IOWA ADMINISTRATIVE BULLETIN

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CONTENTS IN THIS ISSUE

Pages 15 to 159 include **ARC 5977B** to **ARC 6035B**

Continued on page 3

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

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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IOWA LAW, IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM

For free brochures and order forms for 2007 IOWA LAW CD-ROM, contact Nicole Navara at the above address or at nicole.navara@legis.state.ia.us.

Schedule for Rule Making
2007

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. 27 '06	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07
Jan. 12	Jan. 31	Feb. 20	Mar. 7	Mar. 9	Mar. 28	May 2	July 30
Jan. 26	Feb. 14	Mar. 6	Mar. 21	Mar. 23	Apr. 11	May 16	Aug. 13
Feb. 9	Feb. 28	Mar. 20	Apr. 4	Apr. 6	Apr. 25	May 30	Aug. 27
Feb. 23	Mar. 14	Apr. 3	Apr. 18	Apr. 20	May 9	June 13	Sept. 10
Mar. 9	Mar. 28	Apr. 17	May 2	May 4	May 23	June 27	Sept. 24
Mar. 23	Apr. 11	May 1	May 16	***May 16***	June 6	July 11	Oct. 8
Apr. 6	Apr. 25	May 15	May 30	June 1	June 20	July 25	Oct. 22
Apr. 20	May 9	May 29	June 13	June 15	July 4	Aug. 8	Nov. 5
May 4	May 23	June 12	June 27	***June 27***	July 18	Aug. 22	Nov. 19
May 16	June 6	June 26	July 11	July 13	Aug. 1	Sept. 5	Dec. 3
June 1	June 20	July 10	July 25	July 27	Aug. 15	Sept. 19	Dec. 17
June 15	July 4	July 24	Aug. 8	Aug. 10	Aug. 29	Oct. 3	Dec. 31
June 27	July 18	Aug. 7	Aug. 22	***Aug. 22***	Sept. 12	Oct. 17	Jan. 14 '08
July 13	Aug. 1	Aug. 21	Sept. 5	Sept. 7	Sept. 26	Oct. 31	Jan. 28 '08
July 27	Aug. 15	Sept. 4	Sept. 19	Sept. 21	Oct. 10	Nov. 14	Feb. 11 '08
Aug. 10	Aug. 29	Sept. 18	Oct. 3	Oct. 5	Oct. 24	Nov. 28	Feb. 25 '08
Aug. 22	Sept. 12	Oct. 2	Oct. 17	Oct. 19	Nov. 7	Dec. 12	Mar. 10 '08
Sept. 7	Sept. 26	Oct. 16	Oct. 31	Nov. 2	Nov. 21	Dec. 26	Mar. 24 '08
Sept. 21	Oct. 10	Oct. 30	Nov. 14	***Nov. 14***	Dec. 5	Jan. 9 '08	Apr. 7 '08
Oct. 5	Oct. 24	Nov. 13	Nov. 28	Nov. 30	Dec. 19	Jan. 23 '08	Apr. 21 '08
Oct. 19	Nov. 7	Nov. 27	Dec. 12	***Dec. 12***	Jan. 2 '08	Feb. 6 '08	May 5 '08
Nov. 2	Nov. 21	Dec. 11	Dec. 26	***Dec. 26***	Jan. 16 '08	Feb. 20 '08	May 19 '08
Nov. 14	Dec. 5	Dec. 25	Jan. 9 '08	Jan. 11 '08	Jan. 30 '08	Mar. 5 '08	June 2 '08
Nov. 30	Dec. 19	Jan. 8 '08	Jan. 23 '08	Jan. 25 '08	Feb. 13 '08	Mar. 19 '08	June 16 '08
Dec. 12	Jan. 2 '08	Jan. 22 '08	Feb. 6 '08	Feb. 8 '08	Feb. 27 '08	Apr. 2 '08	June 30 '08
Dec. 26	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
3	**Friday, July 13, 2007**	**August 1, 2007**
4	**Friday, July 27, 2007**	**August 15, 2007**
5	**Friday, August 10, 2007**	**August 29, 2007**

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*****

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, July 10, 2007, and Wednesday, July 11, 2007, at 9 a.m. in Room 102, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the June 20, 2007, Iowa Administrative Bulletin.

COLLEGE STUDENT AID COMMISSION[283]
EDUCATION DEPARTMENT[281]"umbrella"

All Iowa opportunity scholarship program, ch 8, Notice **ARC 6017B**, also Filed Emergency **ARC 6006B** 7/4/07
All Iowa opportunity foster care grant program, ch 9, Notice **ARC 6018B**, also Filed Emergency **ARC 6007B** 7/4/07
Registered nurse and nurse educator loan forgiveness program, ch 34,
Notice **ARC 6020B**, also Filed Emergency **ARC 6008B** 7/4/07
Iowa teacher shortage loan forgiveness program, ch 35, Notice **ARC 6022B**, also Filed Emergency **ARC 6011B** 7/4/07

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Reorganization of departmental rules, amend chs 1, 53, 57, 59, 60, 61, 68; rescind chs 2, 17, 103, 168; renumber ch 102 as ch 34, ch 104 as ch 33, ch 132 as ch 72 and chs 169 to 173 as chs 195 to 199; adopt chs 165, 171 to 175, 187 to 189, Notice **ARC 6027B**, also Filed Emergency **ARC 6026B** 7/4/07
Workforce training and economic development funds, 9.1 to 9.10, Notice **ARC 6032B** 7/4/07
Housing fund, 25.2, 25.6(8), 25.9(3), Notice **ARC 6029B** 7/4/07
Film, television and video project promotion program, ch 36,
Notice **ARC 6031B**, also Filed Emergency **ARC 6030B** 7/4/07
COG assistance, 44.6, Notice **ARC 6028B** 7/4/07
Enterprise zones, 59.2, 59.3(6), Notice **ARC 6033B** 7/4/07

ELDER AFFAIRS DEPARTMENT[321]

Boards of directors for area agencies on aging, 6.8 to 6.12, 6.12(4), 6.13 to 6.18,
Notice **ARC 5607B** Terminated **ARC 5991B** 7/4/07

ENVIRONMENTAL PROTECTION COMMISSION[567]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Wastewater construction and operation permits, 64.3(4)"b"(4), 64.6(2), 64.6(6), 64.15(1) to 64.15(3),
Filed **ARC 6000B** 7/4/07
Sanitary landfills for municipal solid waste—groundwater protection systems for the disposal of nonhazardous wastes, 101.13(1)"j"(4), 104.25,
chs 111, 113, Filed **ARC 5999B** 7/4/07

HUMAN SERVICES DEPARTMENT[441]

Calculation of countable income for FIP, FMAP and CMAP eligibility, 41.27(1)"g"(1), 41.27(1)"j," 41.27(2)"c," 41.27(8)"a"(1), 41.27(8)"b"(6), 41.27(9)"a"(2), (3) and (7), 41.27(9)"b"(4), 75.1(35)"g"(2)"2," 75.57(2)"c," 75.57(8)"a," 75.57(8)"b"(6), 75.57(9)"a"(2) to (4) and (7), 75.59(4), Notice **ARC 5981B**, also
Filed Emergency **ARC 5980B** 7/4/07
Emergency assistance, ch 58, div. I, Filed Emergency After Notice **ARC 5982B** 7/4/07
Medicaid eligibility and financial participation of a married person residing in a medical institution who has a spouse who does not live in an institution, 75.5(3)"d," 75.16(2)"d"(3),
Notice **ARC 5987B**, also Filed Emergency **ARC 5986B** 7/4/07
Exemptions to federal requirement for verifying citizenship and identity for children who are receiving federally funded foster care, adoption subsidy, or child welfare services and people receiving Medicare, Social Security disability or SSI, 75.11(2)"c" and "f," Notice **ARC 5989B**, also Filed Emergency **ARC 5988B** 7/4/07
Personal needs allowance for Medicaid members who reside in a medical institution, 75.16(2)"a," 75.16(2)"a"(3),
Notice **ARC 6021B**, also Filed Emergency **ARC 6019B** 7/4/07
Personal needs allowance for Medicaid members who reside in a long-term care facility, 75.16(2)"a"(1),
Notice **ARC 6024B**, also Filed Emergency **ARC 6023B** 7/4/07
Annual update of statewide average cost of nursing facility services to a private pay resident and statewide average charges or maximum Medicaid rate for various levels of institutional care, 75.23(3), 75.24(3)"b"(1) and (4) to (6), Filed Emergency **ARC 5990B** 7/4/07
Medicaid reimbursement methodology for community mental health centers, 79.1(2), 79.1(25),
Notice **ARC 5985B** 7/4/07
Medicaid reimbursement methodology for hospital inpatient psychiatric services, 79.1(5)"b"(3), 79.1(5)"d"(1) and (2), 79.1(5)"g"(2) and (4), 79.1(5)"h," 79.1(5)"i," 79.1(5)"i"(1), 79.1(5)"r," 79.1(5)"r"(4),
Notice **ARC 6013B** 7/4/07
Education about false claims recovery, 79.15, Notice **ARC 5978B** 7/4/07
Fingerprint checks required for foster and adoptive parents and adult members of their households, 108.8(1)"c"(13), 113.13, 200.4(1)"b," Notice **ARC 6012B**, also Filed Emergency **ARC 6009B** 7/4/07

HUMAN SERVICES DEPARTMENT[441](cont'd)
Service provider rate increases, 150.3(5)"p," 156.6(1), 156.11(3)"c," 185.112(1)"k," 185.112(14)"c" and "d,"
Notice **ARC 5993B**, also Filed Emergency **ARC 5992B** 7/4/07
Citizenship requirements for child care assistance, 170.2(2)"d," Filed **ARC 5994B** 7/4/07
Alternative claim form for child care assistance, 170.4(2)"a"(5), examples "1" to "3," 170.4(7),
Notice **ARC 5998B**, also Filed Emergency **ARC 5996B** 7/4/07
Child abuse assessment summary addendum, 175.26(1)"h," 175.26(2), Filed Emergency After Notice **ARC 6005B** 7/4/07

INSURANCE DIVISION[191]
COMMERCE DEPARTMENT[181]"umbrella"
Preneed funeral contracts—conversion of establishment permits and sales permits, 19.72, Filed Emergency **ARC 5983B** 7/4/07
Long-term care insurance—producer training requirements, 39.15(4), Notice **ARC 5984B** 7/4/07

IOWA FINANCE AUTHORITY[265]
Low-income housing tax credits—2008 Qualified Allocation Plan, 12.1, 12.2, Notice **ARC 6014B** 7/4/07

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
Corrective amendments, 11.5(2), 12.1(7)"c"(2) to (6), Notice **ARC 6035B** 7/4/07

LABOR SERVICES DIVISION[875]
WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"
Protective clothing and equipment standards for firefighters, rescind ch 27, Filed **ARC 6034B** 7/4/07

LAW ENFORCEMENT ACADEMY[501]
Reserve peace officers— standardized training and certification; revocation of certification, 6.2, 10.200 to 10.212,
Notice **ARC 6025B** 7/4/07

LOTTERY AUTHORITY,IOWA[531]
Pull-tab general rules—claiming prizes, 19.8, Filed **ARC 6003B** 7/4/07

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"
Rules of practice in contested cases, ch 7, Notice **ARC 6004B** 7/4/07
Deer hunting by residents, 106.2(5), 106.6(2) to 106.6(4), 106.6(6), 106.7(5), 106.7(8), 106.10(2), 106.11,
Filed **ARC 6002B** 7/4/07
Trapping seasons for bobcats, beavers, and otters, 108.4, 108.6 to 108.8, Filed **ARC 6001B** 7/4/07

PROFESSIONAL LICENSURE DIVISION[645]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"
Massage therapy, 131.8(3)"c," ch 132, 135.1(10) Notice **ARC 5977B** 7/4/07

SECRETARY OF STATE[721]
Paper record requirement—reimbursement procedure, 22.32, Filed Emergency **ARC 5979B** 7/4/07

STATE PUBLIC DEFENDER[493]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"
Rate of compensation, 12.4, 12.5(1), 12.6(3)"a" and "b," 14.3, Notice **ARC 6016B**, also Filed Emergency **ARC 6015B** 7/4/07

TRANSPORTATION DEPARTMENT[761]
Iowa airport registration, 720.2 to 720.6, 720.10, 720.15(2), 720.15(3), Filed **ARC 5997B** 7/4/07
School transportation services provided by regional transit systems, 911.5(1), 911.7(1)"b," 911.7(2), 911.10(8),
Filed **ARC 5995B** 7/4/07

UTILITIES DIVISION[199]
COMMERCE DEPARTMENT[181]"umbrella"
Filing of line and pole replacement data, 20.18(7)"i," 25.3(1), 25.3(3)"d," 25.3(4), Filed **ARC 6010B** 7/4/07

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.
EDITOR'S NOTE: Terms ending April 30, 2011.

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AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]		
Reorganization, amend chs 1, 53, 57, 59, 60, 61, 68; rescind chs 2, 17, 103, 168; renumber chs 102, 104, 132 as chs 33, 34, 72 and chs 169 to 173 as chs 195 to 199; adopt chs 165, 171 to 175, 187 to 189 IAB 7/4/07 **ARC 6027B** (See also **ARC 6026B** herein) **(ICN Network)**	**(Origination Site)** Main Conference Room Second Floor 200 E. Grand Ave. Des Moines, Iowa	July 26, 2007 2 to 3:30 p.m.
	Kuemper High School 109 S. Clark Carroll, Iowa	July 26, 2007 2 to 3:30 p.m.
	Clarinda High School 100 N. Cardinal Dr. Clarinda, Iowa	July 26, 2007 2 to 3:30 p.m.
	Eastern Iowa Comm. College District 1 Kahl Educational Center, Rm. 300 326 W. Third St. Davenport, Iowa	July 26, 2007 2 to 3:30 p.m.
	Carnegie-Stout Public Library 360 W. 11th St. Dubuque, Iowa	July 26, 2007 2 to 3:30 p.m.
	Fort Dodge Public Library 424 Central Ave. Fort Dodge, Iowa	July 26, 2007 2 to 3:30 p.m.
	Iowa City High School 1900 Morningside Dr. Iowa City, Iowa	July 26, 2007 2 to 3:30 p.m.
	Keokuk Public Library 210 N. 5th Keokuk, Iowa	July 26, 2007 2 to 3:30 p.m.
	NIACC 500 College Dr. Mason City, Iowa	July 26, 2007 2 to 3:30 p.m.
	Oskaloosa Public Library 301 S. Market Oskaloosa, Iowa	July 26, 2007 2 to 3:30 p.m.
	East High School 5011 Mayhew Ave. Sioux City, Iowa	July 26, 2007 2 to 3:30 p.m.
	Spencer High School 800 E. 3rd St. Spencer, Iowa	July 26, 2007 2 to 3:30 p.m.
	Hawkeye Community College -1 1501 E. Orange Rd. Waterloo, Iowa	July 26, 2007 2 to 3:30 p.m.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261] (Cont'd)

Workforce training and economic development funds, 9.1 to 9.10 IAB 7/4/07 **ARC 6032B** **(ICN Network)**	[See listing for **ARC 6027B** above]	
Housing fund, 25.2, 25.6(8), 25.9(3) IAB 7/4/07 **ARC 6029B** **(ICN Network)**	[See listing for **ARC 6027B** above]	
Film, television, and video project promotion program, ch 36 IAB 7/4/07 **ARC 6031B** (See also **ARC 6030B** herein) **(ICN Network)**	[See listing for **ARC 6027B** above]	
COG assistance, 44.6 IAB 7/4/07 **ARC 6028B** **(ICN Network)**	[See listing for **ARC 6027B** above]	
Enterprise zones, 59.2, 59.3(6) IAB 7/4/07 **ARC 6033B** **(ICN Network)**	[See listing for **ARC 6027B** above]	

EDUCATION DEPARTMENT[281]

Statewide voluntary preschool program, ch 16 IAB 6/20/07 **ARC 5968B** (See also **ARC 5969B**) **(ICN Network)**	ICN Room, Second Floor E. 14th St. and Grand Ave. Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 56, North Polk High School 315 NE 141st Ave. Alleman, Iowa	July 10, 2007 9 a.m. to 12 noon
	Fiber Optic Room Bedford Community High School 906 Pennsylvania Ave. Bedford, Iowa	July 10, 2007 9 a.m. to 12 noon
	Louisa Rm., Mississippi Bend AEA 9 729 21st St. Bettendorf, Iowa	July 10, 2007 9 a.m. to 12 noon
	Burlington High School 421 Terrace Dr. Burlington, Iowa	July 10, 2007 9 a.m. to 12 noon
	AEA 267 3712 Cedar Heights Dr. Cedar Falls, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 203B, Linn Hall Kirkwood Comm. College 6301 Kirkwood Blvd. SW Cedar Rapids, Iowa	July 10, 2007 9 a.m. to 12 noon
	ICN Classroom Clear Lake High School 125 N. 20th St. Clear Lake, Iowa	July 10, 2007 9 a.m. to 12 noon

EDUCATION DEPARTMENT[281] (Cont'd)

	Loess Hills AEA 13 24997 Hwy. 92 Council Bluffs, Iowa	July 10, 2007 9 a.m. to 12 noon
	Room 211, Instructional Center Southwestern Comm. College 1501 W. Townline Rd. Creston, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 225, Wahlert High School 2005 Kane St. Dubuque, Iowa	July 10, 2007 9 a.m. to 12 noon
	Keystone AEA 1 1400 2nd St. NW Elkader, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 12, Fort Dodge High School 819 N. 25th St. Fort Dodge, Iowa	July 10, 2007 9 a.m. to 12 noon
	Heartland AEA 11 6500 Corporate Dr. Johnston, Iowa	July 10, 2007 9 a.m. to 12 noon
	AEA 267 909 S. 12th St. Marshalltown, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 8, Mediapolis High School 725 North Northfield Mediapolis, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 157, Voc. Tech. Bldg. Ottumwa High School 501 E. 2nd Ottumwa, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 103, Northwest AEA 1382 4th Ave. NE Sioux Center, Iowa	July 10, 2007 9 a.m. to 12 noon
	Rm. 311, Central Campus Individual Learning Center 1121 Jackson St. Sioux City, Iowa	July 10, 2007 9 a.m. to 12 noon

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Continuing education for local coordinators, 7.4(4) IAB 6/20/07 **ARC 5975B**	Conference Room, Building W-4 Camp Dodge Johnston, Iowa	July 13, 2007 9 a.m.
Allocation of emergency management performance grant moneys, 7.7(3) IAB 6/20/07 **ARC 5970B**	Conference Room, Building W-4 Camp Dodge Johnston, Iowa	July 13, 2007 9 a.m.
Enhanced 911 telephone systems, 10.9(3), 10.14(4) IAB 6/20/07 **ARC 5976B**	Conference Room, Building W-4 Camp Dodge Johnston, Iowa	July 13, 2007 9 a.m.

INSURANCE DIVISION[191]

Producer training requirements, 39.15(4) IAB 7/4/07 **ARC 5984B**	330 Maple Street Des Moines, Iowa	July 24, 2007 10 a.m.

IOWA FINANCE AUTHORITY[265]

Low-income housing tax credits, 12.1, 12.2 IAB 7/4/07 **ARC 6014B**	2015 Grand Ave. Des Moines, Iowa	July 24, 2007 9 to 11 a.m.

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

Update of reference; calculation of retirement benefits, 11.5(2), 12.1(7) IAB 7/4/07 **ARC 6035B**	7401 Register Dr. Des Moines, Iowa	July 24, 2007 9 a.m.

LAW ENFORCEMENT ACADEMY[501]

Decertification; reserve peace officers, amendments to chs 6, 10 IAB 7/4/07 **ARC 6025B**	Classrooms 3 and 4 Law Enforcement Academy Camp Dodge Johnston, Iowa	July 24, 2007 1 p.m.

NATURAL RESOURCE COMMISSION[571]

Commercial fishing on the Mississippi, 82.2 IAB 6/20/07 **ARC 5956B**	Musser Public Library 304 Iowa Ave. Muscatine, Iowa	July 16, 2007 7 p.m.
	Cafeteria, Clinton Cty. Admin. Bldg. 1900 N. 3rd St. Clinton, Iowa	July 17, 2007 7 p.m.
	Guttenberg Municipal Bldg. 502 S. 1st St. Guttenberg, Iowa	July 18, 2007 7 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Massage therapy, amendments to chs 130 to 135 IAB 7/4/07 **ARC 5977B**	Board Conference Room, 5th Floor Lucas State Office Bldg. Des Moines, Iowa	July 24, 2007 9 to 9:30 a.m.

STATE PUBLIC DEFENDER[493]

Hourly rate paid for indigent defense cases, 12.4, 12.5, 12.6(3), 14.3 IAB 7/4/07 **ARC 6016B** (See also **ARC 6015B** herein)	Conference Room 422 Lucas State Office Bldg. Des Moines, Iowa	July 27, 2007 9 a.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]

Organization; administration; advisory committees, 1.3, 1.5(2), 1.6(1) IAB 6/20/07 **ARC 5948B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.

TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751] (Cont'd)

Change of address, 2.3(1) IAB 6/20/07 **ARC 5949B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 3.1, 3.3(3), 3.5, 3.6(2) IAB 6/20/07 **ARC 5957B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 4.12 IAB 6/20/07 **ARC 5958B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Authorized spending limit; change of address, 5.2(4), 5.17, 5.19(3) IAB 6/20/07 **ARC 5959B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Central switching hub name change, 7.1 IAB 6/20/07 **ARC 5960B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Request for waiver of network use, 9.1 IAB 6/20/07 **ARC 5961B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 16.6 IAB 6/20/07 **ARC 5962B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.
Change of address, 18.5 IAB 6/20/07 **ARC 5963B**	ICN Grand Conference Room Grimes State Office Bldg. Des Moines, Iowa	July 10, 2007 1 p.m.

CITATION of Administrative Rules

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

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

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

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

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 Bureau[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
  - Real Estate Appraiser Examining Board[193F]
  - Interior Design Examining Board[193G]
- Savings and Loan Division[197]
- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
- Parole Board[205]

CULTURAL AFFAIRS DEPARTMENT[221]
- Arts Division[222]
- Historical Division[223]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
- City Development Board[263]
- Grow Iowa Values Board[264]

IOWA FINANCE AUTHORITY[265]
EDUCATION DEPARTMENT[281]
- Educational Examiners Board[282]
- College Student Aid Commission[283]
- Higher Education Loan Authority[284]
- Iowa Advance Funding Authority[285]
- Libraries and Information Services Division[286]
- Public Broadcasting Division[288]
- School Budget Review Committee[289]

EGG COUNCIL, IOWA[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
HUMAN RIGHTS DEPARTMENT[421]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services Division[429]
- Persons With Disabilities Division[431]
- Latino Affairs Division[433]
- Status of African-Americans, Division on the[434]
- Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
- Employment Appeal Board[486]
- Foster Care Review Board[489]
- Racing and Gaming Commission[491]
- State Public Defender[493]

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
LOTTERY AUTHORITY, IOWA[531]
MANAGEMENT DEPARTMENT[541]
- Appeal Board, State[543]
- City Finance Committee[545]
- County Finance Committee[547]

NATURAL RESOURCES DEPARTMENT[561]
- Energy and Geological Resources Division[565]
- Environmental Protection Commission[567]
- Natural Resource Commission[571]
- Preserves, State Advisory Board for[575]

PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
- Homeland Security and Emergency Management Division[605]
- Military Division[611]

PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
- Professional Licensure Division[645]
- Dental Examiners Board[650]
- Medicine Board[653]
- Nursing Board[655]
- Pharmacy Examiners Board[657]

PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
- Archaeologist[685]

REVENUE DEPARTMENT[701]
SECRETARY OF STATE[721]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
- Railway Finance Authority[765]

TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]
VETERINARY MEDICINE BOARD[811]
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
- Labor Services Division[875]
- Workers' Compensation Division[876]
- Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 6017B

COLLEGE STUDENT AID COMMISSION[283]

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 261.3, the College Student Aid Commission hereby proposes to adopt a new Chapter 8, "All Iowa Opportunity Scholarship Program," Iowa Administrative Code.

The purpose of these rules is to implement the All Iowa Opportunity Scholarship Program as enacted by 2007 Iowa Acts, Senate File 588.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6006B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference. These rules became effective on June 14, 2007.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 24, 2007, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)725-3400.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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 6018B

COLLEGE STUDENT AID COMMISSION[283]

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 261.3, the College Student Aid Commission hereby proposes to adopt a new Chapter 9, "All Iowa Opportunity Foster Care Grant Program," Iowa Administrative Code.

The purpose of these rules is to implement the All Iowa Opportunity Foster Care Grant Program as enacted by 2007 Iowa Acts, Senate File 588.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6007B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference. These rules became effective on June 14, 2007.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 24, 2007, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)725-3400.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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 6020B

COLLEGE STUDENT AID COMMISSION[283]

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 261.3, the College Student Aid Commission hereby proposes to rescind Chapter 34, "Registered Nurse Recruitment Program," and adopt a new Chapter 34, "Registered Nurse and Nurse Educator Loan Forgiveness Program," Iowa Administrative Code.

The purpose of these rules is to implement the Registered Nurse and Nurse Educator Loan Forgiveness Program as enacted by 2007 Iowa Acts, Senate File 588.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6008B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference. These rules became effective on June 14, 2007.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 24, 2007, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)725-3400.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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 6022B

COLLEGE STUDENT AID COMMISSION[283]

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 261.3, the College Student Aid Commission hereby proposes to rescind

COLLEGE STUDENT AID COMMISSION[283](cont'd)

Chapter 35, "Teacher Shortage Forgivable Loan Program," and adopt a new Chapter 35, "Iowa Teacher Shortage Loan Forgiveness Program," Iowa Administrative Code.

The purpose of these rules is to implement the Iowa Teacher Shortage Loan Forgiveness Program as enacted by 2007 Iowa Acts, Senate File 588.

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6011B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference. These rules became effective on June 14, 2007.

Interested persons may submit comments orally or in writing by 4:30 p.m. on July 24, 2007, to the Executive Director, College Student Aid Commission, 200 Tenth Street, Fourth Floor, Des Moines, Iowa 50309; telephone (515)725-3400.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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 6027B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 1, "Organization"; rescind Chapter 2, "Grow Iowa Values Fund Assistance," and Chapter 17, "High Technology Apprenticeship Program"; amend Chapter 53, "Community Economic Betterment Program," Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program," Chapter 59, "Enterprise Zones," Chapter 60, "Entrepreneurial Ventures Assistance Program," Chapter 61, "Physical Infrastructure Assistance Program," and Chapter 68, "High Quality Job Creation Program"; renumber Chapter 102, "Welcome Center Program," as Chapter 34; rescind Chapter 103, "Tourism Promotion—Licensing Program"; renumber Chapter 104, "Iowa Wine and Beer Promotion Grant Program," and Chapter 132, "Iowa Export Trade Assistance Program," as Chapters 33 and 72, respectively; adopt new Chapter 165, "Allocation of Grow Iowa Values Fund"; rescind Chapter 168, "Additional Program Requirements"; renumber Chapter 169, "Public Records and Fair Information Practices," Chapter 170, "Department Procedure for Rule Making," Chapter 171, "Petition for Rule Making," Chapter 172, "Petition for Declaratory Order," and Chapter 173, "Uniform Waiver and Variance Rules," as Chapters 195 to 199, respectively; and adopt new Chapter 171, "Supplemental Credit or Points," Chapter 172, "Environmental Law Compliance; Violations of Law," Chapter 173, "Standard Definitions," Chapter 174, "Wage, Benefit, and Investment Requirements," Chapter 175, "Application Review and Approval Procedures," Chapter 187, "Contracting," Chapter 188, "Contract Compliance and Job Counting," and Chapter 189, "Annual Reporting," Iowa Administrative Code.

The objectives of this rule making are to reorganize the Department's rules to group them according to the Department's divisions for ease of reference, to establish a standardized set of rules for administration and oversight of the Department's job creation programs, to renumber existing rules to reserve chapters for new programs recently authorized by the legislature, and to rescind rules for programs that are no longer in operation. The standardized rules for program administration and oversight centralize program definitions, wage and benefits requirements, contracting requirements and other administrative requirements that apply to job creation programs administered by the Department. The rules also establish a revised annual reporting process that includes a method to count and track jobs that is intended to be accountable, verifiable and business friendly.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 26, 2007. Interested persons may submit written or oral comments by contacting Melanie Johnson, Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4862.

The Department will hold a public hearing on Thursday, July 26, 2007, from 2 to 3:30 p.m. to receive comments on these amendments. The public hearing will originate from the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. Public participation will also be available via the Iowa Communications Network (ICN) from the remote locations listed below:

Kuemper High School 109 S. Clark Carroll, Iowa	Keokuk Public Library 210 N. 5th Keokuk, Iowa
Clarinda High School 100 North Cardinal Drive Clarinda, Iowa	North Iowa Area Community College 500 College Drive Mason City, Iowa
Eastern Iowa Community College District 1 326 W. Third Street Kahl Educational Center, Room 300 Davenport, Iowa	Oskaloosa Public Library 301 South Market Oskaloosa, Iowa
Carnegie-Stout Public Library 360 West 11th Street Dubuque, Iowa	East High School 5011 Mayhew Avenue Sioux City, Iowa
Fort Dodge Public Library 424 Central Avenue Fort Dodge, Iowa	Spencer High School 800 East 3rd Street Spencer, Iowa
Iowa City High School 1900 Morningside Drive Iowa City, Iowa	Hawkeye Community College - 1 1501 E. Orange Road Waterloo, Iowa

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6026B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapters 15, 15G and 17A.

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 6032B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 9, "Workforce Training and Economic Development Funds," Iowa Administrative Code.

The proposed amendments change the due date for community college reports and two-year plans from April 30 to August 15 of each year. Language has been added to describe how community colleges may utilize funds allocated by 2007 Iowa Acts, House File 927. In addition, Iowa Code references have been updated.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 26, 2007. Interested persons may submit written or oral comments by contacting Nichole Warren, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4831.

The Department will hold a public hearing on Thursday, July 26, 2007, from 2 to 3:30 p.m. to receive comments on these amendments. The public hearing will originate from the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. Public participation will also be available via the Iowa Communications Network (ICN) from the remote locations listed below:

Kuemper High School 109 S. Clark Carroll, Iowa	Keokuk Public Library 210 N. 5th Keokuk, Iowa
Clarinda High School 100 North Cardinal Drive Clarinda, Iowa	North Iowa Area Community College 500 College Drive Mason City, Iowa
Eastern Iowa Community College District 1 326 W. Third Street Kahl Educational Center, Room 300 Davenport, Iowa	Oskaloosa Public Library 301 South Market Oskaloosa, Iowa
Carnegie-Stout Public Library 360 West 11th Street Dubuque, Iowa	East High School 5011 Mayhew Avenue Sioux City, Iowa
Fort Dodge Public Library 424 Central Avenue Fort Dodge, Iowa	Spencer High School 800 East 3rd Street Spencer, Iowa
Iowa City High School 1900 Morningside Drive Iowa City, Iowa	Hawkeye Community College - 1 1501 E. Orange Road Waterloo, Iowa

These amendments are intended to implement Iowa Code sections 15G.111(5) and 260C.18A and 2007 Iowa Acts, House File 927.

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 rules **261—9.1(81GA,HF868)** through **261—9.10(81GA,HF868)** by amending the parenthetical implementation as follows:

(~~81GA,HF868~~ *15G,260C*)

ITEM 2. Amend rule 261—9.2(15G,260C) as follows:

261—9.2(15G,260C) Definitions.

"Community college" or "college." No change.

"Department" or "IDED." No change.

"Fund" or "funds" means the workforce training and economic development funds created by Iowa Code section 260C.18A ~~as amended by 2005 Iowa Acts, House File 868, sections 35 to 37,~~ and allocated to each community college.

"GIVF" or "grow Iowa values fund" means moneys appropriated to the grow Iowa values fund established by ~~2005 Iowa Acts, House File 868, section 1~~ *Iowa Code section 15G.111*.

"Iowa economic development board" or "IDED board" means the Iowa economic development board established in Iowa Code section 15.103 ~~as amended by 2005 Iowa Acts, House File 868, section 4~~.

"Project." No change.

ITEM 3. Amend rule 261—9.4(15G,260C) as follows:

261—9.4(15G,260C) Community college workforce and economic development plan and progress report. For the fiscal year beginning July 1, 2003, each community college, prior to receiving its allocation, shall adopt and submit to the department with a copy filed with the IDED board a two-year workforce training and economic development plan that outlines the community college's proposed use of the grow Iowa values fund moneys allocated to the community college. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, each community college, to receive its allocation for the forthcoming fiscal year, shall prepare and submit to the department for the IDED board the following items ~~prior to the start of~~ *for* the ~~forthcoming~~ fiscal year:

9.4(1) Two-year workforce training and economic development fund plan. Each college shall adopt a two-year workforce training and economic development fund plan that outlines the community college's proposed use of the grow Iowa values fund moneys appropriated to its fund. Plans shall be based on fiscal years and must be submitted to the department by ~~April 30~~ *August 15* ~~prior to~~ *for* the ~~forthcoming~~ *current* fiscal year allocation.

9.4(2) Plan updates. Plans shall be updated annually outlining proposed uses for the next two fiscal years, and must be submitted to the department by ~~April 30~~ *August 15* ~~prior to~~ *for* the ~~forthcoming~~ *current* fiscal year allocation.

9.4(3) Progress reports.

a. Each college shall prepare an annual progress report on the two-year plan's implementation. This progress report shall address the following goals established by the general assembly for the GIVF:

(1) Expanding and stimulating the state's economy;

(2) Increasing the wealth of Iowans; and

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

(3) Increasing the population of the state.

b. The report shall be submitted in a manner and form as prescribed by IDED and shall meet the requirements of rule 261—9.8(~~81GA,HF868~~ *15G,260C*).

c. Each college shall annually submit the two-year plan and progress report to the department in a manner prescribed by these rules, and annually file a copy of the plan and progress report with the IDED board. Plans and progress reports shall be submitted to IDED by ~~April 30~~ *August 15*. For the fiscal year beginning July 1, 2004, and each fiscal year thereafter, a community college shall not have moneys deposited in the workforce training and economic development fund of that community college unless the IDED board has approved the annual progress report of the community college.

ITEM 4. Amend rule 261—9.5(15G,260C) by adopting the following **new** subrule:

9.5(6) The portion of annual funds allocated from 2007 Iowa Acts, House File 927, shall be used for the development and expansion of energy industry areas and for the department's North American Industrial Classification System (NAICS) for targeted industry areas established pursuant to Iowa Code section 260C.18A.

ITEM 5. Amend subrule 9.8(1) as follows:

9.8(1) Each community college that receives an allocation of moneys under rule 261—9.4(~~81GA,HF868~~ *15G,260C*) shall submit to the IDED board by ~~April 30~~ *August 15* of each year an annual written report regarding the accomplishments of the projects funded through the workforce training and economic development fund for the fiscal year, in a manner and form prescribed by the department. The report shall provide information regarding how projects aided by the community college's workforce training and economic development fund are meeting the goals of the grow Iowa values fund and have resulted in an increase in the number of higher education graduates.

ITEM 6. Amend subrule 9.9(2) as follows:

9.9(2) The board may reject a progress report for the following reasons, including but not limited to:

a. Information or data is incomplete;

b. Report does not address how grow Iowa values fund goals have been met;

c. Fund is determined not to meet the goals established under the grow Iowa values fund;

d. Use of funds fails to meet the college's two-year plan;

e. Seventy percent of the fund is not used for projects in the areas of advanced manufacturing; information technology and insurance; and life sciences, which include the areas of biotechnology, health care technology, and nursing care technology~~.~~ *;*

f. Funds allocated from 2007 Iowa Acts, House File 927, are not used for the development and expansion of energy industry areas and for the department's North American Industrial Classification System (NAICS) for targeted industry areas established pursuant to Iowa Code section 260C.18A.

ITEM 7. **Amend 261—Chapter 9**, implementation sentence, as follows:

These rules are intended to implement ~~2005 Iowa Acts, House File 868 and House File 809~~ *Iowa Code sections 15G.111 and 260C.18A.*

ARC 6029B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 25, "Housing Fund," Iowa Administrative Code.

The proposed amendments clarify or expand on the definition of "technical services," add Habitat for Humanity as another allowable principal mortgage loan provider, and require separate procurement transactions for contracted services.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on July 26, 2007. Interested persons may submit written or oral comments by contacting Terry Vestal, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4850.

The Department will hold a public hearing on Thursday, July 26, 2007, from 2 to 3:30 p.m. to receive comments on these amendments. The public hearing will originate from the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. Public participation will also be available via the Iowa Communications Network (ICN) from the remote locations listed below:

Kuemper High School 109 S. Clark Carroll, Iowa	Keokuk Public Library 210 N. 5th Keokuk, Iowa
Clarinda High School 100 North Cardinal Drive Clarinda, Iowa	North Iowa Area Community College 500 College Drive Mason City, Iowa
Eastern Iowa Community College District 1 326 W. Third Street Kahl Educational Center, Room 300 Davenport, Iowa	Oskaloosa Public Library 301 South Market Oskaloosa, Iowa
Carnegie-Stout Public Library 360 West 11th Street Dubuque, Iowa	East High School 5011 Mayhew Avenue Sioux City, Iowa
Fort Dodge Public Library 424 Central Avenue Fort Dodge, Iowa	Spencer High School 800 East 3rd Street Spencer, Iowa
Iowa City High School 1900 Morningside Drive Iowa City, Iowa	Hawkeye Community College - 1 1501 E. Orange Road Waterloo, Iowa

These amendments are intended to implement Iowa Code section 15.108(1)"a."

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.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

The following amendments are proposed.

ITEM 1. Amend rule **261—25.2(15)**, definition of "technical services," as follows:

"Technical services" means all services that are necessary for individual, scattered site activities including: (1) conducting initial inspections, (2) work write-up or project specification development, (3) cost estimate preparation, ~~and~~ (4) construction supervision associated with activities that do not require an architect or engineer, *(5) lead hazard reduction determination and oversight, (6) lead hazard reduction carrying costs, and (7) temporary relocation coordination*.

ITEM 2. Amend subrule 25.6(8) as follows:

25.6(8) An application for a home ownership activity must indicate that recipients will require the beneficiaries of their home ownership assistance to use a principal mortgage loan product offered by one of the following: Iowa Finance Authority, USDA-Rural Development, Federal Home Loan Bank, HUD (including FHA and VA), Fannie Mae, *Habitat for Humanity,* or Freddie Mac. One of these entities will be the principal, and only, mortgage lender in terms of repayable loans in all individual home ownership assistance projects. Any of the named mortgage lending entity's principal mortgage loan products may be used, provided they meet the following minimum requirements: loan terms will minimally include a 90 percent loan-to-value ratio and will be no less than a 15-year, fully amortized, fixed-rate mortgage.

ITEM 3. Amend subrule 25.9(3) as follows:

25.9(3) Local administrative and technical services contracts.

a. Recipients awarded funds for general administration that employ the services of a third-party administrator to perform all or part of the general administrative functions for the recipient shall enter into a contractual agreement for the general administrative functions to be performed.

b. Recipients awarded funds for activities requiring technical services (e.g., inspections, work write-ups, cost estimates, construction supervision, lead hazard reduction need determination and oversight, lead hazard carrying costs, and temporary relocation coordination) that employ a third-party entity to perform all or part of the technical services shall enter into a contractual agreement for the technical services to be performed.

c. Recipients that employ a third party to perform all or part of the general administration for the recipient and that also employ a third party to perform all or part of the technical services for the recipient shall *conduct separate procurement transactions and shall* enter into separate contractual agreements for each: one contract for general administration and one contract for technical services. Separate contracts are required even if both functions are performed by the same third-party entity.

ARC 6031B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development gives Notice of Intended Action to adopt Chapter 36, "Film, Television, and Video Project Promotion Program," Iowa Administrative Code.

Chapter 36 implements a new tax credit program authorized by 2007 Iowa Acts, House File 892. The rules describe the application process, the tax credit benefits available if approved, and contract administration processes.

Public comments concerning the proposed new chapter will be accepted until 4:30 p.m. on July 26, 2007. Interested persons may submit written or oral comments by contacting Tom Wheeler, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4726.

The Department will hold a public hearing on Thursday, July 26, 2007, from 2 to 3:30 p.m. to receive comments on these rules. The public hearing will originate from the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. Public participation will also be available via the Iowa Communications Network (ICN) from the remote locations listed below:

Kuemper High School
109 S. Clark
Carroll, Iowa

Clarinda High School
100 North Cardinal Drive
Clarinda, Iowa

Eastern Iowa Community College District 1
326 W. Third Street
Kahl Educational Center, Room 300
Davenport, Iowa

Carnegie-Stout Public Library
360 West 11th Street
Dubuque, Iowa

Fort Dodge Public Library
424 Central Avenue
Fort Dodge, Iowa

Iowa City High School
1900 Morningside Drive
Iowa City, Iowa

Keokuk Public Library
210 N. 5th
Keokuk, Iowa

North Iowa Area Community College
500 College Drive
Mason City, Iowa

Oskaloosa Public Library
301 South Market
Oskaloosa, Iowa

East High School
5011 Mayhew Avenue
Sioux City, Iowa

Spencer High School
800 East 3rd Street
Spencer, Iowa

Hawkeye Community College - 1
1501 E. Orange Road
Waterloo, Iowa

These rules were also Adopted and Filed Emergency and are published herein as **ARC 6030B**. The content of that submission is incorporated by reference.

These rules are intended to implement 2007 Iowa Acts, House File 892.

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 6028B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 44, "COG Assistance," Iowa Administrative Code.

The proposed amendment defines how funds appropriated by the legislature will be allocated to the former area fifteen council of governments which, pursuant to 2007 Iowa Acts, Senate File 444, will be split into two council of governments effective July 1, 2007.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on July 26, 2007. Interested persons may submit written or oral comments by contacting Diane Foss, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-5907.

The Department will hold a public hearing on Thursday, July 26, 2007, from 2 to 3:30 p.m. to receive comments on this amendment. The public hearing will originate from the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. Public participation will also be available via the Iowa Communications Network (ICN) from the remote locations listed below:

Kuemper High School
109 S. Clark
Carroll, Iowa

Clarinda High School
100 North Cardinal Drive
Clarinda, Iowa

Eastern Iowa Community College District 1
326 W. Third Street
Kahl Educational Center, Room 300
Davenport, Iowa

Carnegie-Stout Public Library
360 West 11th Street
Dubuque, Iowa

Fort Dodge Public Library
424 Central Avenue
Fort Dodge, Iowa

Iowa City High School
1900 Morningside Drive
Iowa City, Iowa

Keokuk Public Library
210 N. 5th
Keokuk, Iowa

North Iowa Area Community College
500 College Drive
Mason City, Iowa

Oskaloosa Public Library
301 South Market
Oskaloosa, Iowa

East High School
5011 Mayhew Avenue
Sioux City, Iowa

Spencer High School
800 East 3rd Street
Spencer, Iowa

Hawkeye Community College - 1
1501 E. Orange Road
Waterloo, Iowa

This amendment is intended to implement Iowa Code section 28H.1 and 2007 Iowa Acts, Senate File 444.

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 261—44.6(99E) as follows:

261—44.6(~~99E~~ *28H*) Grant awards.

44.6(1) Grant awards will be made on a noncompetitive basis with each eligible applicant receiving an equal share of the funds available for the purpose of this chapter. *One-sixteenth of the total funds allocated by the legislature for COG assistance shall be awarded to each COG, with the exception of the area fifteen regional planning commission and the Chariton valley council of governments. One-sixteenth of the total funds allocated under this program shall be divided between the area fifteen regional planning commission and the Chariton valley council of governments. The funding for those two agencies shall be determined, based on the population of each agency's member entities, on a per capita basis.*

44.6(2) *The area fifteen regional planning commission and the Chariton valley council of governments shall provide to the department a list of their members by July 1 of each year, so that the department can determine the appropriate amount of funding for each entity. The department will use the United States Census Bureau's most recent Decennial Census to determine the population figures used and to calculate the funding amount for each of the two entities.*

ARC 6033B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

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 15.104 and 15.106, the Iowa Department of Economic Development hereby gives Notice of Intended Action to amend Chapter 59, "Enterprise Zones," Iowa Administrative Code.

The proposed amendments define a "business closure" and a "permanent layoff" and include a permanent layoff as additional criteria for establishing an enterprise zone.

Public comments concerning the proposed amendments will be accepted until 4:30 p.m. on July 26, 2007. Interested persons may submit written or oral comments by contacting Jeremy Babcock, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)242-4940.

The Department will hold a public hearing on Thursday, July 26, 2007, from 2 to 3:30 p.m. to receive comments on these amendments. The public hearing will originate from

the Main Conference Room, Second Floor, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa. Public participation will also be available via the Iowa Communications Network (ICN) from the remote locations listed below:

Kuemper High School 109 S. Clark Carroll, Iowa	Keokuk Public Library 210 N. 5th Keokuk, Iowa
Clarinda High School 100 North Cardinal Drive Clarinda, Iowa	North Iowa Area Community College 500 College Drive Mason City, Iowa
Eastern Iowa Community College District 1 326 W. Third Street Kahl Educational Center, Room 300 Davenport, Iowa	Oskaloosa Public Library 301 South Market Oskaloosa, Iowa
Carnegie-Stout Public Library 360 West 11th Street Dubuque, Iowa	East High School 5011 Mayhew Avenue Sioux City, Iowa
Fort Dodge Public Library 424 Central Avenue Fort Dodge, Iowa	Spencer High School 800 East 3rd Street Spencer, Iowa
Iowa City High School 1900 Morningside Drive Iowa City, Iowa	Hawkeye Community College - 1 1501 E. Orange Road Waterloo, Iowa

These amendments are intended to implement 2007 Iowa Acts, House File 648.

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 **261—59.2(15E)** by adopting in alphabetical order the following **new** definitions:

"Business closure" means a business that has completed the formal legal process of dissolution, withdrawal or cancellation with the secretary of state.

"Permanent layoff" means the loss of jobs to an out-of-state location, the cessation of one or more production lines, the removal of manufacturing machinery and equipment, or similar actions determined to be equivalent in nature by the department. A permanent layoff does not include a layoff of seasonal employees or a layoff that is seasonal in nature. For purposes of these rules, a permanent layoff must occur on or after February 1, 2007.

ITEM 2. Amend subrule 59.3(6) as follows:

59.3(6) City or county with business closure.

a. Requirements. A city of any size or any county may designate an enterprise zone at any time prior to July 1, 2010, when a business closure *or permanent layoff* occurs involving the loss of full-time employees, not including retail employees, at one place of business totaling at least 1,000 employees or 4 percent of the county's resident labor force based upon the most recent annual resident labor force statistics from the department of workforce development, whichever is lower.

b. Zone parameters. The enterprise zone may be established on the property of the place of business that has closed *or imposed a permanent layoff*, and the enterprise zone may include an area up to an additional three miles adjacent to the property. *The closing business or business imposing a permanent layoff shall not be eligible to receive incentives or assistance under this program.* The area meeting the requirements for enterprise zone eligibility under this subrule shall not be included for the purpose of determining the area limitation pursuant to Iowa Code section 15E.192, subsection 4.

c. Certification procedures. All requests for certification shall be made using the application provided by the department. The board will review requests for enterprise zone certification. The board may approve, deny, or defer a request for zone certification.

d. Amendments. A city or county which designated an enterprise zone under this subrule on or after June 1, 2000, may request an amendment to include additional area within the enterprise zone. Requests must be in writing and be approved by the department within three years of the date the enterprise zone was originally certified. Requests must include the enterprise zone name and number, as established by the department when the zone was certified, the date the zone was originally certified, and the number of acres the zone will contain if the amendment is approved. A legal description of the amended enterprise zone and a map which shows both the original enterprise zone boundaries and the proposed changes to those boundaries shall accompany the written request.

e. Restrictions. Enterprise zones established pursuant to this subrule shall not be used to provide incentives for eligible housing businesses to construct new housing units or rehabilitate existing housing units.

ARC 5991B

ELDER AFFAIRS DEPARTMENT[321]

Notice of Termination

Pursuant to the authority of Iowa Code section 231.14, the Elder Affairs Department terminates the rule making initiated by its Notice of Intended Action published in the December 6, 2006, Iowa Administrative Bulletin as **ARC 5607B** amending Chapter 6, "Area Agency on Aging Planning and Administration," Iowa Administrative Code.

The Notice proposed amendments to establish the nomination and objection procedure to be used in replacing members of area agency on aging boards of directors and require nonprofit contractors or subgrantees to comply with Iowa Code chapter 504.

The Department is terminating the rule making commenced in **ARC 5607B** because 2007 Iowa Acts, House File 585, section 1, strikes the language pertaining to the establishment of the nomination and objection procedure. The portion of the Noticed rules requiring nonprofit contractors or subgrantees to comply with Iowa Code chapter 504 will be renoticed in the near future.

ARC 5981B

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 sections 217.6 and 249A.4, the Department of Human Services proposes to amend Chapter 41, "Granting Assistance," and Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

In 2007 Iowa Acts, Senate File 254, section 6, the General Assembly directed the Department to provide a 58 percent work incentive disregard under the Family Investment Program (FIP). In 2007 Iowa Acts, House File 909, section 98, subsection (1), paragraph "b," the General Assembly also appropriated $9,337,435 to provide the same disregard for parents under the Family Medical Assistance Program (FMAP) and the Child Medical Assistance Program (CMAP). Eligibility in the FMAP and CMAP programs generally follows FIP income policies. FIP participants usually attain Medicaid eligibility through these coverage groups.

These amendments implement that legislation by changing the way the Department calculates countable income for FIP, FMAP, and CMAP. The amendments increase the work incentive disregard from 50 percent to 58 percent, in effect raising the income limits for working parents. The effective date of 2007 Iowa Acts, Senate File 254, is July 1, 2007. However, August 1, 2007, is the earliest date that data processing system changes can be put in place to implement the new calculation method.

These amendments also make technical changes to update the name of the report supporting the average statewide standard deduction for personal care services available to residential care facility residents in the Medically Needy program. The Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities has been renamed "Compilation of Various Costs and Statistical Data." The report was previously released annually based on information from the prior fiscal year. The report is currently issued in January based on the averages from December only and is issued again in July based on the averages for the previous state fiscal year. The amendment clarifies that the personal care deduction will be based on the report that includes the costs for the entire fiscal year. There is no cost associated with this change.

These amendments do not provide for waivers in specified situations, since they confer a benefit on the people affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5980B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code section 239B.7 as amended by 2007 Iowa Acts, Senate File 254, section 6, and Iowa Code section 249A.4.

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 5987B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments update the description of the methodology used in determining the Medicaid eligibility and financial participation of a married person residing in a medical institution (an "institutionalized spouse") who has a spouse who does not live in an institution (a "community spouse"). The amendments replace specific dollar amounts with references to the maximum amounts allowed by federal Medicaid law or regulations. The Medicare Catastrophic Coverage Act provides that these amounts are indexed for inflation according to the consumer price index and are updated annually by the Centers for Medicare and Medicaid Services.

Previously, the Department has included the specific dollar amounts in the rules and has amended the rules each year. Under these amendments, future increases in the amounts allowed will not require further amendments to the Department's rules. The specific dollar amounts will be published in the Department's Employees Manual and on its Web site.

The maximum amount of the couple's resources that may be attributed to the community spouse for 2007 increased from $99,540 to $101,640. This amount is set by Section 1924(f)(2)(A)(i) of the Social Security Act (42 U.S.C. § 1396r-5(f)(2)(A)(i)). This limit affects the amount of resources that is designated as a community spouse resource allowance and therefore is not counted as available to the institutionalized spouse. An increase in the maximum effectively decreases the amount of resources counted when determining the institutionalized spouse's financial eligibility for Medicaid.

The maximum monthly maintenance needs allowance for the community spouse for 2007 increased from $2,488.50 to $2,541.00. This amount is set by Section 1924(d)(3)(C) of the Social Security Act (42 U.S.C. § 1396r-5(d)(3)(C)). This amount affects the amount of the Medicaid member's income that is considered available to contribute toward the cost of care in the medical facility. This change increases the maintenance needs allowance and decreases the amount of

HUMAN SERVICES DEPARTMENT[441](cont'd)

the Medicaid member's income that is considered available to contribute toward the cost of care in the medical facility.

These amendments do not provide for waivers in specified situations, since these amounts are set at the maximums allowed by federal law.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5986B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code section 249A.4.

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 5989B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment adds exemptions to the federal requirements for verifying citizenship and identity in order to receive Medicaid that were established by the Deficit Reduction Act of 2005. Federal legislation in the Tax Relief and Health Care Act of 2006 (Public Law 109-432, passed in December 2006) exempts children who are receiving federally funded foster care, adoption subsidy, or child welfare services and people receiving Medicare, Social Security disability, or Supplemental Security Income benefits from the verification requirement. This amendment incorporates those exemptions into Iowa rules.

This amendment does not provide for waivers in specified situations because it removes a restriction on the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 5988B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

This amendment is intended to implement Iowa Code section 249A.4.

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 6021B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment revises Medicaid policy regarding personal needs allowances for members who reside in a medical institution. Legislation passed in 2006 allowed Medicaid members in nursing facilities to retain $50 of their income for a personal needs allowance, instead of $30. Legislation in 2007 Iowa Acts, House File 909, section 44, directs the Department to make the same increase in the personal needs allowance for residents of intermediate care facilities for persons with mental retardation (ICFs/MR), intermediate care facilities for persons with mental illness (ICFs/MI), and psychiatric medical institutions for children (PMICs).

The legislation allows the state to supplement the income of people who have less than $50 monthly income, to bring their income up to $50, but only if specifically appropriated. For state fiscal year 2008, this supplemental payment is funded only for residents of nursing facilities.

This amendment does not provide for waivers in specified situations. There are other provisions for excluding income from client participation to meet other needs, such as medical expenses not otherwise covered or maintenance needs of a spouse or dependents. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 6019B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment is intended to implement Iowa Code section 249A.4 and Iowa Code section 249A.30A as amended by 2007 Iowa Acts, House File 909, section 44.

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 6024B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment revises Medicaid policy regarding personal needs allowances for members who reside in a long-term care facility. Currently, Iowa allows residents of such facilities who receive a pension from the U.S. Department of Veterans Affairs to keep $90 of the pension after the month of entry to the facility in place of the personal needs allowance. The Centers for Medicare and Medicaid Services has informed the Department that 38 U.S.C. Section 5503 prohibits states from using a veteran's pension income to reduce Medicaid payment to the facility. Therefore, this amendment allows a veteran to retain the standard personal needs allowance in addition to the $90 from the veteran's pension.

This amendment does not provide for waivers in specified situations, since the change benefits the people affected, and the Department does not have the authority to waive federal law.

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 6023B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

This amendment is intended to implement Iowa Code section 249A.4 and Iowa Code section 249A.30A as amended by 2007 Iowa Acts, House File 909, section 44.

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 5985B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments revise the Medicaid reimbursement methodology for community mental health centers. Provisions of 2006 Iowa Acts, chapter 1115, section 36, direct the Department to increase reimbursement for clinic services provided by community mental health centers, effective October 1, 2006. The legislation directs the Department to increase reimbursement rates for these services to not more than 100 percent of the reasonable costs for the provision of services, subject to Medicaid upper payment limits and to the funding made available by amending the contract with the Medicaid managed care provider for mental health services.

Currently, Iowa Medicaid reimburses clinic services provided by community mental health centers based on a fee schedule. Amendment of the contract with the Medicaid managed care provider for mental health services will provide sufficient funds, within the confines of the current rate structure, to reimburse these clinic services at 100 percent of reasonable costs. Therefore, these amendments provide that beginning with services rendered October 1, 2006, Iowa Medicaid will reimburse clinic services provided by community mental health centers on a retrospective cost-related basis at 100 percent of reasonable costs as determined by Medicare cost reimbursement principles. The Department expects that this change in methodology will provide additional funding to help mental health centers maintain staffing levels needed to ensure that all Medicaid members have access to care.

The Iowa Medicaid program will initially make interim payments to the center based upon 105 percent of the greater of the statewide fee schedule for community mental health centers effective July 1, 2006, or the average Medicaid managed care contracted fee amounts for community mental health centers effective July 1, 2006, applied on a procedure code basis. Mental health centers will be required to submit an annual cost report within three months of their fiscal year end. If the center is hospital-based, the cost report shall be prepared according to the filing requirements for the Medicare cost report.

The clinic services provided by community mental health centers are subject to a cost settlement based on the actual cost of the services as determined from the provider's cost report. The cost settlement is calculated by comparing interim payments made by Medicaid during the period to the actual allowable cost of the services. The difference may result in an underpayment to the provider or an overpayment to the provider. Following submission of the annual Medicaid cost report, the Department will adjust the provider-specific interim payment prospectively.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations because they confer a benefit in the form of higher reimbursement rates and because all providers should be reimbursed on the same basis. Requests for the waiver of any rule may be submitted 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 July 24, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, chapter 1115, section 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 subrule **79.1(2)**, "community mental health centers" provider category, as follows:

Provider category	Basis of reimbursement	Upper limit
Community mental health centers *and providers of mental health services to county residents pursuant to a waiver approved under Iowa Code section 225C.7(3)*	~~Fee schedule~~ *Retrospective cost-related. See 79.1(25)*	~~Fee schedule in effect 06/30/06 plus 3%~~ *100% of reasonable Medicaid cost as determined by Medicare cost reimbursement principles*.

ITEM 2. Amend rule 441—79.1(249A) by adopting the following **new** subrule:

79.1(25) Reimbursement for community mental health centers and providers of mental health services to county residents pursuant to a waiver approved under Iowa Code section 225C.7(3).

a. Reimbursement methodology. Effective for services rendered on or after October 1, 2006, community mental health centers and providers of mental health services to county residents pursuant to a waiver approved under Iowa Code section 225C.7(3) that provide clinic services are paid on a reasonable-cost basis as determined by Medicare reimbursement principles. Rates are initially paid on an interim basis and then are adjusted retroactively based on submission of a financial and statistical report.

(1) Until a provider that was enrolled in the Medicaid program before October 1, 2006, submits a cost report in order to develop a provider-specific interim rate, the Iowa Medicaid enterprise shall make interim payments to the provider based upon 105 percent of the greater of:

1. The statewide fee schedule for community mental health centers effective July 1, 2006, or

2. The average Medicaid managed care contracted fee amounts for community mental health centers effective July 1, 2006.

(2) For a provider that enrolls in the Medicaid program on or after October 1, 2006, until a provider-specific interim rate is developed, the Iowa Medicaid enterprise shall make interim payments based upon the average statewide interim rates for community mental health centers at the time services are rendered. A new provider may submit a projected cost report that the Iowa Medicaid enterprise will use to develop a provider-specific interim rate.

(3) Cost reports as filed are subject to review and audit by the Iowa Medicaid enterprise. The Iowa Medicaid enterprise shall determine each provider's actual, allowable costs in accordance with generally accepted accounting principles and in accordance with Medicare cost principles, subject to the exceptions and limitations in the department's administrative rules.

(4) The Iowa Medicaid enterprise shall make retroactive adjustment of the interim rate after the submission of annual cost reports. The adjustment represents the difference between the amount the provider received during the year through interim payments for covered services and the amount determined to be the actual, allowable cost of service rendered to Medicaid members.

(5) The Iowa Medicaid enterprise shall use each annual cost report to develop a provider-specific interim fee schedule to be paid prospectively. The effective date of the fee schedule change is the first day of the month following completion of the cost settlement.

b. Reporting requirements. All providers shall submit cost reports using Form 470-4419, Financial and Statistical Report. A hospital-based provider shall also submit the Medicare cost report, CMS Form 2552-96.

(1) Financial information shall be based on the provider's financial records. When the records are not kept on an accrual basis of accounting, the provider shall make the adjustments necessary to convert the information to an accrual basis for reporting. Failure to maintain records to support the cost report may result in termination of the provider's enrollment with the Iowa Medicaid program.

(2) Providers that offer multiple programs shall submit a cost allocation schedule prepared in accordance with generally accepted accounting principles and requirements as specified in OMB Circular A-87 adopted in federal regulations at 2 CFR Part 225 as amended to August 31, 2005.

(3) Costs reported for community mental health clinic services shall not be reported as reimbursable costs under any other funding source. Costs incurred for other services shall not be reported as reimbursable costs under community mental health clinic services.

(4) Providers shall submit completed cost reports to the IME Provider Cost Audit and Rate Setting Unit, P.O. Box 36450, Des Moines, Iowa 50315. A provider that is not hospital-based shall submit Form 470-4419 on or before the last day of the third month after the end of the provider's fiscal year. A hospital-based provider shall submit both Form 470-4419 and CMS Form 2552-96 on or before the last day of the fifth month after the end of the provider's fiscal year.

(5) A provider may obtain a 30-day extension for submitting the cost report by submitting a letter to the IME provider cost audit and rate setting unit before the cost report due date. No extensions will be granted beyond 30 days.

(6) If a provider fails to submit a cost report that meets the requirements of this paragraph, the Iowa Medicaid enterprise shall reduce the provider's interim payments to 76 percent of the current interim rate. The reduced interim rate shall be paid for not longer than three months, after which time no further payments will be made.

ARC 6013B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

These amendments revise the Medicaid reimbursement methodology for hospital inpatient psychiatric services. Currently, Iowa Medicaid reimburses inpatient hospital psychiatric services based on a diagnosis-related group (DRG) methodology. Enhanced DRG weights are developed for DRGs associated with psychiatric treatment provided in a hospital with a certified psychiatric unit. The hospital-specific base rates and DRG weights are updated every three years and are inflated during non-rebasing years if the Iowa General Assembly approves funding. The last rebasing was effective October 1, 2005.

Provisions of 2006 Iowa Acts, chapter 1116, section 36, direct the Department to provide prospective reimbursement for hospital inpatient psychiatric services effective October 1, 2006, at the cost of the services, subject to Medicaid program upper payment limit rules and to the funding made available by amending the contract with the Medicaid managed care provider for mental health services. Amendment of the contract with the Medicaid managed care provider for mental health services provides sufficient funds to reimburse inpatient hospital psychiatric services on a per diem basis, based on costs, consistent with the reimbursement methodology in use for physical rehabilitation hospitals.

Therefore, these amendments provide that beginning with services rendered October 1, 2006, Iowa Medicaid will reimburse inpatient hospital psychiatric services provided in a certified psychiatric unit on a prospective per diem basis. The per diem rate effective October 1, 2006, will be calculated using the same cost report data that was used to calculate the hospital's base rate effective October 1, 2005, inflated by 3 percent. The per diem rate will be rebased every three years at the same time the hospital DRG rebasing and recalibration are completed. The next rebasing will be effective October 1, 2008. Annual inflation adjustments will be applied during non-rebasing years if the Iowa General Assembly approves funding.

These amendments do not provide for waivers in specified situations because they confer a benefit in the form of higher reimbursement rates and because all providers should be reimbursed on the same basis.

Any interested person may make written comments on the proposed amendments on or before July 24, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code section 249A.4 and 2006 Iowa Acts, chapter 1116, section 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. Rescind and reserve subrule **79.1(5)**, paragraph **"b,"** subparagraph **(3)**.

ITEM 2. Amend subrule **79.1(5)**, paragraph **"d,"** subparagraphs **(1)** and **(2)**, as follows:

(1) Calculation of statewide average case-mix-adjusted cost per discharge. The statewide average cost per discharge is calculated by subtracting from the statewide total Iowa Medicaid inpatient expenditures*:*

1. ~~the~~ *The* total calculated dollar expenditures based on hospitals' base-year cost reports for capital costs~~,~~ *and* medical education costs, and

2. ~~calculation of~~ *The* actual payments ~~that will be~~ made for additional transfers, outliers, physical rehabilitation services, *psychiatric services rendered on or after October 1, 2006,* and indirect medical education.

Cost report data for hospitals receiving reimbursement as critical access hospitals during any of the period of time included in the base-year cost report is not used in calculating the statewide average cost per discharge. The remaining amount (which has been case-mix adjusted and adjusted to reflect inflation if applicable) is divided by the statewide total number of Iowa Medicaid discharges reported in the Medicaid management information system (MMIS) less an actual number of nonfull DRG transfers and short stay outliers.

(2) Calculation of hospital-specific case-mix-adjusted average cost per discharge. The hospital-specific case-mix-adjusted average cost per discharge is calculated by subtracting from the lesser of total Iowa Medicaid costs~~,~~ or covered reasonable charges, as determined by the hospital's base-year cost report or MMIS claims system, the actual dollar expenditures for capital costs, direct medical education costs, *and* the payments ~~that will be~~ made for nonfull DRG transfers, outliers, ~~and~~ physical rehabilitation services, *and psychiatric services rendered on or after October 1, 2006,* if ~~included~~ *applicable*. The remaining amount is case-mix adjusted, multiplied by inflation factors, and divided by the total number of Iowa Medicaid discharges from the MMIS claims system for that hospital during the applicable base year, less the nonfull DRG transfers and short stay outliers.

For purposes of calculating the disproportionate share rate only, a separate hospital-specific case-mix-adjusted average cost per discharge shall be calculated for any hospital that qualifies for a disproportionate share payment only as a children's hospital based on a distinct area or areas serving children, using the costs, charges, expenditures, payments, discharges, transfers, and outliers attributable to the distinct area or areas in the hospital where services are provided predominantly to children under 18 years of age.

ITEM 3. Amend subrule **79.1(5)**, paragraph **"g,"** as follows:

Amend subparagraph **(2)** as follows:

(2) Substance abuse ~~and psychiatric~~ units. When a patient is discharged to or from an acute care hospital and is admitted to or from a substance abuse ~~or psychiatric~~ unit certified pursuant to *paragraph* 79.1(5)"r," both the discharging and ad-

mitting hospitals will receive 100 percent of the DRG payment.

Adopt **new** subparagraph **(4)** as follows:

(4) Psychiatric units. When a patient is discharged to or from an acute care hospital before October 1, 2006, and is admitted to or from a psychiatric unit certified pursuant to paragraph 79.1(5)"r," both the discharging and admitting hospitals will receive 100 percent of the DRG payment.

Effective October 1, 2006, when a patient requiring psychiatric care is discharged from an acute care hospital and admitted to a psychiatric unit certified pursuant to paragraph 79.1(5)"r," and the admission is medically appropriate, then payment for time spent in the unit is through a per diem. The discharging hospital will receive 100 percent of the DRG payment. When a patient is discharged from a certified psychiatric unit and is admitted to an acute care hospital, the acute care hospital will receive 100 percent of the DRG payment.

When a patient requiring psychiatric care is discharged from a facility other than an acute care hospital on or after October 1, 2006, and is admitted to a psychiatric unit certified pursuant to paragraph 79.1(5)"r," and the admission is medically appropriate, then payment for time spent in the unit is based on a per diem. The other facility will receive payment in accordance with rules governing that facility. When a patient is discharged from a certified psychiatric unit on or after October 1, 2006, and is admitted to a facility other than an acute care hospital, the other facility will receive payment in accordance with rules governing that facility.

ITEM 4. Amend subrule **79.1(5)**, paragraph **"h,"** as follows:

h. Covered DRGs. Medicaid DRGs cover services provided in acute care general hospitals, with the exception of services provided in physical rehabilitation hospitals and units certified pursuant to *paragraph* 79.1(5)"r" *and services provided on or after October 1, 2006, in psychiatric units certified pursuant to paragraph 79.1(5)"r,"* which are paid per diem, as specified in *paragraph* 79.1(5)"i."

ITEM 5. Amend subrule **79.1(5)**, paragraph **"i,"** introductory paragraph and subparagraph **(1)**, as follows:

i. Payment for certified physical rehabilitation hospitals and units *and psychiatric units*. Payment for services provided by a physical rehabilitation hospital or unit certified pursuant to *paragraph* 79.1(5)"r" *and for services provided on or after October 1, 2006, in a psychiatric unit certified pursuant to paragraph 79.1(5)"r"* is prospective~~,~~. *The payment is* based on a per diem rate calculated for each hospital by establishing a base-year per diem rate to which an annual index is applied.

(1) Per diem calculation. The base rate shall be the medical assistance per diem rate as determined by the individual hospital's *base-year* cost report ~~for the hospital's 1998 fiscal year.~~ *pursuant to paragraph 79.1(5)"a."* No recognition will be given to the professional component of the hospital-based physicians except as noted under *paragraph* 79.1(5)"j."

ITEM 6. Amend subrule **79.1(5)**, paragraph **"r,"** introductory paragraph and subparagraph **(4)**, as follows:

r. Certification for reimbursement as a special unit or physical rehabilitation hospital. Certification for Medicaid reimbursement as a substance abuse unit under *subparagraph* 79.1(5)"b"(1), a neonatal intensive care unit under *subparagraph* 79.1(5)"b"(2), a psychiatric unit under ~~79.1(5)"b"(3),~~ *paragraph 79.1(5)"i,"* or a physical rehabilitation hospital or unit under *paragraph* 79.1(5)"i" shall be awarded as provided in this paragraph.

(4) Certification criteria for psychiatric units. A psychiatric unit may be certified for Medicaid reimbursement under ~~79.1(5)"b"(1)~~ *paragraph 79.1(5)"i"* if it is excluded from the Medicare prospective payment system as a psychiatric unit pursuant to 42 Code of Federal Regulations, Sections 412.25 and 412.27~~,~~ as amended to August 1, 2002.

ARC 5978B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 79, "Other Policies Relating to Providers of Medical and Remedial Care," Iowa Administrative Code.

This amendment implements Section 6032 of the Deficit Reduction Act of 2005 (Public Law 109-171), Employee Education About False Claims Recovery, which became effective on January 1, 2007. The amendment requires providers or provider entities that receive $5 million or more from the Medicaid program in any federal fiscal year to establish and disseminate written policies that include detailed information about the entity's policies and procedures for detecting and preventing waste, fraud, and abuse. It is the responsibility of providers and provider entities to determine whether they meet the $5 million threshold and to provide documentation of the policies to the Department.

This amendment does not provide for waivers in specified situations because the requirement is a federal mandate.

Any interested person may make written comments on the proposed amendment on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

This amendment is intended to implement Iowa Code section 249A.4 and Section 6032 of Public Law 109-171.

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.

Adopt the following **new** rule:

441—79.15(249A) Education about false claims recovery. The provisions in this rule apply to any entity that has received medical assistance payments totaling at least $5 million during a federal fiscal year (ending on September 30). For entities whose payments reach this threshold, compliance with this rule is a condition of receiving payments under the medical assistance program during the following calendar year.

HUMAN SERVICES DEPARTMENT[441](cont'd)

79.15(1) Policy requirements. Any entity whose medical assistance payments meet the threshold shall:

a. Establish written policies for all employees of the entity and for all employees of any contractor or agent of the entity, including management, which provide detailed information about:

(1) The False Claims Act established under Title 31, United States Code, Sections 3729 through 3733;

(2) Administrative remedies for false claims and statements established under Title 31, United States Code, Chapter 38;

(3) Any state laws pertaining to civil or criminal penalties for false claims and statements;

(4) Whistle blower protections under the laws described in subparagraphs (1) to (3) with respect to the role of these laws in preventing and detecting fraud, waste, and abuse in federal health care programs, as defined in Title 42, United States Code, Section 1320a-7b(f); and

(5) The entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

b. Include in any employee handbook a specific discussion of:

(1) The laws described in paragraph 79.15(1)"a";

(2) The rights of employees to be protected as whistle blowers; and

(3) The entity's policies and procedures for detecting and preventing fraud, waste, and abuse.

79.15(2) Reporting requirements.

a. Any entity whose medical assistance payments meet the specified threshold during a federal fiscal year shall provide the following information to the Iowa Medicaid enterprise by the following December 31:

(1) The name, address, and national provider identification numbers associated with the entity;

(2) Copies of written or electronic policies that meet the requirements of subrule 79.15(1); and

(3) A written description of how the policies are made available and disseminated to all employees of the entity and to all employees of any contractor or agent of the entity.

b. The information may be provided by:

(1) Mailing the information to the IME Surveillance and Utilization Review Services Unit, P.O. Box 36390, Des Moines, Iowa 50315; or

(2) Faxing the information to (515)725-1354.

79.15(3) Enforcement. Any entity that fails to comply with the requirements of this rule shall be subject to sanction under rule 441—79.2(249A), including probation, suspension or withholding of payments, and suspension or termination from participation in the medical assistance program.

This rule is intended to implement Iowa Code section 249A.4 and Public Law 109-171, Section 6032.

ARC 6012B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 113, "Licensing and Regulation of Foster Family Homes," and Chapter 200, "Adoption Services," Iowa Administrative Code.

These amendments require a person applying for a foster parent license or for approval for adoption to be fingerprinted for a national criminal history check. The amendments implement the requirements of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), which amends Section 471(a)(20)(C)(i) of the Social Security Act.

Public Law 109-248 requires states to conduct fingerprint-based checks with the National Crime Information Database for prospective foster and adoptive parents and adult members of their households as a condition of receiving federal foster care and adoption assistance funds. 2007 Iowa Acts, Senate File 503, section 12, amends Iowa Code section 237.8(2)"a" to require a person applying for a foster parent license to be fingerprinted for a national criminal history check.

The fingerprints will be submitted to the Department of Public Safety for submission to the Federal Bureau of Investigation in the U.S. Department of Justice for a check against national crime information databases. The Department of Human Services is responsible for the cost of the criminal history check.

The fingerprint checks are in addition to the record checks currently completed by the Department. If the criminal and child abuse record checks have been completed and the person does not have a record of crime or founded abuse, or the Department's evaluation of the record has determined that prohibition of the person's approval as a foster or adoptive parent is not warranted, the person may be provisionally approved pending the outcome of the fingerprint-based criminal history check.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6009B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are intended to implement Iowa Code chapters 238 and 600 and Iowa Code section 237.8(2) as amended by 2007 Iowa Acts, Senate File 503, section 12.

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 5993B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 150, "Purchase of Service," Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

- A 3 percent across-the-board increase for social service providers is implemented as directed by 2007 Iowa Acts, House File 909, section 31(5). This increase affects adoption services, supervised apartment living services, and shelter care. The increase will be applied to reimbursement rates in effect on June 30, 2007, or to the provider's actual and allowable cost for each service plus inflation, whichever is less. (The amendments eliminate references to adoptive home studies, home study updates, and family planning services, which are no longer available through purchase of service contracts. Notice of Intended Action on the family planning changes was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5875B**.)
- The basic reimbursement rates for foster family care and, by reference, the maximum payments for foster care supervised apartment living, adoption maintenance subsidy, and guardianship subsidy are increased as directed by 2007 Iowa Acts, House File 909, section 31(4). With this increase, the rates are restored to 65 percent of the USDA estimate of the cost to raise a child in 2006, in compliance with Iowa Code section 234.38.
- The rule regarding shelter contracts is revised to maintain the statewide availability of a daily average of 273 guaranteed emergency juvenile shelter care beds during the fiscal year beginning July 1, 2007, as directed by 2007 Iowa Acts, House File 909, section 18(7).
- A 3 percent cost-of-living adjustment to reimbursement rates for family-centered supportive services and foster care services is implemented as directed by 2007 Iowa Acts, House File 909, section 31(6). Most increases will be applied to a provider's negotiated rate in effect on June 30, 2007. For family-centered community resource procurement, the fixed fee is increased by 3 percent. (The amendment eliminates references to the relative home study, as that service is no longer purchased under an RTSS contract, as referenced in **ARC 5937B**, published in the Iowa Administrative Bulletin on June 6, 2007.)

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5992B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code sections 234.6, 234.35, and 234.38 and 2007 Iowa Acts, House File 909, sections 18 and 31.

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 5998B

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services proposes to amend Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments allow the use of a claim form specifically designed for Child Care Assistance as an alternative to the generic claim form that is used for various Department programs. Legislation found in 2007 Iowa Acts, Senate File 601, section 99, directs the Department to allow child care providers to bill on either a biweekly or a monthly basis, to remit payment within ten business days of receiving a bill, and to notify the provider of any errors in the bill within five business days of its receipt. The Department believes that use of a simplified claim form that is easier for providers to understand and that offers clear directions on how to complete the form will expedite claims processing. Use of the new claim form is optional to allow large child care centers that have automated their billing process using the current form to continue this practice.

The amendments also make technical changes to update the amounts used in the examples illustrating the application of the sliding fee schedule. These changes were inadvertently omitted when the amendments updating the fee schedule were adopted in **ARC 5854B**, which was published in the Iowa Administrative Bulletin on May 9, 2007.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations. Claims must be submitted on one of the prescribed forms.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 5996B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before July 25, 2007. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, 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.

These amendments are intended to implement Iowa Code section 237A.13 as amended by 2007 Iowa Acts, Senate File 601.

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 5984B

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 505.8, 514D.9(3) and 514G.7(1), the Insurance Division hereby gives Notice of Intended Action to amend Chapter 39, "Long-Term Care Insurance," Iowa Administrative Code.

Chapter 39, among other things, protects applicants for long-term care insurance from unfair or deceptive sales or enrollment practices, and helps to facilitate public understanding and comparison of long-term care insurance coverage. The Iowa Insurance Commissioner has the authority to adopt rules for full and fair disclosure of the terms and benefits of a long-term care insurance policy pursuant to Iowa Code sections 514D.9(3) and 514G.7(1). To that end, proposed subrule 39.15(4) requires certain specific training for insurance producers who wish to sell long-term care insurance in Iowa. This additional training is necessary due to the complex nature of long-term care insurance products and to ensure that an insurance producer is able to adequately explain to a consumer how long-term care insurance products work. The Division intends that this amendment will become effective October 3, 2007, and that insurance producers and companies must be able to demonstrate compliance by January 1, 2009.

Any interested person may make written suggestions or comments on this proposed amendment on or before July 24, 2007. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on July 24, 2007, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements, such as those relating to hearing or mobility impairments, should contact the Division and advise of specific needs.

This amendment is intended to implement Iowa Code chapters 514D and 514G.

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 191—39.15(514D,514G) by adopting the following **new** subrule 39.15(4):

39.15(4) Producer training requirements.

a. Purpose. The purpose of this subrule is to require certain specific minimum training for insurance producers who wish to sell long-term care insurance in Iowa. This additional training is necessary due to the complex nature of long-term care insurance products and to ensure that insurance producers are able to determine whether long-term care insurance products are suitable for consumers and are able to adequately explain to consumers how the long-term care insurance products work. The ultimate goal of this subrule is to ensure that purchasers of long-term care insurance products understand basic features of the products. This subrule applies to all long-term care insurance products sold on or after January 1, 2009.

b. Requirements to sell, solicit or negotiate long-term care insurance.

(1) An individual may not sell, solicit or negotiate long-term care insurance unless the individual is licensed as an insurance producer for accident and health or sickness and has completed a one-time training course. The training shall meet the requirements set forth in paragraph "c."

(2) An individual holding a producer license on January 1, 2009, may not continue to sell, solicit or negotiate long-term care insurance on or after January 1, 2009, unless the individual has completed a one-time training course as set forth in paragraph "c."

(3) In addition to the one-time training course required in subparagraphs (1) and (2) above, an individual who sells, solicits or negotiates long-term care insurance shall complete ongoing training as set forth in paragraph "c."

(4) The training requirements of paragraph "c" may be approved as continuing education courses under 191—Chapter 11.

c. Training requirements.

(1) The one-time training course required by this subrule shall be no less than eight hours. The ongoing training required by this subrule shall be no less than six hours every 36 months.

(2) The training required under subparagraph (1) shall consist of topics related to long-term care insurance, long-term care services and, if applicable, qualified state long-term care asset preservation programs, pursuant to 191—Chapter 72, including, but not limited to:

1. State and federal regulations and requirements and the relationship between qualified state long-term care asset

preservation programs and other public and private coverage of long-term care services, including Medicaid;

2. Available long-term care services and providers;

3. Changes or improvements in long-term care services or providers;

4. Alternatives to the purchase of private long-term care insurance;

5. The effect of inflation on benefits and the importance of inflation protection; and

6. Consumer suitability standards and guidelines.

(3) The training required by this subrule shall not include training that is specific to an insurer's or company's product or that includes any sales or marketing information, materials, or training, other than that required by state or federal law.

d. Requirements for insurers. Insurers subject to this subrule shall obtain verification that a producer has received training required by paragraphs "b" and "c" before a producer is permitted to sell, solicit or negotiate the insurer's long-term care insurance products, shall maintain records in accordance with the state's record retention requirements, and shall make the verification and records available to the commissioner upon request.

e. Training obtained in other states. The satisfaction of these training requirements in any state shall be deemed to satisfy the training requirements in this state.

ARC 6014B

IOWA FINANCE AUTHORITY[265]

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 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority proposes to amend Chapter 12, "Low-Income Housing Tax Credits," Iowa Administrative Code.

These amendments replace the current qualified allocation plan for the low-income housing tax credit program with the 2008 qualified allocation plan which is incorporated by reference in rule 12.1(16).

The qualified allocation plan sets forth the purpose of the plan, the administrative information required for participation in the program, the threshold criteria, the selection criteria, the post-reservation requirements, the appeal process, and the compliance monitoring component. The plan also establishes the fees for filing an application for low-income housing tax credits and for compliance monitoring. Copies of the qualified allocation plan are available upon request from the Authority and are available electronically on the Authority's Web site at www.iowafinanceauthority.gov. It is the Authority's intent to incorporate the 2008 qualified allocation plan by reference consistent with Iowa Code chapter 17A and 265—subrules 17.4(2) and 17.12(2).

The Authority does not intend to grant waivers under the provisions of any of these rules, other than as may be allowed under the Authority's general rules concerning waivers. The qualified allocation plan is subject to state and federal requirements that cannot be waived. (See Internal Revenue Code Section 42 and Iowa Code section 16.52.)

The Authority will receive written comments on the proposed amendments and on the qualified allocation plan until 4:30 p.m. on July 24, 2007. Comments may be addressed to Carla Pope, Affordable Rental Production Director, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Carla Pope at (515)725-4901 or E-mailed to carla.pope@iowa.gov.

The Authority will hold a public hearing on July 24, 2007, to receive public comments on these amendments and on the qualified allocation plan. The public hearing will be held from 9 to 11 a.m at the Authority's offices, located at 2015 Grand Avenue, Des Moines, Iowa, telephone (515)725-4900.

The Authority anticipates that it may make changes to the 2008 qualified allocation plan based on comments received from the public.

These amendments are intended to implement Iowa Code sections 16.4(3), 16.52, 17A.12, and 17A.16 and IRC Section 42.

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 265—12.1(16) as follows:

265—12.1(16) Qualified allocation plan. The qualified allocation plan entitled Iowa Finance Authority Low-Income Housing Tax Credit Program ~~2007~~ *2008* Qualified Allocation Plan effective October ~~4, 2006~~ *3, 2007*, shall be the qualified allocation plan for the allocation of ~~2007~~ *2008* low-income housing tax credits consistent with IRC Section 42 and the applicable Treasury regulations and Iowa Code section 16.52. The qualified allocation plan includes the plan, application, and the application instructions. The qualified allocation plan is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

ITEM 2. Amend rule 265—12.2(16) as follows:

265—12.2(16) Location of copies of the plan. The qualified allocation plan can be reviewed and copied in its entirety on the authority's Web site at http://www.iowafinanceauthority.gov. Copies of the qualified allocation plan, application, and all related attachments and exhibits shall be deposited with the administrative rules coordinator and at the state law library. The plan incorporates by reference IRC Section 42 and the regulations in effect as of October ~~4, 2006~~ *3, 2007*. Additionally, the plan incorporates by reference Iowa Code section 16.52. These documents are available from the state law library, and information about these statutes, regulations and rules is on the authority's Web site. Copies are available upon request at no charge from the authority.

ARC 6035B

IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]

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 97B.4 and 97B.15, the Iowa Public Employees' Retirement System (IPERS) hereby gives Notice of Intended Action to amend Chapter 11, "Application for, Modification of, and Termination of Benefits," and Chapter 12, "Calculation of Monthly Retirement Benefits," Iowa Administrative Code.

The following paragraphs itemize the proposed changes.

Item 1 updates a rule to correspond to a legislative amendment changing the controlling statute to a new statute.

Item 2 corrects a provision of a business rule inadvertently omitted from the current administrative rule.

There are no waiver provisions included in the proposed amendments.

Any person may make written suggestions or comments on the proposed amendments on or before July 24, 2007. Such written suggestions or comments should be directed to the IPERS Administrative Rules Coordinator at IPERS, P.O. Box 9117, Des Moines, Iowa 50306-9117. Persons who wish to present their comments orally may contact the IPERS Administrative Rules Coordinator at (515)281-3081. Comments may also be submitted by fax to (515)281-0045 or by E-mail to info@ipers.org.

A public hearing will be held on July 24, 2007, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Persons who attend the hearing will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

These amendments are intended to implement Iowa Code sections 97B.4 and 97B.15.

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 **11.5(2)**, third unnumbered paragraph, as follows:

"Public hospital" means a governmental entity of a political subdivision of the state of Iowa that is authorized by legislative authority. For purposes of this subrule, a "public hospital" must also meet the requirements of Iowa Code section ~~249I.3~~ *249J.3*. Under Iowa Code section ~~249I.3~~ *249J.3*, a "public hospital" must be licensed pursuant to Iowa Code chapter 135B and governed pursuant to Iowa Code chapter 145A (merged hospitals), Iowa Code chapter 347 (county hospitals), Iowa Code chapter 347A (county hospitals payable from revenue), or Iowa Code chapter 392 (creation by city of a hospital or health care facility). For the purposes of this definition, "public hospital" does not include a hospital or medical care facility that is funded, operated, or administered by the Iowa department of human services, Iowa department of corrections, or board of regents, or the Iowa Veterans Home.

ITEM 2. Amend subrule **12.1(7)**, paragraph **"c,"** by adopting the following **new** subparagraph **(2)** and renumbering existing subparagraphs **(2)** to **(5)** as **(3)** to **(6)**:

(2) If there is a calendar year of covered wages outside the high three-year average wage calculation that has four quarters, but the covered wages for that year are less than the covered wages for the fourth highest calendar year of covered wages, and that fourth highest calendar year of covered wages does not have four quarters of service credit for wages, the control year will be the lowest of the high three calendar years of wages with service credits for wages in all four quarters being used in the high three-year average wage calculation.

ARC 6025B

LAW ENFORCEMENT ACADEMY[501]

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 80B.11 and 2007 Iowa Acts, Senate File 110, the Iowa Law Enforcement Academy, with approval of the Iowa Law Enforcement Academy Council, hereby gives Notice of Intended Action to amend Chapter 6, "Decertification," and Chapter 10, "Reserve Peace Officers," Iowa Administrative Code.

The Iowa State Reserve Law Officer's Association (ISRLOA) approached the Academy and the Legislature with the request to standardize training for Iowa reserve peace officers. 2007 Iowa Acts, Senate File 110, was passed in April 2007, giving the Academy authority to establish standardized training and state certification for reserve peace officers.

Iowa reserve peace officers are volunteer, nonregular, sworn members of a law enforcement agency who serve with or without compensation. The reserve officer has regular police powers while functioning as a law enforcement agency representative. Sworn reserve peace officers wear uniforms and are most often armed.

Initial meetings were held with the ISRLOA and the Iowa Law Enforcement Academy in the fall of 2002. The ISRLOA saw the development of personal standards as the first necessary step in an effort to increase the professionalism of Iowa reserve officers. Personal standards were established by administrative rule, which became effective June 2, 2004 (see 501—Chapter 10, Division II, Reserve Peace Officer Personal Standards). The second step involved a review of the number of required training hours for reserve officers. The third step involved state certification for reserve officers. The review of the number of required training hours and the state certification process has been in development since the fall of 2004, with approximately 30 meetings held across the state in the summer of 2005. Work continued into 2006, with emphasis placed on gaining support from various law enforcement associations. Support was gained from these law

LAW ENFORCEMENT ACADEMY[501](cont'd)

enforcement associations and resulted in the passage of 2007 Iowa Acts, Senate File 110.

Twenty-two meetings were held across the state during May 2007 following the passage of 2007 Iowa Acts, Senate File 110, to gain input on the standardized training and state certification process. One hundred sixty-five sworn peace officers and current reserve officers attended these meetings, with many suggestions offered for improving the process. This input resulted in the proposed rules that were presented to the Iowa Law Enforcement Academy Council.

It was suggested by an Iowa sheriff that grounds and procedure for decertification of reserve peace officers should also be considered once state certification is provided. It was believed that these grounds should be similar to the requirements for regular peace officers. The Iowa Law Enforcement Academy Council had been considering and had approved the filing of a Notice of Intended Action to change the decertification grounds for regular peace officers. Final approval was withheld until reserve peace officers could be added to the changes. These changes were presented at the June Council meeting.

The proposed amendments to Chapters 6 and 10 were presented at the June 7, 2007, Iowa Law Enforcement Academy Council meeting. The Council approved the filing of a Notice of Intended Action in order to place the proposed amendments before the public for discussion. The proposed amendments outline the required standardized training and state certification requirements for individuals who want to serve as reserve peace officers in Iowa and establish grounds for decertification.

Any interested person may make written suggestions or comments on these proposed amendments on or before July 24, 2007. Such written material should be directed to the Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131; fax (515)242-5471; or E-mail penny.westfall@ilea.state.ia.us.

There will be a public hearing on July 24, 2007, at 1 p.m. in Classrooms 3 and 4 at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any person who plans to attend the public hearing and has special requirements, such as those relating to hearing or mobility impairments, should contact the Iowa Law Enforcement Academy at (515)242-5357 and advise of specific needs.

These amendments are intended to implement Iowa Code chapter 80D as amended by 2007 Iowa Acts, Senate File 110.

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 501—6.2(80B) as follows:

501—6.2(80B,*80D*) Grounds for revocation.

6.2(1) Mandatory revocation. The council shall revoke a law enforcement officer's certification *or a reserve peace officer's certification* if*:*

a. ~~the~~ *The law enforcement* officer *or reserve peace officer* ~~has been~~ *pleads guilty to or is* convicted of a felony.*;*

b. The law enforcement officer or reserve peace officer manufactures, sells, or conspires to manufacture or sell an illegal drug;

c. The law enforcement officer pleads guilty to or is convicted of domestic abuse or other offenses stemming from domestic abuse.

6.2(2) Discretionary revocation. The council, at its discretion, may revoke or suspend a law enforcement officer's *or a reserve peace officer's* certification under any of the following circumstances:

~~a. Rescinded IAB 1/10/01, effective 1/14/01.~~

~~b~~ *a.* The law enforcement officer *or reserve peace officer* has been discharged for "good cause" from employment as a law enforcement officer *or from appointment as a reserve peace officer.*

~~c~~ *b.* The law enforcement officer *or reserve peace officer* leaves ~~or~~, voluntarily quits, *or the officer's position is eliminated* when disciplinary action was imminent or pending which could have resulted in the law enforcement officer being discharged *or the reserve peace officer being removed* for "good cause."

c. The law enforcement officer or reserve peace officer:

(1) Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the Iowa law enforcement academy council to take or withhold action.

(2) Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency or any other public document required to be completed by the officer.

(3) Testifies falsely in any court of law or administrative hearing.

(4) Pleads guilty to or is found guilty of a crime, or an internal affairs investigation substantiates an act by the officer involving moral turpitude as defined in 501—subrule 2.1(5), including but not limited to:

1. Income tax evasion;
2. Perjury, or its subornation;
3. Theft;
4. Indecent exposure;
5. Sex crimes;
6. Conspiracy to commit a crime;
7. Defrauding the government;
8. Assault;
9. Stalking; and
10. Any offense in which a weapon was used in the commission of a crime.

(5) Uses or possesses an illegal substance other than in connection with official duties.

(6) Fails to comply with the requirements of 501—Chapter 8 and 501—Chapter 10 relative to in-service training.

(7) Is decertified in any other state where the law enforcement officer or reserve peace officer may be certified.

d. The law enforcement officer has failed to reimburse the employing agency for costs incurred by that agency ~~in achieving certification training for the officer when~~*, including fees paid to the academy, clothing vendor costs, meal costs, uniform/equipment costs and the officer's salary paid during the academy if* the officer leaves that agency and is employed by another law enforcement agency within a period of four years following completion of the certification training, under the following conditions:

(1) A written agreement or contract of employment must be entered into by the officer and the employing agency con-

LAW ENFORCEMENT ACADEMY[501](cont'd)

temporaneously with the date of employment. ~~which~~ *The* agreement *shall* specifically ~~provides~~ *provide* for the reimbursement to the employing agency by the officer of the costs of training incurred by the employing agency, *including fees paid to ILEA, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy.* The agreement must:

1. Specify the amount of reimbursement that the officer agrees to pay;

2. Set forth the time period within which this reimbursement will be made, which shall be on a declining scale similar to the provisions of Iowa Code section 384.15(7);

3. Contain a statement that if reimbursement is not made in accordance with the agreement, ~~that~~ the officer understands that the employing agency may at its option seek the officer's decertification as an Iowa law enforcement officer; and

4. Contain a provision to the effect that the agreement or contract of employment is for bona-fide employment of the officer and not for the purpose of achieving certification for the officer by way of "sponsorship" through the academy.

(2) A recommendation for decertification must be verified under oath by the administrator of the employing agency with which the officer contracted under this rule; and

1. Have attached a copy of the agreement referred to in subparagraph (1) above;

2. Include an order of judgment from a small claims or civil court;

~~2~~ *3.* State that the officer has not made reimbursement to the employing agency as provided in the agreement, and clearly describe the nature of the default;

~~3~~ *4.* List an accounting of all payments made by the officer to the employing agency under the agreement, and specify the balance due;

~~4~~ *5.* State that written notice of the default *or judgment* has been given to the officer, that the officer has been provided opportunity to correct the default, and that there remains no reasonable alternative to decertification;

~~5~~ *6.* Specifically recommend that the Iowa law enforcement academy council commence proceedings to decertify the officer, and state that the employing agency will do all things necessary to cooperate in this effort; and

~~6~~ *7.* Set out the last-known address of the officer, the officer's telephone number, and the officer's last-known place of employment.

(3) The recommendation for decertification must be submitted to the academy not more than one year after the date of the officer's default, unless the Iowa law enforcement academy council, upon written application and for good cause shown, grants further time in which to submit the recommendation.

~~(4) Upon receipt by the academy of a recommendation for decertification, the Iowa law enforcement academy council may commence decertification procedures by causing a notice to be served upon the officer as provided in subrule 6.3(2), with a copy of the recommendation for decertification attached thereto.~~

~~e. The law enforcement officer:~~

~~(1) Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the Iowa law enforcement academy council to take or withhold action.~~

~~(2) Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency.~~

~~(3) Testifies falsely in any court of law or administrative hearing.~~

~~(4) Fails to comply with the requirements of 501—Chapter 8 relative to in-service training.~~

~~(5) Pleads guilty to, or is found guilty of, a felony or a crime involving moral turpitude as defined in 501—subrule 2.1(5).~~

~~(6) Uses or possesses an illegal controlled substance other than in connection with official duties.~~

~~(7) Is decertified in any other state where the officer may be certified.~~

ITEM 2. Amend **501—Chapter 6**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 80B.11 *and Iowa Code chapter 80D as amended by 2007 Iowa Acts, Senate File 110*.

ITEM 3. Amend 501—Chapter 10, Division II, by reserving rules **10.106** to **10.199**.

ITEM 4. Amend **501—Chapter 10** by adding the following **new** division:

DIVISION III

RESERVE PEACE OFFICER

STANDARDIZED TRAINING AND CERTIFICATION

501—10.200(80D) Certification through training required for all reserve peace officers.

10.200(1) Each person appointed to serve as a reserve peace officer after July 1, 2007, shall satisfactorily complete a minimum training course established by the academy consisting of 80 hours of training and 40 hours of supervised time. Training for individuals appointed as reserve peace officers shall be provided by instructors in a community college or other facility, including a law enforcement agency, selected by the individual and approved by the law enforcement agency and the academy. Reserve peace officers must be certified within 18 months from the date of their appointment.

10.200(2) The academy council may, at the council's discretion, extend the 18-month time period in which a reserve peace officer must become certified for up to 180 days after a showing of "undue hardship" by the reserve peace officer or the reserve peace officer's appointing agency. To be considered for an extension of the 18-month certification period, the person or agency requesting the extension must initiate the request in writing not less than 10 days prior to the council meeting at which it is to be discussed and must also make a presentation to the council at the next regularly scheduled meeting of the council. An extension shall not be liberally granted and shall only be granted after a showing that all other alternatives to an extension have been considered and rejected.

10.200(3) The time period within which a person must achieve certification as a reserve peace officer in the state of Iowa shall commence on the day a person is first appointed as a reserve peace officer in the state of Iowa. Any subsequent changes in a reserve peace officer's appointment status, including transfers to a different appointing agency, shall not toll or otherwise extend the certification period. Those reserve peace officers appointed after July 1, 2007, but before the effective date of these rules shall have 18 months after the effective date of these rules to complete the training and supervision requirements.

10.200(4) Should a person appointed as a reserve peace officer fail to achieve certification within the time period or under any extension allowed by this rule, that person shall

not be eligible for appointment as a reserve peace officer and shall not serve as a reserve peace officer in the state of Iowa for a period of not less than one year from the date the time period in which to achieve certification expired, or from the date that the person was last appointed as a reserve peace officer in the state of Iowa, whichever comes first.

501—10.201(80D) Training modules. Six modules consisting of 12 to 16 hours of required training topics per module will be developed by the academy. The training modules will include curriculum and training materials for each topic consisting of learning objectives, a lesson plan, training aids such as PowerPoint, handouts, and sample tests. Curriculum and training materials will be provided by the academy to those agencies with academy-approved instructors. Training modules will be updated no less than every three years.

501—10.202(80D) Completion of training modules. The agency providing the training shall notify the academy when a training module is completed. The reserve peace officer completing the training module will be given an academy-developed test covering the completed module. The reserve peace officer completing the training module must pass the test with a score of 70 percent or better. The reserve peace officer may take the test a second time if the first test score is below 70 percent and the appointing law enforcement agency approves the second test. The reserve peace officer must then retake the training in the area failed if the second test score is below 70 percent before taking the test a third time if the appointing law enforcement agency approves the third test. Failure of the test the third time will result in the individual's not being eligible for certification for a period of one year following the date of the third test failure.

501—10.203(80D) Supervised time. Supervised time is defined as direct supervision by a regular certified law enforcement officer of the reserve peace officer while performing activities consistent with the reserve peace officer's duties, such as ride-along time, jail time, or other assigned duties.

501—10.204(80D) Certification. Upon satisfactory completion of training and supervised time required by the academy, the individual shall be certified by the academy as an Iowa reserve peace officer and shall be issued a certificate by the academy.

501—10.205(80D) Time frame—tolled. The time frame requirements for completion of any mandatory training are tolled during the period a law enforcement officer is called to active military service.

501—10.206(80D) Minimum in-service training requirements. All certified reserve peace officers shall meet the following mandatory minimum in-service training requirements.

10.206(1) Firearms training. A certified reserve peace officer who is authorized to carry firearms must qualify with all duty handguns annually on a course of fire approved by the Iowa law enforcement academy and must successfully fire a minimum score as established by the Iowa law enforcement academy. This rule applies only to those reserve peace officers who are authorized to carry firearms by their appointing agency.

10.206(2) General training. In addition to the firearms training and CPR training requirements, a certified reserve peace officer must receive a minimum of 12 hours per year, or 36 hours every three years, of law enforcement related in-service training. Whether training is law enforcement related shall be determined by the employing agency administrator.

10.206(3) Agency responsibility. It is the responsibility of the law enforcement agency administrator to ensure that in-service training records are regularly kept and maintained. The law enforcement administrator shall also see that these records are made available for inspection upon request by the Iowa law enforcement academy or its designee.

a. In-service training records shall include the following:

(1) The subject matter of the training;
(2) The name of the instructor of the training;
(3) The name of the individual who took the training;
(4) The number of credit hours received from the training;
(5) The location where the training took place; and
(6) The scores, if any, achieved by the reserve peace officer to show proficiency in or understanding of the subject matter.

b. It shall be the responsibility of law enforcement agency administrators to ensure that all certified reserve peace officers under their direction receive the minimum hours of in-service training required by these rules.

501—10.207(80D) Training and in-service training requirements for regular law enforcement officers who become certified reserve peace officers.

10.207(1) An active certified regular law enforcement officer who also serves as a reserve peace officer or a certified regular law enforcement officer who retires or leaves active regular law enforcement and returns within 180 days to an Iowa law enforcement agency as a reserve peace officer needs no further training.

10.207(2) Any individual who leaves an Iowa law enforcement officer position and becomes a certified reserve peace officer shall receive in-service training within one year of the individual's appointment date as follows:

Period Outside of Iowa Law Enforcement	In-Service Training Required
6 months to 12 months	12 hours
More than 12 months to 24 months	24 hours
More than 24 months to 36 months	36 hours
More than 36 months	60 hours

The subject matter of this training will be determined and approved by the law enforcement agency.

501—10.208(80D) Reserve peace officers appointed prior to July 1, 2007—obtaining state certification.

10.208(1) A reserve peace officer enrolled in an approved minimum course of training prior to July 1, 2007, shall obtain state certification by July 1, 2012. The state certification may be obtained through certification by examination. Reserve peace officers who have received training prior to July 1, 2007, may, upon application to and approval from the director, take a competency test or tests to gain Iowa reserve peace officer certification. Successful completion of the required test or tests will result in certification by the council. The test or tests and study material shall be prepared and administered by the academy. The individual must pass the test or tests with a score of 70 percent or better. Individuals will be allowed to take the test or tests a second time in the areas with scores below 70 percent within 60 days and with the approval of the appointing law enforcement agency. The individual must pass the test or tests upon retake with a score of 70 percent or better. Failure to score 70 percent or better the second time will require the individual, with approval of the appointing law enforcement agency, to take the 80-hour module training established by the academy.

10.208(2) Criteria to be eligible to certify through examination. The following is required for certification through examination: successful completion of a minimum 150-hour certifying reserve peace officer training program.

10.208(3) Current reserve peace officers choosing not to be state certified by examination or by module training established by the academy will continue to hold agency certification only and will not be recognized as reserve peace officers after July 1, 2012.

10.208(4) If a reserve peace officer appointed prior to July 1, 2007, with agency certification only transfers to another agency, the reserve peace officer will be considered a new reserve peace officer and will be subject to the 18-month training requirements for state certification.

501—10.209(80D) Instructors for approved reserve peace officer training program.

10.209(1) All reserve peace officer instructors will be designated as general, specialist, or legal instructors. General law enforcement instructors will be those instructing in subjects that are clearly law enforcement in nature and as designated by the academy. Specialist law enforcement instructors are those persons who have attended specialized schools and possess considerable experience in the subject to be taught as designated by the academy. Legal instructors are those persons with a juris doctor degree instructing in the area of criminal law.

10.209(2) Request for instructional certification. All instructors requesting certification must submit this request to the academy council on an application form that can be obtained from the Iowa law enforcement academy.

10.209(3) Granting or revocation of instructor certification.

a. Instructor certification will be issued for a period of three years. Instructor certification may be renewed for a three-year period if the instructor has instructed in a reserve peace officer training program during the three-year time period; the reserve peace officer training coordinator or administrator for the agency recommends renewal of the instructor certification; the individual remains in good standing; and required certification in the specialty areas is in force and valid at the time of application.

b. Certification may be revoked in writing whenever, in the opinion of the academy or in the opinion of the administrator of the appointing law enforcement agency or other agency requesting certification, that certification should be revoked. In the event of denial of recertification or revocation of certification, the certificate holder may file a written notice of appeal to the academy council within 30 days of notification of the action. The appeal notice should be addressed to Director, Iowa Law Enforcement Academy, Camp Dodge, P.O. Box 130, Johnston, Iowa 50131. A hearing on the matter will be held by the academy council as soon as possible after receipt of the notice of appeal.

501—10.210(80D) Minimum qualifications for certification of general instructor. The minimum qualifications for certification of a general instructor include the following: a regular, nonprobationary certified sworn peace officer (active, inactive, or retired in good standing) with documented experience in the subject area to be instructed and endorsement by the chief or sheriff requesting certification as to the person's qualifications to instruct. Good standing is determined by the chief or sheriff and by the academy. A person who has been dismissed for good cause from previous employment, who left during an internal affairs investigation that would have resulted in dismissal for good cause, or who is currently involved in the decertification process shall not be considered in good standing.

501—10.211(80D) Minimum qualifications for certification of specialist instructor. The minimum qualifications for certification of a specialist instructor include the following.

10.211(1) The individual must have successfully completed a specialty course in the area to be instructed when required. The individual must have successfully met all requirements of the issuing agency granting the certification as an instructor in the specialty area requiring instructor certification. The specialty areas requiring certification include force management (ILEA), defensive tactics (ILEA), precision driving (ILEA), Hazmat awareness, blood-borne pathogens, and mandatory reporting. Certification from the issuing agency must be in force and valid at the time of application to be considered as a specialist instructor.

10.211(2) An instructor of the role of emergency communications must have completed the 40-hour basic telecommunication training approved by the academy or have been employed as a telecommunication specialist since July 1998.

10.211(3) An instructor of juvenile law must be a juvenile probation officer or department of human services social worker or be listed under legal instructor.

10.211(4) An instructor of weather preparedness must have experience with the national weather service or be listed as a general instructor as defined above.

10.211(5) An instructor of current drug trends/investigations will be qualified by training and experience in drug investigations such as serving on a drug task force, attending DNE/DEA 40-hour training, or attending DRE training.

501—10.212(80D) Minimum qualifications for certification of legal instructor. The minimum qualifications for certification of a legal instructor include the following: The individual must have a juris doctor degree and be licensed to practice law in Iowa.

These rules are intended to implement Iowa Code sections 80D.1A, 80D.3, 80D.4 and 2007 Iowa Acts, Senate File 110.

ARC 6004B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 455A.6, the Natural Resource Commission of the Department of Natural Resources hereby gives Notice of Intended Action to rescind Chapter 7, "Rules of Practice in Contested Cases," Iowa Administrative Code, and to adopt by reference a new Chapter 7 with the same title.

The new version of Chapter 7 has previously been adopted as 561—Chapter 7.

This proposed rule making adopts by reference the new version of 561—Chapter 7 that became effective March 7, 2007. On September 27, 2006, a Notice of Intended Action

NATURAL RESOURCE COMMISSION[571](cont'd)

was published in the Iowa Administrative Bulletin as **ARC 5385B** to rescind 561—Chapter 7 and to adopt a new version of Chapter 7. No comments were received, and the Adopted and Filed rule making was published in the Iowa Administrative Bulletin on January 31, 2007, as **ARC 5693B**.

The new version of 561—Chapter 7 addresses procedural issues that have arisen in the past on a recurring basis. It also clarifies the procedural practices of the Department.

The new version of Chapter 7 was reviewed by an administrative law judge from the Department of Inspections and Appeals and by a group of volunteer attorneys who are members of the Iowa State Bar Association.

Any interested persons may make written suggestions or comments regarding the proposed amendment no later than 4:30 p.m. on July 24, 2007. Written comments should be directed to Anne Preziosi, Department of Natural Resources, Air Quality Bureau, 7900 Hickman, Urbandale, Iowa 50322; telephone (515)281-6243; fax (515)242-5094. Requests for a public hearing regarding this rule making must be submitted in writing to the above address by the above date.

This amendment is intended to implement Iowa Code section 455A.4.

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 571—Chapter 7 and adopt the following **new** chapter in lieu thereof:

CHAPTER 7
RULES OF PRACTICE IN CONTESTED CASES

571—7.1(17A) Adoption by reference. The commission adopts by reference 561—Chapter 7, Iowa Administrative Code.

This rule is intended to implement Iowa Code sections 17A.3 and 17A.12 to 17A.18.

ARC 5977B

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 Massage Therapy hereby gives Notice of Intended Action to amend Chapter 130, "Administrative and Regulatory Authority for the Board of Examiners for Massage Therapy," and Chapter 131, "Licensure of Massage Therapists," to rescind Chapter 132, "Massage Therapy Education Curriculum," and adopt a new Chapter 132 with the same title, and to amend Chapter 133, "Continuing Education for Massage Therapists," Chapter 134, "Discipline for Massage Therapists," and Chapter 135, "Fees," Iowa Administrative Code.

These proposed amendments rescind Chapter 132 and adopt a new Chapter 132 regarding curriculum. Additionally, the proposed amendments implement changes necessitated by the passage of 2007 Iowa Acts, Senate File 74, and amend subrule 131.8(3), paragraph "c," to remove the first aid certification requirement for license renewal.

Any interested person may make written comments on the proposed amendments no later than July 24, 2007. Comments should be 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.

A public hearing will be held on July 24, 2007, 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 amendments.

These amendments are intended to implement Iowa Code chapters 147, 152C and 2007 Iowa Acts, Senate File 74.

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 **645—Chapters 130** to **134** by striking the term "board of massage therapy examiners" wherever it appears and inserting the term "board of massage therapy" in lieu thereof.

ITEM 2. Amend subrule **131.8(3)**, paragraph **"c,"** as follows:

c. Submit evidence of current certification in CPR~~/first aid~~.

ITEM 3. Rescind 645—Chapter 132 and adopt the following **new** chapter in lieu thereof:

CHAPTER 132
MASSAGE THERAPY EDUCATION CURRICULUM

645—132.1(152C) Definitions.

"Approved curriculum" means that the massage therapy education course of study meets the criteria specified in this chapter and has been approved by the board of massage therapy.

"Board" means the board of massage therapy.

"Client" means any person with whom the school has an agreement to provide massage therapy.

"Clinical practicum" means hands-on massage therapy provided to members of the public by a student who is enrolled at a massage therapy school and is under the supervision of an instructor who is an Iowa-licensed massage therapist, is physically present on the premises and is available for advice and assistance. "Clinical practicum" does not include classroom practice.

"Course of study" means a series of classroom courses, not including continuing education, which is approved by the board as having a unified purpose in training individuals toward a certificate, degree or diploma in the practice of massage therapy.

"Massage therapy" means performance for compensation of massage, myotherapy, massotherapy, bodywork, bodywork therapy, or therapeutic massage including hydrotherapy, superficial hot and cold applications, vibration and topi-

cal applications, or other therapy which involves manipulation of the muscle and connective tissue of the body, excluding osseous tissue, to treat the muscle tonus system for the purpose of enhancing health, providing muscle relaxation, increasing range of motion, reducing stress, relieving pain, or improving circulation.

645—132.2(152C) Application for approval of massage therapy education curriculum.

132.2(1) From the [effective date of these rules] through June 30, 2008, both in-state and out-of-state massage therapy schools may apply for curriculum approval. Beginning July 1, 2008, only in-state massage therapy schools may request curriculum approval or reapproval. Massage therapy schools seeking curriculum approval shall submit the application and fees in accordance with the requirements of subrule 132.2(3). The curriculum approval shall be valid for up to two years with reapplication for approval due June 30 of each even-numbered year. The biennial renewal cycle shall begin July 1 of an even-numbered year and end June 30 two years later. Schools that receive curriculum approval within six months prior to the start of the next biennial renewal cycle shall not need to reapply for curriculum approval until the following even-numbered year.

132.2(2) The board-approved application form and Curriculum Criteria and Documentation form for schools providing a massage therapy curriculum shall be obtained from the board's Web site, www.idph.state.ia.us/licensure, or directly from the board office.

132.2(3) Applications and fees shall be submitted to the Board of Massage Therapy, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075. The application for curriculum approval shall include all of the following:

a. A completed board-approved application form;

b. The curriculum approval application fee as specified in 645—Chapter 135;

c. A completed Curriculum Criteria and Documentation form;

d. The current school catalog, including name of the program(s), a description of the curriculum delivery system, course descriptions, and program accreditation or approval by other professional entities; and

e. A sample diploma and a sample transcript that identifies the name of the graduate, name of the program, graduation date, and the degree, diploma or certificate awarded.

132.2(4) Beginning June 30, 2008, the board shall conduct curriculum reviews only for in-state massage therapy schools. Out-of-state school curriculum shall be reviewed on a case-by-case basis upon receipt of the curriculum as a part of an individual's application for licensure to practice massage therapy in the state of Iowa.

132.2(5) Massage therapy schools that do not renew curriculum approval by the expiration date shall be removed from the board's list of approved curriculum providers until such time that they comply with curriculum approval requirements.

132.2(6) Schools that apply for curriculum approval shall at a minimum provide a curriculum that meets the requirements of this chapter, offer a course of study of at least 500 clock hours or the equivalent in academic credit hours, and require for entrance into the massage therapy school graduation from high school or its equivalent.

645—132.3(152C) Curriculum requirements. An approved curriculum shall include but not be limited to the following content areas:

1. Fundamentals of massage therapy.
2. Clinical application of massage and bodywork therapies.
3. Client communication theory and practice.
4. Health care referral theory and practice.
5. Anatomy and physiology.
6. Kinesiology.
7. Pathology and skills in CPR, first aid, infection control, injury prevention and sanitation.
8. Iowa law and ethics.
9. Business management, including legal and financial aspects, documentation and record maintenance.
10. Wellness and healthy lifestyle theory and practice in such areas as hydrotherapy, hot and cold applications, spa techniques, nutrition, herbal studies, wellness models, somatic movement and energy work.

645—132.4(152C) Student massage clinical practicum standards.

132.4(1) The school must provide clinical practicum hours at the school's primary location or an event sponsored by the school.

132.4(2) At all times when the student delivers physical contact with the public or other students, a clinical instructor/supervisor who is an Iowa-licensed massage therapist shall be personally in attendance.

132.4(3) Students shall not be paid by consumers for massage therapy work.

645—132.5(152C) School certificate or diploma. Upon successful completion of a school's course of study, the student shall be awarded a certificate or diploma, which shall identify the legal name of the graduate, the name of the program, the graduation date, and the degree or certificate awarded.

645—132.6(152C) School records retention. Records documenting the student's completion of the curriculum shall be maintained for two years following the student's graduation date. In the event of school closure, the board shall be notified of the location of the records.

645—132.7(152C) Massage school curriculum compliance.

132.7(1) A school shall maintain curriculum records and shall make the records available to the board upon request.

132.7(2) A school whose curriculum is approved shall notify the board in writing within 30 days if there is a change of address, a school closing, or a curriculum revision that does not meet the requirements of this chapter.

132.7(3) For each student who successfully completes curriculum requirements, the school shall provide the student an official transcript that includes the student's legal name and date of graduation.

645—132.8(152C) Denial or withdrawal of approval.

132.8(1) The board shall deny approval of a school curriculum if the curriculum does not meet the requirements of this chapter.

132.8(2) The board shall withdraw approval of an approved school curriculum if the board determines that the curriculum no longer meets the requirements of this chapter.

132.8(3) The board shall notify the school in writing if the board denies or withdraws curriculum approval. Following denial or withdrawal of approval by the board, the school may request that the board reconsider its decision. Requests for curriculum approval reconsideration must be submitted in writing and include any evidence the school believes sup-

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ports its belief that all requirements of this chapter are met. The board in its sole discretion shall determine whether to grant such a request.

These rules are intended to implement Iowa Code chapter 152C.

ITEM 4. Amend subrule 135.1(10) as follows:

135.1(10) ~~Initial application~~ *Application* fee for approval of massage therapy education curriculum is $120.

ARC 6016B

STATE PUBLIC DEFENDER[493]

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 13B.4(8), the State Public Defender gives Notice of Intended Action to amend Chapter 12, "Claims for Indigent Defense Services," and Chapter 14, "Claims for Attorney Fees in 600A Terminations," Iowa Administrative Code.

These proposed amendments implement 2007 Iowa Acts, Senate File 575, which revises the hourly rate paid for indigent defense cases.

Interested persons may make written comments or suggestions on the proposed amendments on or before July 27, 2007. Written materials should be addressed to the State Public Defender, Lucas State Office Building, Fourth Floor, 321 East 12th Street, Des Moines, Iowa 50319-0087; faxed to (515)281-7289; or E-mailed to msmith@spd.state.ia.us.

There will be a public hearing on July 27, 2007, at 9 a.m. in Conference Room 422 of the Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the State Public Defender and advise of specific needs.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 6015B**. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapters 13B, 600A, and 815 and 2007 Iowa Acts, Senate File 575.

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.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

July 1, 2006 — July 31, 2006	7.00%
August 1, 2006 — August 31, 2006	7.25%
September 1, 2006 — September 30, 2006	7.00%
October 1, 2006 — October 31, 2006	7.00%
November 1, 2006 — November 30, 2006	6.75%
December 1, 2006 — December 31, 2006	6.75%
January 1, 2007 — January 31, 2007	6.50%
February 1, 2007 — February 28, 2007	6.50%
March 1, 2007 — March 31, 2007	6.75%
April 1, 2007 — April 30, 2007	6.75%
May 1, 2007 — May 31, 2007	6.50%
June 1, 2007 — June 30, 2007	6.75%
July 1, 2007 — July 31, 2007	6.75%

ARC 6006B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby adopts new Chapter 8, "All Iowa Opportunity Scholarship Program," Iowa Administrative Code.

The purpose of these rules is to implement the All Iowa Opportunity Scholarship Program as enacted by 2007 Iowa Acts, Senate File 588.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary to ensure that all action taken by the Commission is in compliance with federal law and regulations.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules should be made effective upon filing, as this will allow the rules to become effective prior to the beginning of the 2007-08 academic year.

These rules are also published herein under Notice of Intended Action as **ARC 6017B** to allow for public comment.

The Commission adopted these rules on June 14, 2007.

These rules became effective on June 14, 2007.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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.

Adopt **new** 283—Chapter 8 as follows:

CHAPTER 8
ALL IOWA OPPORTUNITY SCHOLARSHIP PROGRAM

283—8.1(261) Basis of aid. Tuition assistance available under the all Iowa opportunity scholarship program is based on the financial need of Iowa residents enrolled at eligible Iowa colleges and universities.

283—8.2(261) Definitions. As used in this chapter:

"Eligible college or university" means an Iowa community college, an institution of higher education governed by the state board of regents, or an accredited private institution located in Iowa that meets all eligibility requirements set forth in Iowa Code section 261.9. All eligible colleges and universities must submit annual reports which include student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code sections 261.9 through 261.16.

"Financial need" means the need of an applicant for financial assistance. Need shall be evaluated annually on the basis of a confidential statement of family finances filed on a form designated by the commission. The commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. The FAFSA must be received by the processing agent by the date specified in the application instructions.

"Full-time" means enrollment at an eligible college or university in a course of study including at least 12 semester hours or the trimester or quarter equivalent.

"Iowa resident" means a person who meets the criteria used by the state board of regents to determine residency for tuition purposes as described in 681—1.4(262) or a person who meets the criteria defined by the Iowa department of education's "Iowa community college uniform policy on student residency status."

"Part-time" means enrollment at an eligible college or university in a course of study including at least three semester hours or the trimester or quarter equivalent.

283—8.3(261) Eligibility requirements.

8.3(1) Applicants for the all Iowa opportunity scholarship program must complete the Free Application for Federal Student Aid (FAFSA) by the date specified in the application instructions. In addition to completing the FAFSA, an applicant must be:

a. An Iowa resident who begins his or her initial period of postsecondary enrollment within two academic years of graduation from high school;

b. An Iowa high school graduate who graduated from high school with at least a 2.5 cumulative grade point average on a 4.0 grade scale or its equivalent; and

c. Enrolled for at least three semester hours, or the trimester or quarter equivalent, in a program leading to an undergraduate degree from an eligible college or university.

8.3(2) To maintain eligibility, recipients must maintain satisfactory academic progress as defined by the eligible college or university.

8.3(3) Individuals who have military obligations may delay the initial period of enrollment for up to four academic years beyond high school graduation or must begin postsecondary enrollment within two academic years of discharge. Exceptions for health or other personal reasons for delaying the initial period of enrollment will be reviewed by commission staff on a case-by-case basis.

283—8.4(261) Awarding of funds.

8.4(1) Selection criteria. All applicants who submit applications that are received on or before the published deadline will be considered for funding.

8.4(2) Priority for grants. Only applicants with expected family contributions (EFCs) at or below the average tuition and fees for regent university students for the academic year for which awards are being made will be considered for awards.

8.4(3) Maximum award. The maximum award for full-time students will be the average tuition and fees for regent university students for the award year or the tuition and fees paid by the student, whichever is less.

If insufficient funding is available to make full awards to all eligible students, awards will be made only to those students whose EFCs combined with federal Pell grants, Iowa vocational-technical tuition grants, and Iowa tuition grants total less than the designated EFC level.

8.4(4) Awarding process.

a. College and university officials will provide information about eligible students to the commission in a format specified by the commission.

b. The commission will designate recipients in rank order based on the award amount calculated as follows—regent average tuition and fees minus EFC minus Pell grant minus Iowa vocational-technical tuition grant minus Iowa tuition grant. In no case will an award exceed a student's tuition and fees or the average tuition and fees at a regent university,

whichever is less. Awards will be made in rank order until all funding has been expended. In the event that all applicants in a specific rank cannot be funded, applicants will be selected in that rank based on expected renewal status (in the case of community college students), expected family contribution, parental adjusted gross income, and application date.

c. The college or university will notify the recipient of the award, clearly indicating the award amount and the state program from which funding is being provided and stating that funding is contingent on the availability of state funds.

d. The college or university is responsible for completing necessary verification and for coordinating other aid to ensure compliance with student eligibility requirements and allowable award amounts. The college or university will report changes in student eligibility to the commission.

8.4(5) Award transfers and adjustments. Recipients are responsible for promptly notifying the appropriate college or university of any change in enrollment or financial situation. The college or university will make necessary changes and notify the commission.

8.4(6) Academic-year awards. All Iowa opportunity scholarships are provided during the traditional nine-month academic year, which is generally defined as September through May. Students attending eligible community colleges may receive no more than four semesters of full-time all Iowa opportunity scholarships or eight part-time semesters. Students attending eligible regent universities and other eligible colleges and universities may receive no more than two semesters of full-time all Iowa opportunity scholarships or four part-time semesters.

8.4(7) Renewal. Applicants must complete and file annual applications (FAFSAs) for the all Iowa opportunity scholarship program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications. To be eligible for renewal, a recipient must maintain satisfactory academic progress as defined by the eligible college or university.

283—8.5(261) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the all Iowa opportunity scholarship program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for funding.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

[Filed Emergency 6/14/07, effective 6/14/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6007B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby adopts new Chapter 9, "All Iowa Opportunity Foster Care Grant Program," Iowa Administrative Code.

The purpose of these rules is to implement the All Iowa Opportunity Foster Care Grant Program as enacted by 2007 Iowa Acts, Senate File 588.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary to ensure that all action taken by the Commission is in compliance with federal law and regulations.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules should be made effective upon filing, as this will allow the rules to become effective prior to the beginning of the 2007-08 academic year.

These rules are also published herein under Notice of Intended Action as **ARC 6018B** to allow for public comment.

The Commission adopted these rules on May 17, 2007.

These rules became effective on June 14, 2007.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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.

Adopt **new** 283—Chapter 9 as follows:

CHAPTER 9
ALL IOWA OPPORTUNITY FOSTER CARE GRANT PROGRAM

283—9.1(261) Basis of aid. Financial assistance under the all Iowa opportunity foster care grant program is available to students who have been in Iowa foster care, who demonstrate financial need, and who are enrolled at eligible Iowa colleges and universities.

283—9.2(261) Definitions. As used in this chapter:

"Adopted youth" means a youth who was adopted after the age of 16.

"Aged out" means youth who leave foster care at age 18 or older.

"Eligible child" means a child who meets the definition of "aged out" of foster care or who was adopted on or after the child's 16th birthday.

"Eligible college or university" means an Iowa community college, an institution of higher education governed by the state board of regents, or an accredited private institution located in Iowa that meets all eligibility requirements set forth in Iowa Code section 261.9. All eligible colleges and universities must submit annual reports which include student and faculty information, enrollment and employment information, and other information required by the commission as described in Iowa Code sections 261.9 through 261.16.

"Financial need" means the need of an applicant for financial assistance. Need shall be evaluated annually on the basis

of a confidential statement of family finances filed on a form designated by the commission. For the purposes of determining financial need, the commission has adopted the use of the Free Application for Federal Student Aid (FAFSA), a federal form used to calculate a formula developed by the U.S. Department of Education, the results of which are used to determine relative need. The FAFSA must be received by the processing agent by the date specified in the application instructions.

"Foster care" means substitute care furnished on a 24-hour-a-day basis to an eligible child, in a licensed foster care facility or approved shelter care facility, by a person or agency other than the child's parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of less than 30 days. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision, and health care.

"Full-time" means enrollment at an eligible college or university in a course of study including at least 12 semester hours or the trimester or quarter equivalent.

"Iowa resident" means an individual who meets the criteria used by the state board of regents to determine residency for tuition purposes as described in 681—1.4(262).

"Located in Iowa" means that a college or university has made a substantial investment in a permanent Iowa campus and staff and offers a full range of courses leading to the degrees offered by the institution as well as a full range of student services.

"Part-time" means enrollment at an eligible college or university in a course of study including at least three semester hours or the trimester or quarter equivalent.

283—9.3(261) Eligibility requirements.

9.3(1) Applicants for the all Iowa opportunity foster care grant program must complete the Free Application for Federal Student Aid (FAFSA) and an application specific to the program as provided by the commission. Both applications must be completed by deadlines provided by the commission. The applicant's initial application date and the start date of the education or training program must be prior to the applicant reaching the age of 23. In addition to completing the required applications, an applicant must be:

a. An Iowa resident;

b. A youth who has either a general equivalency diploma (GED) or a high school diploma;

c. A youth who is at least 18 years of age and who has not yet reached 24 years of age and:

(1) Was in a licensed foster care placement under a court order as described in Iowa Code chapter 232 under the care and custody of the department of human services or juvenile court services on the date the youth reached the age of 18 or during the 30 calendar days before or after that date;

(2) Was under court order under Iowa Code chapter 232 to live with a relative or other suitable person on the date the youth reached the age of 18 or during the 30 calendar days before or after that date;

(3) Was in a licensed foster care placement under an order entered under Iowa Code chapter 232 prior to being legally adopted after reaching the age of 16;

(4) Was in the state training school or the Iowa juvenile home under court order under Iowa Code chapter 232 under the care and custody of the department of human services on the date the youth reached the age of 18 or during the 30 calendar days before or after that date; and

d. A student enrolled for at least three semester hours, or the trimester or quarter equivalent, in a program leading to a degree or certificate from an eligible college or university.

9.3(2) To maintain eligibility, recipients must maintain satisfactory academic progress as defined by the eligible institution.

283—9.4(261) Awarding of funds.

9.4(1) Selection criteria. All applicants who submit FAFSAs and program applications that are received on or before the published deadlines will be considered for funding.

9.4(2) Priority for grants. Applicants are ranked in order of the estimated amount which the applicant reasonably can be expected to contribute toward college expenses, and awards are granted to those who demonstrate need in order of family contribution, from lowest to highest, insofar as funds permit, with priority being given to applicants who were placed in the state training school or the Iowa juvenile home pursuant to a court order under Iowa Code chapter 232 under the care and custody of the department of human services.

If funds are insufficient to fund all applicants, awards will first be made to returning students who submit renewal applications by the application deadline. After all on-time renewals have been funded, awards will be made to new students and renewal students based on the application receipt date.

When all funds have been committed, applicants not awarded grants who meet the eligibility requirements will be placed on a waiting list. Applicants on the waiting list will be awarded grants based on the date the completed application was received. In the event multiple applications are received on the same date, preference will be given as follows:

a. Applicants who were placed in the state training school or the Iowa juvenile home pursuant to a court order under Iowa Code chapter 232 under the care and custody of the department of human services.

b. Applicants who aged out of foster care.

(1) In the event there are multiple applicants who aged out of care, preference will be given to the applicant closest to the age of 24.

(2) In the event multiple applicants have the same birthday, preference will be given to the applicant with the highest financial need as determined by the FAFSA.

c. Applicants who were adopted.

(1) In the event there are multiple adopted applicants, preference will be given to the applicant closest to the age of 24.

(2) In the event multiple applicants have the same birthday, preference will be given to the applicant with the highest financial need as determined by the FAFSA.

d. Applicants, regardless of foster care placement, who received awards previously but withdrew from school.

(1) In the event there are multiple applicants, preference will be given to the applicant closest to the age of 24.

(2) In the event multiple applicants have the same birthday, preference will be given to the applicant with the highest financial need as determined by the FAFSA.

9.4(3) Award notification. All recipients will be notified in writing of the amount of their award. Ineligible applicants, or applicants who are on the waiting list, will be notified in writing of their ineligibility or waiting-list status. The commission will coordinate all financial aid received by the recipient to ensure compliance with student eligibility requirements and allowable award amounts.

9.4(4) Award transfers and adjustments. Recipients are responsible for promptly notifying the appropriate college or university of any change in enrollment or financial situation. The college or university will make necessary changes and notify the commission.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

9.4(5) Academic-year awards. All Iowa opportunity foster care grants are provided during the traditional nine-month academic year, which is generally defined as September through May.

9.4(6) Renewal. Applicants must complete and file annual applications for the all Iowa opportunity foster care grant program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications. To be eligible for renewal, a recipient must maintain satisfactory academic progress as defined by the eligible college or university.

9.4(7) Extent of grant. Students may receive no more than eight semesters of full-time all Iowa opportunity foster care grants or 16 part-time semesters.

283—9.5(261) Disbursement of grant. The full amount of the grant will be disbursed in multiple installments to the eligible college or university upon receipt of certification from the college or university that the grant recipient is enrolled and in good academic standing. The institution will first use the funds to pay any outstanding charges of the student. Once the student account balance has been settled, the remaining funds, if any, may be refunded to the student.

If the student withdraws from the university and is entitled to a refund of tuition and fees, the pro-rata share of the refund attributable to the grant shall be refunded to the commission.

283—9.6(261) Award transfers and adjustments. Recipients are responsible for notifying the commission immediately of any change in name, enrollment status, or address.

283—9.7(261) Restrictions. A student who is in default on a Stafford Loan, SLS Loan, or a Perkins/National Direct/National Defense Student Loan or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for assistance under the all Iowa opportunity foster care grant program. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in an appeal under the procedures set forth in 283—Chapters 4 and 5. Credits that a student receives through "life experience credit" and "credit by examination" are not eligible for grant funding.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

[Filed Emergency 6/14/07, effective 6/14/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6008B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby rescinds Chapter 34, "Registered Nurse Recruitment Program," and adopts a new Chapter 34, "Registered Nurse and Nurse Educator Loan Forgiveness Program," Iowa Administrative Code.

The purpose of these rules is to implement the Registered Nurse and Nurse Educator Loan Forgiveness Program as enacted by 2007 Iowa Acts, Senate File 588.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary to ensure that all action taken by the Commission is in compliance with federal law and regulations.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules should be made effective upon filing, as this will allow the rules to become effective prior to the beginning of the 2007-08 academic year.

These rules are also published herein under Notice of Intended Action as **ARC 6020B** to allow for public comment.

The Commission adopted these rules on June 14, 2007.

These rules shall become effective on June 14, 2007.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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 **283—Chapter 34** and adopt the following **new** chapter in lieu thereof:

CHAPTER 34
REGISTERED NURSE AND NURSE EDUCATOR LOAN FORGIVENESS PROGRAM

283—34.1(261) Registered nurse and nurse educator loan forgiveness program. The registered nurse and nurse educator loan forgiveness program is a state-supported and state-administered forgivable loan program established for nurse educators teaching at eligible Iowa colleges and universities or registered nurses employed in Iowa.

283—34.2(261) Definitions. As used in this chapter:

"Nurse educator" means a registered nurse who holds a master's or doctorate degree and is employed as a faculty member who teaches nursing as provided in 655—2.6(152) at an eligible college or university.

"Registered nurse" means a nurse who meets the requirements provided in 655—6.2(152).

283—34.3(261) Eligibility requirements.

34.3(1) Applicants must be:

a. Registered nurses employed as nurses in Iowa; or

b. Registered nurses who hold bachelor's, master's, specialist, or doctorate degrees who are employed as teachers by eligible colleges or universities.

34.3(2) Applicants must complete and file annual applications for the registered nurse and nurse educator loan forgiveness program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications.

34.3(3) Applicants must annually complete and return to the commission affidavits of practice verifying that they are employed as registered nurses in Iowa or as nurse educators at eligible Iowa colleges or universities.

34.3(4) Applicants must begin their first registered nurse or nurse educator positions in Iowa on or after July 1, 2007.

34.3(5) Applicants who received funding under the registered nurse recruitment program will be eligible for funding under the registered nurse and nurse educator loan forgiveness program for five years minus one year for each year that

a loan was received under the registered nurse recruitment program.

283—34.4(261) Awarding of funds.

34.4(1) Selection criteria. All applications received on or before the published deadline will be considered for funding. In the event that all applications for the program cannot be funded with the available appropriations, criteria for selection of recipients will be prioritized as follows:

a. Nurse educators. All nurse educators will receive priority funding. If all applications for nurse educators cannot be funded, criteria for selection of recipients will be prioritized as follows:

(1) Applicant renewal status,
(2) Full-time employment status,
(3) Iowa residency status,
(4) Part-time employment status, and
(5) Date of application.

b. Registered nurses. Registered nurses will receive awards if funding remains after all eligible nurse educator applications have been funded. If all applications for registered nurses cannot be funded, criteria for selection of recipients will be prioritized as follows:

(1) Applicant renewal status,
(2) Full-time employment status,
(3) Iowa residency status,
(4) Part-time employment status, and
(5) Date of application.

34.4(2) Annual award.

a. The maximum annual award to an eligible registered nurse shall be the lesser of:

(1) The average resident tuition rate established for students attending universities governed by the Iowa board of regents for the first year following the registered nurse's graduation from a nursing education program approved by the Iowa board of nursing pursuant to Iowa Code section 152.5, or

(2) Twenty percent of the registered nurse's total federally guaranteed Stafford loan balance, including principal and interest, under the Federal Family Education Loan Program (FFELP) or the Federal Direct Loan Program (FDLP). Eligible loans include subsidized and unsubsidized Stafford loans and consolidated loans.

b. The maximum annual award to an eligible nurse educator shall be the lesser of:

(1) The average resident graduate tuition rate established for students attending universities governed by the Iowa board of regents for the first year following the nurse educator's graduation from an advanced formal academic nursing education program approved by the Iowa board of nursing pursuant to Iowa Code section 152.5, or

(2) Twenty percent of the nurse educator's total federally guaranteed Stafford loan balance, including principal and interest, under the Federal Family Education Loan Program (FFELP) or the Federal Direct Loan Program (FDLP). Eligible loans include subsidized and unsubsidized Stafford loans and consolidated loans.

34.4(3) Extent of forgiveness. Recipients may receive loan forgiveness for no more than five consecutive years. Recipients who fail to complete five consecutive years as nurse educators or registered nurses will not be considered for subsequent years of forgiveness.

34.4(4) Disbursement of loan forgiveness funds.

a. Loan payments will be disbursed upon completion of the year for which forgiveness was approved and upon certification from the employer that the nurse educator or registered nurse was employed during the entire year and completed the year in good standing.

b. Loan proceeds will be distributed to the recipient's student loan holder and applied directly to eligible loans. Unless otherwise instructed by the recipient, the holder will be instructed to apply the proceeds of the loan forgiveness program first to any outstanding unsubsidized Stafford loan balances, next to any outstanding subsidized Stafford loan balances, then to any eligible outstanding consolidation loan balances.

283—34.5(261) Loan forgiveness cancellation.

34.5(1) Within thirty days following termination of employment as a registered nurse or as a nurse educator, the registered nurse or nurse educator shall notify the commission of the nature of the registered nurse's or nurse educator's employment status.

34.5(2) The registered nurse or nurse educator is responsible for notifying the commission immediately of a change in name, place of employment, or home address.

283—34.6(261) Restrictions. A registered nurse or nurse educator who is in default on a Stafford Student Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan forgiveness benefits. Eligibility for state aid may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

These rules are intended to implement Iowa Code section 261.23 as amended by 2007 Iowa Acts, Senate File 588.

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[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6011B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby rescinds Chapter 35, "Teacher Shortage Forgivable Loan Program," and adopts a new Chapter 35, "Iowa Teacher Shortage Loan Forgiveness Program," Iowa Administrative Code.

The purpose of these rules is to implement the Iowa Teacher Shortage Loan Forgiveness Program as enacted by 2007 Iowa Acts, Senate File 588.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are unnecessary to ensure that all action taken by the Commission is in compliance with federal law and regulations.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these rules should be waived and these rules should be made effective upon filing, as this will allow the rules to become effective prior to the beginning of the 2007-08 academic year.

These rules are also published herein under Notice of Intended Action as **ARC 6022B** to allow for public comment.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

The Commission adopted these rules on May 17, 2007.

These rules became effective on June 14, 2007.

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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 **283—Chapter 35** and adopt the following **new** chapter in lieu thereof:

CHAPTER 35
IOWA TEACHER SHORTAGE
LOAN FORGIVENESS PROGRAM

283—35.1(261) Iowa teacher shortage loan forgiveness program. The Iowa teacher shortage loan forgiveness program is a state-supported and administered loan forgiveness program for Iowans teaching in designated teacher shortage areas as certified by the director of the Iowa department of education.

283—35.2(261) Definitions. As used in this chapter:

"Shortage area" means a geographic or subject area in which there exists teacher shortages as determined annually by the director of the Iowa department of education.

"Teacher" means an individual holding a practitioner's license issued by the Iowa board of educational examiners, who is employed in a nonadministrative position in a designated shortage area by a school district or area education agency. Further, a teacher is a licensed member of a school's instructional staff who diagnoses, prescribes, evaluates, and directs student learning in a manner consistent with professional practice and school objectives, shares responsibility for the development of an instructional program and any coordinating activities, evaluates or assesses student progress before and after instruction, and uses student evaluation or assessment information to promote additional student learning.

283—35.3(261) Eligibility requirements.

1. Applicants must be teaching in approved shortage areas at Iowa kindergarten through twelfth grade schools recognized and approved by the Iowa department of education.
2. Applicants must complete and file annual applications for the Iowa teacher shortage loan forgiveness program by the deadline established by the commission. If funds remain available after the application deadline, the commission will continue to accept applications.
3. Applicants must annually complete and return to the commission affidavits of practice verifying that they are teaching in eligible teacher shortage areas.
4. Applicants must begin their first teaching jobs in Iowa on or after July 1, 2007.

283—35.4(261) Awarding of funds.

35.4(1) Selection criteria. All applications received on or before the published deadline will be considered for funding. In the event that all on-time applicants for the program cannot be funded with the available appropriation, criteria for selection of recipients will be prioritized as follows:

a. Renewal status;

b. Instructional shortage area being served, with the highest need areas as ranked by the Iowa department of education being served first;

c. Geographic shortage area being served, with the highest need areas as ranked by the Iowa department of education being served first;

d. Iowa residency status;

e. Full-time employment status;

f. Part-time employment status;

g. Total indebtedness; and

h. Date of application.

35.4(2) Annual award. The maximum annual award to an eligible recipient shall be the lesser of:

a. The average resident tuition rate established for students attending universities governed by the Iowa board of regents for the first year following the teacher's graduation from an approved practitioner preparation program, or

b. Twenty percent of the teacher's total federally guaranteed Stafford loan balance, including principal and interest, under the Federal Family Education Loan Program (FFELP) or the Federal Direct Loan Program (FDLP). Eligible loans include subsidized and unsubsidized Stafford loans and consolidated loans.

35.4(3) Extent of forgiveness. Recipients may receive loan forgiveness for no more than five consecutive years. Recipients who fail to complete five consecutive years of teaching in the designated shortage areas will not be considered for subsequent years of forgiveness.

Applicants who received funding under the teacher shortage forgivable loan program will be eligible for funding under the Iowa teacher shortage loan forgiveness program for five years minus one year for each year that a loan was received under the teacher shortage forgivable loan program.

35.4(4) Disbursement of loan forgiveness funds.

a. Loan payments will be disbursed upon completion of the academic year for which forgiveness was approved and upon certification from the school district that the teacher was employed as a teacher during the entire academic year and completed the academic year in good standing.

b. Loan proceeds will be distributed to the teacher's student loan holder and applied directly to the teacher's eligible loans. Unless otherwise instructed by the teacher, the holder will be instructed to apply the proceeds of the Iowa teacher shortage loan forgiveness program first to any outstanding unsubsidized Stafford loan balances, next to any outstanding subsidized Stafford loan balances, then to any eligible outstanding consolidation loan balances.

283—35.5(261) Loan forgiveness cancellation.

35.5(1) Within 30 days following termination of employment as a teacher in a designated teacher shortage area, the teacher shall notify the commission of the nature of the teacher's employment status.

35.5(2) The teacher is responsible for notifying the commission immediately of a change in name, place of employment, or home address.

283—35.6(261) Restrictions. A teacher who is in default on a Stafford Student Loan, SLS Loan, Perkins/National Direct/National Defense Student Loan, Health Professions Student Loan (HPSL), or Health Education Assistance Loan (HEAL) or who owes a repayment on any Title IV grant assistance or state award shall be ineligible for loan payments. Eligibility may be reinstated upon payment in full of the delinquent obligation or by commission ruling on the basis of adequate extenuating evidence presented in appeal under the procedures set forth in 283—Chapters 4 and 5.

COLLEGE STUDENT AID COMMISSION[283](cont'd)

These rules are intended to implement Iowa Code chapter 261 as amended by 2007 Iowa Acts, Senate File 588.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6026B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development hereby amends Chapter 1, "Organization"; rescinds Chapter 2, "Grow Iowa Values Fund Assistance," and Chapter 17, "High Technology Apprenticeship Program"; amends Chapter 53, "Community Economic Betterment Program," Chapter 57, "Value-Added Agricultural Products and Processes Financial Assistance Program," Chapter 59, "Enterprise Zones," Chapter 60, "Entrepreneurial Ventures Assistance Program," Chapter 61, "Physical Infrastructure Assistance Program," and Chapter 68, "High Quality Job Creation Program"; renumbers Chapter 102, "Welcome Center Program," as Chapter 34; rescinds Chapter 103, "Tourism Promotion—Licensing Program"; renumbers Chapter 104, "Iowa Wine and Beer Promotion Grant Program," and Chapter 132, "Iowa Export Trade Assistance Program," as Chapters 33 and 72, respectively; adopts new Chapter 165, "Allocation of Grow Iowa Values Fund"; rescinds Chapter 168, "Additional Program Requirements"; renumbers Chapter 169, "Public Records and Fair Information Practices," Chapter 170, "Department Procedure for Rule Making," Chapter 171, "Petition for Rule Making," Chapter 172, "Petition for Declaratory Order," and Chapter 173, "Uniform Waiver and Variance Rules," as Chapters 195 to 199, respectively; and adopts new Chapter 171, "Supplemental Credit or Points," Chapter 172, "Environmental Law Compliance; Violations of Law," Chapter 173, "Standard Definitions," Chapter 174, "Wage, Benefit, and Investment Requirements," Chapter 175, "Application Review and Approval Procedures," Chapter 187, "Contracting," Chapter 188, "Contract Compliance and Job Counting," and Chapter 189, "Annual Reporting," Iowa Administrative Code.

These amendments are intended to streamline and consolidate administrative provisions for ten programs. The programs impacted by this rule making are CEBA, PIAP, VAAPFAP, EVA, EZ, HQJC, Loan and Credit Guarantee Program, Economic Development Set-aside Program, Targeted Small Business Financial Assistance Program and the Brownfield Redevelopment Program. The amendments rescind portions of existing program rules that apply to the application review and approval process, wage and threshold requirements, contracting, amendments, reporting and combine them into two new parts that will apply to these job creation or Grow Iowa Values Fund-assisted programs.

The amendments update the Department's method of counting and tracking jobs. This revised method is intended to be accountable, verifiable and business-friendly. At the time of application, a baseline employment number will be established using payroll records. The baseline data will include details about how many jobs at the project location already meet the qualifying wage thresholds (with and without the value of benefits added to the hourly wage). Changes in these baseline employment numbers will be collected and analyzed by the Department as part of the annual reporting process.

The outcomes sought by this rule making are:

1. The establishment of a more easily understandable set of standard rules that describe the primary funding sources for job creation programs administered by IDED. Those sources are the 2003 Grow Iowa Values Fund (funded with Federal Economic Stimulus moneys), the 2005 Grow Iowa Values Fund (established by Iowa Code chapter 15G and funded with an annual $35 million state appropriation), and moneys in program funds that previously received state appropriations.
2. A centralized description of the various advisory groups and decision makers involved with the approval processes. These include the Due Diligence Committee, the Loan and Credit Guarantee Committee, the Agricultural Products Advisory Council, the Brownfield Advisory Council, the Iowa Economic Development Board, and the Iowa Department of Economic Development.
3. The consolidation of program/funding source wage and benefit threshold requirements (e.g., 90 percent, 100 percent, 130 percent, or 160 percent of the average county wage).
4. The establishment of uniform contracting requirements and contract administration procedures.
5. The establishment of a uniform method of job counting and tracking.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest. A June 15, 2007, effective date will permit IDED to incorporate the updated job counting method in the new database that is in the final stages of development in time for the filing of the annual project status report that businesses are required to submit to the Department by July 31, 2007 (for the period ending June 30, 2007). It would also ensure that the standardized administrative provisions are in place when the new fiscal year starts on July 1, 2007.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2) that the normal effective date of the amendments should be waived and the amendments should be made effective upon filing with the Administrative Rules Coordinator on June 15, 2007. Having the revised administrative rules in effect on this date will allow the Department to take steps to implement streamlined administrative procedures for fiscal year 2008 and proceed with an updated annual report process.

These amendments are also published herein under Notice of Intended Action as **ARC 6027B** to allow for public comment.

The Iowa Economic Development Board adopted these amendments on June 13, 2007.

These amendments became effective on June 15, 2007.

These amendments are intended to implement Iowa Code chapters 15, 15E, 15G and 17A.

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.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 1. Amend **261—Part I**, title, as follows:

PART I
DEPARTMENT STRUCTURE ~~AND PROCEDURE~~

ITEM 2. Amend **261—Chapter 1** to update the parenthetical implementation wherever referenced as follows:
(15,~~81GA,HF868~~)

ITEM 3. Amend rule 261—1.4(15) as follows:

261—1.4(15) Department structure.

1.4(1) General. The department's organizational structure consists of the director, deputy director, and ~~three administrative~~ *four* divisions.

1.4(2) Director. The Iowa department of economic development is administered by a director appointed by the governor, who serves at the pleasure of the governor~~,~~ and is subject to confirmation by the senate. The director is the chief administrative officer of the department and in that capacity administers the programs and services of the department in compliance with applicable federal and state laws and regulations. The duties of the director are as authorized in Iowa Code section 15.106 and include preparing a budget subject to board approval, establishing an internal administrative structure and employing personnel, reviewing and submitting to the board legislative proposals, recommending rules to the board, reporting to the board on grants and contracts awarded by the department, and other actions to administer and direct the programs of the department.

The administrators of the ~~three~~ *four* divisions and the deputy director report to the director.

1.4(3) No change.

1.4(4) Divisions. The director has established the following administrative divisions within the department in order to most efficiently and effectively carry out the department's responsibilities:

1. Administration division;
2. Business development division; ~~and~~
3. Community development division~~.~~*; and*
4. *Targeted industries division.*

1.4(5) Attachment for administrative purposes; board support. ~~Pursuant to Iowa Code section 7E.7(1), the Iowa finance authority is attached to the Iowa department of economic development for organizational and administrative purposes only. The Iowa finance authority has rule-making authority independent of the Iowa department of economic development, and its administrative rules are located under agency identification number 265 in the Iowa Administrative Code.~~ The Iowa department of economic development provides office space and staff support to the city development board pursuant to Iowa Code sections 368.9 and 15.108(3)"a"(2). The department provides administrative support to the vision Iowa board pursuant to Iowa Code section 15F.104~~.~~ *and the renewable fuel infrastructure board pursuant to Iowa Code section 15G.202.*

1.4(6) No change.

ITEM 4. Rescind and reserve **261—Chapter 2**.

ITEM 5. Rescind and reserve **261—Chapter 17**.

ITEM 6. Amend **261—Chapter 53**, title, as follows:

CHAPTER 53
COMMUNITY ECONOMIC BETTERMENT
ACCOUNT (CEBA) PROGRAM

ITEM 7. Amend rule 261—53.1(15) as follows:

261—53.1(15) Purpose *and administrative procedures*.

53.1(1) *Purpose.* The purpose of the community economic betterment *account (CEBA)* program is to assist communities and rural areas of the state with their economic development efforts and to increase employment opportunities for Iowans by increasing the level of economic activity and development within the state. The program structure provides financial assistance to businesses and industries which require assistance in order to create new job opportunities or retain existing jobs which are in jeopardy. Also, the program may provide comprehensive management assistance to businesses involved with the CEBA program. Assistance may be provided to encourage:

1. New business start-ups in Iowa;
2. Expansion of existing businesses in Iowa; or
3. The recruitment of out-of-state businesses into Iowa.

53.1(2) *Administrative procedures. The CEBA program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.*

ITEM 8. Amend rule **261—53.2(15)** as follows:

Amend the introductory paragraph as follows:

261—53.2(15) Definitions. *In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the CEBA program:*

Rescind the definitions of "agreement expiration date," "average county wage," "average regional wage," "board," "business," "committee," "community base employment," "comprehensive community and economic development plan," "department," "direct job," "director," "equity-like investment," "float loan," "full-time equivalent job," "grant," "job attainment goal," "job creation," "job retention," "loan," "loan guarantee," "project expiration date," and "recipient."

Amend the definition of "twenty-eight E (28E) agreement" as follows:

"Twenty-eight E ~~(28E)~~ agreement" *or "28E agreement"* means an intergovernmental agreement formed according to Iowa Code chapter 28E.

ITEM 9. Rescind and reserve rule **261—53.3(15)**.

ITEM 10. Amend rule 261—53.6(15) as follows:

261—53.6(15) Application for assistance. The requirements outlined in this rule are applicable to all CEBA program components, except applications under the venture project component. Refer to rule 261—53.10(15) for application requirements for venture projects.

53.6(1) General policies.

a. to f. No change.

~~g. All applicants for financial assistance shall comply with the requirements of 261—Chapter 168.~~

~~h~~ *g.* To be eligible for assistance, applicants shall meet the ~~following~~ *qualifying* wage threshold requirements *described in 261—Chapter 174 and the following*:

~~(1) Project positions shall have a starting wage of at least 100 percent of the average county wage or 100 percent of the average regional wage, whichever is lower.~~

~~(2)~~ *(1)* Fifty percent or more of the jobs to be created or retained shall have a starting wage ~~of~~ *that pays* at least ~~100 percent of the average county wage or 100 percent of the average regional wage, whichever is lower~~ *the qualifying wage threshold.*

~~(3) Where the community can document to the department's satisfaction that a significant differential exists between the actual local county wage (as determined by a local~~

~~employer survey) and the average county wage or average regional wage, the department may substitute the community survey results for the average county wage or average regional wage for consideration in a specific project. Qualification of a project would not be anticipated unless the starting project wage was clearly above the survey wage.~~

~~(4)~~ *(2)* The department may approve a project where the starting project wage is less than the average county wage or average regional wage under the following conditions:

1. to 3. No change.

~~i. A business receiving moneys from the department for the purpose of job creation shall make available 10 percent of the new jobs created for PROMISE JOBS program participants.~~

~~j. Transition provision. Applicants that have fully completed preapplications pending before the department prior to January 1, 2004, or fully completed preapplications that are postmarked or E-mailed to the department by the close of business on December 31, 2003, will be evaluated using the rules regarding wage thresholds in effect at the time of submittal.~~

53.6(2) Ineligible applications. The department will not rate and rank ineligible applications. An application may be ruled ineligible if:

a. to d. No change.

e. The project fails to meet the *qualifying* wage threshold requirements under ~~subrule 53.6(1)~~ *261—Chapter 174*, or

f. The business has a record of violations of the law over a period of time that tends to show a consistent pattern *as described in 261—Chapter 172*. ~~The business shall provide the department with a report detailing violations of law within the most recent consecutive three-year period prior to application. Consistent with Iowa Code section 15A.1(3), violations of environmental protection statutes, regulations or rules shall be reported for the most recent consecutive five-year period prior to application. If the department finds that a business has a record of violations of the law that tends to show a consistent pattern, the business shall not be eligible under this program. Violations of law include, but are not limited to, environmental and worker safety statutes, rules and regulations. A business shall not be ineligible if the department finds that the violations did not seriously affect the public health or safety, or the environment, or if they did, that there were mitigating circumstances.~~

53.6(3) Procedures.

a. No change.

b. Applications should be submitted to: Division of Business Development, Department of Economic Development, CEBA Program, 200 East Grand Avenue, Des Moines, Iowa 50309. Application forms and instructions are available at this address, *on the department's Web site*, or by calling (515)242-4819.

c. and d. No change.

e. The department will rate and rank applications according to the criteria in rule 53.7(15). Additionally, for small business gap financing applications, the department will use rule 53.8(15). For new business opportunities and new product development applications, the department will use rule 53.9(15). ~~The department will present its recommendations on rating and ranking to the committee. The committee will present its recommendations to the board. The board will have final authority in the rating and ranking of applications. The board will also make the final decision to approve, reject, table, defer, or refer an application to another funding program. The department may negotiate with the applicant or proposed recipient concerning dollar amounts, terms, or any other elements of the application package. The board may offer an award in a lesser amount or structured in a manner different than requested.~~ *Applications shall be reviewed and approved following the process described in 261—Chapter 175.*

~~**53.6(4)** Emergency applications. Applications are sometimes made for projects which require an immediate decision on CEBA assistance in order to be successful. In the event evidence is presented to the department that this situation exists, the board may hold a telephonic meeting or otherwise process the application in an accelerated manner. If approved, the project must commence within 45 days of the date of approval; failure to begin within 45 days may be grounds for the termination of the award.~~

ITEM 11. Amend subrule **53.7(2)**, paragraph **"a,"** as follows:

a. The total number of jobs to be created or retained. When rating a project, the department shall only consider those positions which meet the *qualifying* wage threshold requirements defined in ~~subrule 53.6(1)~~ *261—Chapter 174*.

ITEM 12. Amend subrule **53.8(2)**, paragraphs **"b"** to **"d,"** as follows:

b. EDSA (economic development set-aside program); *or*

~~c. BDFC (business development finance corporation program); or~~

~~d~~ *c*. PFSA (public facilities set-aside program).

ITEM 13. Amend subrule **53.8(3)**, paragraph **"d,"** as follows:

d. ~~Comprehensive community and economic development plan.~~ *A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171.* Maximum—10 points. ~~A community submitting a comprehensive community and economic development plan meeting the requirements of 261—Chapter 168~~ *Projects meeting these conditions* will receive 10 points.

ITEM 14. Amend subrule 53.8(4) as follows:

53.8(4) Project period. Projects funded under rule 53.8(15) are considered to have a project period ~~of three years for meeting job attainment goal and other related performance goals~~ *as described in 261—Chapter 187. This is the time period allowed for meeting and maintaining the job and performance obligations*.

~~The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.15(15).~~

ITEM 15. Amend subrule **53.9(2)**, paragraphs **"b"** to **"d,"** as follows:

b. EDSA (economic development set-aside program); *or*

~~c. BDFC (business development finance corporation program); or~~

~~d~~ *c*. PFSA (public facilities set-aside program).

ITEM 16. Amend subrule **53.9(3)**, paragraph **"c,"** as follows:

c. ~~Comprehensive community and economic development plan.~~ *A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171.* Maximum—10 points. *Projects meeting these conditions will receive 10 points*;

ITEM 17. Amend subrule 53.9(4) as follows:

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

53.9(4) Project period. Projects funded under rule 53.9(15) are considered to have ~~up to~~ a ~~maximum five-year~~ project period *as described in 261—Chapter 187. This is the time period allowed for meeting and maintaining the job and performance obligations*.

~~The recipient shall maintain the pledged jobs for 90 days beyond the project expiration date or will be subject to penalties as provided for in rule 53.15(15).~~

ITEM 18. Amend subrules 53.10(1) to 53.10(3) as follows:

53.10(1) Eligible applicants; projects; coordination with PROMISE JOBS.

a. to c. No change.

~~d. Coordination with PROMISE JOBS. Businesses receiving assistance shall make available for PROMISE JOBS participants 10 percent of the new jobs created.~~

53.10(2) Ineligible applications. The department will not rate and rank ineligible applications. An application may be determined to be ineligible if:

a. to c. No change.

d. The business has a record of violations of the law over a period of time that tends to show a consistent pattern *as described in 261—Chapter 172.* ~~The business shall provide the department with a report detailing violations of law within the most recent consecutive three-year period prior to application. Consistent with Iowa Code section 15A.1(3), violations of environmental protection statutes, regulations or laws shall be reported for the most recent five-year period prior to application. If the department finds that a business has a record of violations of law that tends to show a consistent pattern, the business shall not be eligible under this program. Violations of law include, but are not limited to, environmental and worker safety statutes, rules and regulations. A business shall not be ineligible if the department finds that the violations did not seriously affect the public health, safety, or the environment or, if they did, that there were mitigating circumstances.~~

53.10(3) Rating system. Eligible applications will be reviewed and rated using the following criteria:

a. to f. No change.

g. ~~Comprehensive community and economic development plan. A community submitting a comprehensive community and economic development plan meeting the requirements of 261—Chapter 168~~ *A project in a brownfield, blighted or distressed area or a business with a good neighbor agreement or an Iowa great places agreement, as described in 261—Chapter 171* will receive 5 extra points.

Applications must receive a minimum of 60 points to be recommended for funding.

ITEM 19. Rescind and reserve subrule **53.10(4)**.

ITEM 20. Rescind and reserve subrules **53.11(3)** and **53.11(5)**.

ITEM 21. Rescind and reserve subrule **53.12(3)**.

ITEM 22. Rescind and reserve rules **261—53.13(15)** to **261—53.17(15)**.

ITEM 23. Amend rule 261—57.1(15E) as follows:

261—57.1(15E) Purpose *and administrative procedures.*

57.1(1) *Purpose*. The purpose of this program is to encourage the increased utilization of agricultural commodities produced in this state. The program shall assist in efforts to revitalize rural regions of this state by committing resources to provide financial assistance to new or existing value-added production facilities.

57.1(2) *Administrative procedures. The VAAPFAP program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.*

ITEM 24. Amend rule 261—57.2(15E) as follows:

Amend the introductory paragraph as follows:

261—57.2(15E) Definitions. *In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the VAAPFAP program:*

Rescind the definitions of "agricultural products advisory council," "'department,' or 'IDED,'" "loan," and "loan guarantee."

ITEM 25. Amend subrule 57.5(1) as follows:

57.5(1) The department shall not provide financial assistance to support a value-added production facility if the facility or a person owning a controlling interest in the facility has demonstrated~~, within the most recent consecutive three-year period prior to application,~~ a continuous and flagrant disregard for the health and safety of its employees or the quality of the environment *as more fully described in 261—Chapter 172.* ~~Violations of environmental protection statutes, rules or regulations shall be reported for the most recent five-year period prior to application. Evidence of such disregard shall include a history of serious or uncorrected violations of state or federal law protecting occupational health and safety or the environment, including but not limited to serious or uncorrected violations of occupational safety and health standards enforced by the division of labor services of the department of employment services pursuant to Iowa Code chapter 84A, or rules enforced by the environmental protection division of the department of natural resources pursuant to Iowa Code chapter 455B.~~

ITEM 26. Amend rule 261—57.7(15E), introductory paragraph, as follows:

261—57.7(15E) Application procedure. Application materials ~~may be obtained from the IDED Bureau of Business Finance~~ *are available online at www.iowalifechanging.com or from IDED, Business Finance*, 200 East Grand Avenue, Des Moines, Iowa 50309, telephone (515)242-4819. A comprehensive business plan must accompany the application and shall include at least the following:

ITEM 27. Amend rule 261—57.8(15E), introductory paragraph, as follows:

261—57.8(15E) Review process. Subject to availability of funds, applications are reviewed and rated by IDED staff on an ongoing basis. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. If the applicant had previously consulted with the coordinator in completion of the application, the department may refer the application to the coordinator for further feasibility studies if deemed necessary. ~~Notice of such referral shall simultaneously be mailed to the applicant. The IDED staff may refer viable applications for project development assistance. The applicant shall then have three weeks from the date of the IDED letter to submit the requested information. Applications will also be reviewed by the agricultural products advisory council on a regular basis. Recommendations from the IDED staff will be submitted to the director of the department for final approval, denial or deferral. Applicants shall be notified in writing within one week following the department's final action.~~ *Applications will be reviewed as described in 261—Chapter 175.*

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

ITEM 28. Rescind and reserve rules **261—57.9(15E)** and **261—57.11(15E)** to **261—57.15(15E)**.

ITEM 29. Amend **261—Chapter 59**, title, as follows:

CHAPTER 59
ENTERPRISE ~~ZONES~~ *ZONE (EZ) PROGRAM*

ITEM 30. Amend rule 261—59.1(15E) as follows:

261—59.1(15E) Purpose *and administrative procedures.*

59.1(1) *Purpose.* The purpose of the establishment of an enterprise zone in a county or city is to promote new economic development in economically distressed areas. Businesses that are eligible and locating or located in an enterprise zone and approved by the department are authorized under this program to receive certain tax incentives and assistance. The intent of the program is to encourage communities to target resources in ways that attract productive private investment in economically distressed areas within a county or city. Projects that have already been initiated before receiving formal application approval by the department shall not be eligible for tax incentives and assistance under this program.

59.1(2) *Administrative procedures. The EZ program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.*

ITEM 31. Amend rule 261—59.2(15E) as follows:

Amend the introductory paragraph as follows:

261—59.2(15E) Definitions. *In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the EZ program:*

Rescind the definitions of "average county wage," "average regional wage," "board," "department," "director," and "full-time."

Amend the definitions of "Act" and "project jobs" as follows:

"Act" means Iowa Code sections ~~15E.191 and 15E.196; section 15E.193 as amended by 2006 Iowa Acts, Senate File 2147; Iowa Code sections 15E.194 and 15E.195; and Iowa Code Supplement sections 15E.192 and 15E.193B as amended by 2006 Iowa Acts, Senate File 2183~~ *15E.191 to 15E.197 as amended by 2007 Iowa Acts, House File 648.*

"Project jobs" means all of the new jobs to be created by the location or expansion of the business in the enterprise zone *that meet the qualifying wage threshold requirements described in 261—Chapter 174*. ~~For the project jobs, the business shall pay an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than $7.50 per hour.~~

ITEM 32. Amend subrule 59.5(2) as follows:

59.5(2) Negotiations. The department reserves the right to negotiate the *terms and conditions of an award and the* amount of all program benefits except the following benefits: the new jobs supplemental credit; the value-added property tax exemption; and the refund of sales, service and use taxes paid to contractors and subcontractors. The criteria, as applicable to the category under which the business is applying, to be used in the negotiations to determine the amount of tax incentives and assistance include but are not limited to:

a. The number and quality of jobs to be created. Factors to be considered include but are not limited to full-time, career path jobs; *number of jobs meeting or exceeding the qualifying wage threshold requirements described in 261—Chapter 174;* turnover rate; fringe benefits provided; safety; skill level.

b. to f. No change.

ITEM 33. Amend subrule 59.6(1) as follows:

59.6(1) Requirements. A business which is or will be located, in whole or in part, in an enterprise zone is eligible to *be considered to* receive incentives and assistance under the Act if the business meets all of the following:

a. to c. No change.

d. Wage levels. The business pays an average wage that is at or greater than 90 percent of the lesser of the average county wage or average regional wage, as determined by the department. However, in any circumstance, the wage paid by the business for the project jobs shall not be less than $7.50 per hour. ~~The department will periodically calculate, revise and issue the "average county wage" and the "average regional wage" figures that will be used for determining business eligibility in the program.~~ The local enterprise zone commission may establish higher company eligibility wage thresholds if it so desires.

e. Job creation. The business expansion or location must result in at least ten full-time project jobs. ~~and those project jobs must be maintained for at least ten years. The business shall create these jobs within three years of the effective date of the business's agreement with the department and the city or county, as appropriate.~~ *The time period allowed to create the jobs and the required period to retain the jobs are described in 261—Chapter 187.* For an existing business in counties with a population of 10,000 or less or in cities with a population of 2,000 or less, the commission may adopt a provision that allows the business to create at least five initial jobs with the additional five jobs to be added within five years. The business shall include in its strategic plan the time line for job creation. If the existing business fails to meet the ten-job creation requirement within the five-year period, all incentives and assistance will cease immediately.

f. and g. No change.

ITEM 34. Amend subrule **59.8(2)**, paragraph **"a,"** subparagraph **(8)**, as follows:

(8) Housing enterprise zone tax credit certificates issued to eligible housing businesses also using low-income housing tax credits authorized under Section 42 of the Internal Revenue Code to assist in the financing of the project may be transferred to any person. Within 90 days of the sale of the housing enterprise zone tax credit, the eligible housing business must return the tax credit certificate issued by the department so that replacement tax credit certificate(s) can be issued. The original tax credit certificate shall be accompanied by a written statement from the eligible housing business which contains the names, tax identification numbers, and addresses of the taxpayers to which the tax credits are being transferred, along with the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within 30 days of receiving the eligible housing business's tax credit certificate and written statement, the department shall issue replacement tax credit certificate(s). ~~The department shall not issue replacement tax credit certificates in an amount less than $25,000.~~

ITEM 35. Amend subrule 59.12(4) as follows:

59.12(4) Violations of law. The department will review each application to determine if the business has a record of violations of law *as described in 261—Chapter 172*. ~~If the department finds that an eligible business, alternative eligible business, or an eligible housing business has a record of~~

~~violations of the law including, but not limited to, environmental and worker safety statutes, rules, and regulations over a period of time that tends to show a consistent pattern, the business shall not qualify for incentives or assistance under 1998 Iowa Acts, House Files 2164 and 2538 or Iowa Code Supplement section 15E.196, unless the department finds that the violations did not seriously affect public health or safety or the environment, or if they did that there were mitigating circumstances. If requested by the department, the business shall provide copies of materials documenting the type of violation, any fees or penalties assessed, court filings, final disposition of any findings and any other information which would assist the department in assessing the nature of any violation.~~

ITEM 36. Rescind and reserve rules **261—59.13(15E)** and **261—59.14(15E)**.

ITEM 37. Amend **261—Chapter 60**, title, as follows:

CHAPTER 60
ENTREPRENEURIAL VENTURES
ASSISTANCE *(EVA)* PROGRAM

ITEM 38. Amend rule 261—60.1(15) as follows:

261—60.1(15) Purpose *and administrative procedures.*

60.1(1) *Purpose.* The department of economic development administers the entrepreneurial ventures assistance (EVA) program. The purpose of the entrepreneurial ventures assistance program is to encourage the development of entrepreneurial venture planning and managerial skills in conjunction with the delivery of a financial assistance program for business start-ups and expansions.

60.1(2) *Administrative procedures. The EVA program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.*

ITEM 39. Amend rule 261—60.2(15) as follows:

Amend the introductory paragraph as follows:

261—60.2(15) Definitions. ~~As used in this chapter, unless the context otherwise requires~~ *In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the EVA program*:

Rescind the definition of "department."

ITEM 40. Amend rule 261—60.6(15) as follows:

261—60.6(15) Application process. Applications must be submitted ~~on forms as prescribed by the department~~ *in the format required by the department*. Applications, the business plan, and related material shall be submitted *on line or by mail* to Entrepreneurial Ventures Assistance Program, Division of Business Development, *Business Finance*, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

ITEM 41. Amend rule 261—60.7(15), catchwords, as follows:

261—60.7(15) Review ~~process~~ *criteria.*

ITEM 42. Rescind and reserve rules **261—60.8(15)** and **261—60.9(15)**.

ITEM 43. Amend **261—Chapter 60** by adding the following **new** implementation sentence at the end thereof:

These rules are intended to implement Iowa Code sections 15.338 and 15.339.

ITEM 44. Amend **261—Chapter 61**, title, as follows:

CHAPTER 61
PHYSICAL INFRASTRUCTURE
ASSISTANCE PROGRAM *(PIAP)*

ITEM 45. Amend rule 261—61.1(15E) as follows:

261—61.1(15E) Purpose *and administrative procedures.*

61.1(1) *Purpose.* The purpose of the physical infrastructure assistance program (PIAP) is to provide financial assistance for the physical infrastructure necessary to aid in community or business development or redevelopment projects which involve substantial investment; provide for the opportunity for creating quality, high-wage jobs; and have statewide impact.

61.1(2) *Administrative procedures. The PIAP program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, contracting and compliance.*

ITEM 46. Amend rule 261—61.5(15E), catchwords, as follows:

261—61.5(15E) Application review *criteria.*

ITEM 47. Rescind and reserve rule **261—61.6(15E)**.

ITEM 48. Amend subrule 61.7(1) as follows:

61.7(1) Forms of assistance. Funding ~~from state fiscal years 1997 and 1998~~ is available for providing assistance in the form of a loan, forgivable loan, loan guarantee, cost-share, ~~indemnification of costs, indemnification of liability,~~ or any combination deemed to be the most efficient in facilitating the infrastructure project. ~~Any indemnification for liability agreements must be entered into prior to June 30, 1998.~~

ITEM 49. Rescind and reserve rule **261—61.8(15E)**.

ITEM 50. Amend **261—Chapter 68**, title, as follows:

CHAPTER 68
HIGH QUALITY JOB CREATION *(HQJC)* PROGRAM

ITEM 51. Amend **261—Chapter 68** to update the parenthetical implementation wherever referenced as follows:

(~~81GA,HF868~~ *15*)

ITEM 52. Amend rule 261—68.1(15) as follows:

261—68.1(15) ~~Definitions~~ *Administrative procedures and definitions.*

68.1(1) *Administrative procedures. The HQJC program is subject to the requirements of the department's rules located in 261—Part VII, additional application requirements and procedures, and 261—Part VIII, legal and compliance.*

68.1(2) *Definitions. In addition to the standard definitions located in 261—Chapter 173, the following definitions apply to the HQJC program:*

"Act" means Iowa Code ~~section 15.332 and 2005 Iowa Code Supplement sections 15.326 to 15.331 and 15.333 to 15.336~~ *sections 15.326 to 15.337*.

"Annual base rent." No change.

~~"Average county wage" means the average the department calculates using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa department of workforce development. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.~~

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

~~"Benefits" means all of the following:~~
~~1. Medical and dental insurance plans.~~
~~2. Pension and profit-sharing plans.~~
~~3. Child care services.~~
~~4. Life insurance coverage.~~
~~5. Vision insurance plan.~~
~~6. Disability coverage.~~
"Biotechnology-related processes." No change.
~~"Board" means the Iowa department of economic development board.~~
"Community." No change.
"Community base jobs." No change.
~~"Created jobs" means the new full-time jobs the business will create over and above the number of community base jobs or retained jobs or both.~~
~~"Department" means the Iowa department of economic development.~~
~~"Full-time" means the equivalent of employment of one person:~~
~~1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations, and other paid leave, or~~
~~2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.~~
"High quality jobs." No change.
~~"Job creation goal" means the number of new created jobs, which includes a specified number of high quality jobs, which the business pledged to create in its application.~~
"Program." No change.
"Project." No change.
~~"Project completion" means:~~
~~1. For new manufacturing facilities, the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility.~~
~~2. For all other projects, the date of completion of all improvements necessary for the start-up, location, expansion or modernization of a business.~~
"Project initiation." No change.
"Qualifying investment." No change.
~~"Retained jobs" means the full-time jobs that are at risk of being eliminated if the project does not proceed as planned.~~
"Value-added agricultural products." No change.

ITEM 53. Amend subrules 68.2(5) and 68.2(6) as follows:

68.2(5) Violations of law. If the department finds that a business has a record of violations of law~~, including but not limited to environmental and worker safety statutes, rules, and regulations~~, over a period of time that tends to show a consistent pattern *as described in 261—Chapter 172*, the business shall not qualify for tax incentives and assistance under this program~~, unless the department finds that the violations did not seriously affect public health or safety, or the environment, or if the department did find that the violations seriously affected public health or safety, or the environment, that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether the business is disqualified for tax incentives and assistance under this program, the department shall be exempt from Iowa Code chapter 17A.~~

68.2(6) Waiver of eligibility requirements. The department may waive any of the requirements listed above when good cause is shown. *The waiver process is described in 261—Chapter 174.*

~~a. Good cause includes:~~
~~(1) The community in which the project will be located can demonstrate economic distress based on a combination of factors including but not limited to:~~
~~1. A county family poverty rate significantly higher than the state average.~~
~~2. A county unemployment rate significantly higher than the state average.~~
~~3. A unique opportunity to use existing unutilized facilities in the community.~~
~~4. A significant downsizing or closure by one of the community's major employers.~~
~~5. An immediate threat posed to the community's workforce due to downsizing or closure of a business.~~
~~(2) The proposed project meets all of the following criteria:~~
~~1. The business is in one of the state's targeted industry clusters: life sciences, information solutions, and advanced manufacturing.~~
~~2. All jobs created as a result of the project will have a starting wage, not including benefits, equal to or greater than 100 percent of the average county wage.~~
~~3. The business is headquartered in Iowa or, as a result of the proposed project, will be headquartered in Iowa. In lieu of the business's being headquartered in Iowa, the project has unique aspects which will assist the department in meeting one or more of the department's strategic objectives.~~
~~b. Requests to waive an eligibility requirement must be submitted in writing to the department when the business's application is submitted. The waiver request shall include documentation from other sources confirming the statistical data cited in the request. The waiver request will be reviewed as part of the application review process and acted upon by the board or the director subject to the decision-making guidelines in paragraph 68.3(1)"e." If the request for a waiver is approved, the board or the director may proceed with a final decision on the application.~~

ITEM 54. Rescind subrule **68.3(1)**, paragraph **"e."**

ITEM 55. Rescind and reserve subrules **68.3(2)** and **68.3(3)**.

ITEM 56. Rescind rule **261—68.5(15)**.

ITEM 57. Amend **261—Chapter 68**, implementation sentence, as follows:

These rules are intended to implement ~~2005 Iowa Acts, House File 868~~ *Iowa Code sections 15.326 to 15.336.*

ITEM 58. Amend **261—Part V**, heading, as follows:

PART V

TARGETED INDUSTRIES DIVISION

ITEM 59. Renumber **261—Chapter 102** as **261—Chapter 34**, rescind and reserve **261—Chapter 103**, and renumber **261—Chapter 104** as **261—Chapter 33**.

ITEM 60. Rescind **261—Part VI**, heading.

ITEM 61. Renumber **261—Chapter 132** as **261—Chapter 72**.

ITEM 62. Renumber the heading of **261—Part VII** as **261—Part VI**.

ITEM 63. Adopt **new** 261—Chapter 165 as follows:

CHAPTER 165
ALLOCATION OF GROW IOWA VALUES FUND

261—165.1(15G) Purpose. The purpose of the grow Iowa values fund is to provide financial assistance for business incentives, marketing efforts, and other programs and activities designed to spur the economy and improve the quality of life of Iowans. Moneys in the grow Iowa values fund provide financial assistance for programs administered by the department; for state parks pursuant to a plan from the department of natural resources (DNR); for the cultural trust fund; for workforce training and economic development funds of the community colleges; for economic development region initiatives; and for financial assistance to the regents for the University of Northern Iowa, Iowa State University, the University of Iowa, a bioscience organization, and private universities. The rules in this chapter apply to financial assistance awarded from the grow Iowa values fund by the department and the board.

261—165.2(15G) Definitions. The definitions located in 261—Chapter 173 apply to this chapter.

261—165.3(15G) Grow Iowa values fund (2005). The grow Iowa values fund (2005) refers to the fund established on July 1, 2005, pursuant to Iowa Code chapter 15G. The fund includes moneys appropriated to the department by the general assembly for the fund, interest earned, repayments and recaptures of loans and grants. Pursuant to Iowa Code section 15G.108, the fund is under the control of and administered by the department.

261—165.4(15G) Allocation of grow Iowa values fund moneys. Pursuant to Iowa Code section 15G.110, $50 million is appropriated from the grow Iowa values fund to the department each fiscal year for the fiscal period beginning July 1, 2005, and ending June 30, 2015. The fund moneys are allocated as follows:

$35M – For programs administered by the department, marketing and other specified uses.

$5M – To the state board of regents for institutions of higher learning under the control of the state board of regents, for specific activities.

$1M – For projects in targeted state parks, state banner parks and destination parks.

$1M – For the cultural trust fund administered by the department of cultural affairs.

$7M – For workforce training and economic development funds of the community colleges.

$1M – For economic development region initiatives.

165.4(1) Funding for programs administered by the department, marketing, other specified uses.

a. IDED programs. Pursuant to Iowa Code section 15G.111, $35 million is appropriated to the department for each of the fiscal years identified above for deposit in the fund for programs administered by the department. The grow Iowa values fund moneys can be used to fund projects and activities under the value-added agricultural products and processes financial assistance program (VAAPFAP) (261—Chapter 57), the community economic betterment (CEBA) program (261—Chapter 53), the entrepreneurial ventures assistance (EVA) program (261—Chapter 60), the targeted small business financial assistance program (TSBFAP) (261—Chapter 55), the physical infrastructure assistance program (PIAP) (261—Chapter 61), the brownfield redevelopment program (261—Chapter 65), and other programs administered by the department.

b. Administrative costs. The department may use up to one and one-half percent of the $35 million allocation for administrative purposes.

c. Business incentives, marketing, and research and development. Each fiscal year the department shall allocate a percentage of the fund moneys for business start-ups, business expansions, business modernization, business attraction, business retention, marketing, and research and development. The department may adjust the allocation during the year if it determines that it is necessary to do so to ensure the availability of funds in those categories in which a greater need is demonstrated to exist or to respond to investment opportunities.

d. Technical assistance, labor shed study and transportation purposes. A portion of the $35 million may also be used to procure technical assistance from the public or private sectors, for information technology purposes, for a statewide labor shed study, and for rail, air, or river port transportation-related purposes. For applications involving rail, air, or river port transportation-related purposes, fund assistance is only available if the activity is directly related to an economic development project and the values fund moneys are used to leverage other financial assistance moneys.

e. E-85 blended gasoline financial incentive program. The department may allocate a maximum of $325,000 each fiscal year for the fiscal period beginning July 1, 2005, and ending June 30, 2008, to provide financial incentives for an E-85 blended gasoline financial incentive program. Financial incentives are available for the installation or conversion of infrastructure used by service stations to sell and dispense E-85 blended gasoline and for the installation or conversion of infrastructure required to establish on-site and off-site terminal facilities that store biodiesel for distribution to service stations. The department shall provide for an addition of at least 30 new or converted E-85 retail outlets and 4 new or converted on-site or off-site terminal facilities. The department may provide for the marketing of these products in conjunction with this infrastructure program. The department will issue a request for proposal (RFP) to seek qualified applicants for this program. The RFP will identify the maximum amounts available, eligibility requirements, evaluation criteria, due dates and other information necessary to evaluate the responses to the RFP.

f. Board approval. The board shall approve or deny financial assistance applications and other activities funded with moneys provided through this $35 million allocation from the grow Iowa values fund.

165.4(2) Funding to the state board of regents for institutions of higher learning under the control of the state board of regents for specific activities.

a. Use of funds. Five million dollars is available for financial assistance to institutions of higher learning under the control of the state board of regents (Iowa State University (ISU), University of Iowa (U of I), University of Northern Iowa (UNI)). These funds must be used for capacity building infrastructure in areas related to technology commercialization, for marketing and business development efforts in areas related to technology commercialization, entrepreneurship, and business growth, and for infrastructure projects and programs needed to assist in the implementation of activities under Iowa Code chapter 262B.

(1) In allocating moneys to institutions under the control of the state board of regents, the state board of regents shall require the institutions to provide a one-to-one match of

additional moneys for the activities funded with moneys provided under this subrule.

(2) The state board of regents may allocate moneys available under this subrule for financial assistance to a single biosciences development organization determined by the department to possess expertise in promoting the area of bioscience entrepreneurship. The organization must be composed of representatives of both the public and the private sector and shall be composed of subunits or subcommittees in the areas of existing identified biosciences platforms, education and workforce development, commercialization, communication, policy and governance, and finance. Such financial assistance shall be used for purposes of activities related to biosciences and bioeconomy development under Iowa Code chapter 262B, and to accredited private universities in this state.

b. Annual state board of regents report. Each fiscal year, the state board of regents shall report how the funds were used and allocated among ISU, U of I, UNI, a bioscience organization, and private universities.

c. Board action. The board shall hear a report from the state board of regents and accept, or request additional information regarding, the use of the $5 million allocation from the grow Iowa values fund to the state board of regents.

165.4(3) Funding for projects in targeted state parks, state banner parks and destination parks.

a. Use of funds. One million dollars is available for purposes of providing financial assistance for projects in targeted state parks, state banner parks, and destination parks. For purposes of this subrule, "state banner park" means a park with multiple uses and which focuses on the economic development benefits of a community or area of the state.

b. Annual DNR plan. The department of natural resources shall submit a plan to the department for the expenditure of moneys allocated under this subrule. The plan shall focus on improving state parks, state banner parks, and destination parks for economic development purposes.

c. Board action. The board shall approve or deny the proposed plan for use of the $1 million allocation from the grow Iowa values fund for state parks. Upon approval of the plan, a contract shall be executed between the department and the department of natural resources to provide financial assistance to the department of natural resources for support of state parks, state banner parks, and destination parks.

165.4(4) Funding for the cultural trust fund administered by the department of cultural affairs. One million dollars is appropriated to the office of the treasurer of state for deposit in the Iowa cultural trust fund created in Iowa Code section 303A.4 and administered by the department of cultural affairs. The department shall transfer the moneys allocated from the grow Iowa values fund for this purpose to the treasurer of state.

165.4(5) Funding for workforce training and economic development funds of the community colleges. Seven million dollars is allocated for deposit into the workforce training and economic development funds of the community colleges created pursuant to Iowa Code section 260C.18A. The department shall transfer the moneys allocated from the grow Iowa values fund to the workforce training and economic development fund.

165.4(6) Funding for economic development region initiatives.

a. Funds available. One million dollars is available for providing assistance to economic development regions. These moneys are allocated as follows:

$350,000 – To ISU, for establishment of small business development centers in certain areas of the state.

$50,000 – To the department, for assistance to Iowa business resource centers authorized in 2007 Iowa Code section 15G.111(6)(c).

$600,000 – To the department, for financial assistance to economic development regions, for the establishment of a regional economic development revenue-sharing pilot project.

b. Allocation of $600,000 for economic development region initiatives. The department shall annually allocate the $600,000 available under this subrule for economic development region initiatives. The department may adjust the allocation during the year if it determines that it is necessary to do so to ensure the availability of funds in those categories in which a greater need is demonstrated to exist. The $600,000 is available for the following:

(1) Financial assistance to economic development regions. A portion of the $600,000 may be allocated for financial assistance to economic development regions. An economic development region may apply for:

1. Financial assistance for physical infrastructure needs;
2. Financial assistance to assist an existing business threatened with closure due to the potential consolidation of an out-of-state location;
3. Financial assistance to establish and operate an entrepreneurial initiative.

(2) Regional economic development revenue-sharing pilot project. The department may establish and administer a regional economic development revenue-sharing pilot project for one or more regions. The department shall take into consideration the geographical dispersion of the pilot projects. The department shall provide technical assistance to the regions participating in a pilot project.

(3) Designation as an economic enterprise area. An economic development region may apply to the department for approval to be designated as an economic enterprise area. The department shall approve no more than ten regions as economic enterprise areas.

These rules are intended to implement Iowa Code chapter 15G.

ITEM 64. Rescind and reserve **261—Chapter 168**.

ITEM 65. Renumber **261—Chapters 169** to **261—Chapter 173** as **261—Chapters 195** to **261—Chapter 199**, respectively.

ITEM 66. Adopt the following **new** 261—Part VII:

PART VII
ADDITIONAL APPLICATION REQUIREMENTS
AND PROCEDURES

CHAPTER 171
SUPPLEMENTAL CREDIT OR POINTS

261—171.1(15A) Applicability. Pursuant to Iowa Code chapter 15A, the department will give additional consideration or additional points in the application of rating or evaluation criteria in providing a loan, grant, or other financial assistance for economic development-related purposes to a business or person that meets the requirements of this chapter. Unless prohibited by state or federal law or rule, department programs using a point system will provide supplementary credit of up to a maximum of ten points for applicants meeting the requirements of this chapter.

261—171.2(15A) Brownfield areas, blighted areas and distressed areas. To be eligible to receive the extra credit points, the person or business shall be located in an area that meets one of the following criteria:

1. The area is a brownfield site as defined in Iowa Code section 15.291.
2. The area is a blighted area as defined in Iowa Code section 403.17.
3. The area is located in a city or county that meets the distress criteria provided under the enterprise zone program in Iowa Code section 15E.194, subsection 1 or 2.

261—171.3(15A) Good neighbor agreements. Pursuant to Iowa Code section 15A.4, for any program providing financial assistance for economic development in which the assistance is provided on a competitive basis, a business which enters into a good neighbor agreement shall receive extra consideration of at least ten points or the equivalent.

171.3(1) Definition. A good neighbor agreement is an enforceable contract between the business and a community group or coalition of community groups which requires the business to adhere to negotiated environmental, economic, labor, or other social and community standards.

171.3(2) Noncompliance. A business which fails to abide by the good neighbor agreement shall repay all financial assistance received under the program.

261—171.4(82GA,HF647) Iowa great places agreements. Notwithstanding any restriction, requirement, or duty to the contrary, in considering an application for a grant, loan, or other financial or technical assistance for a project identified in an Iowa great places agreement developed pursuant to Iowa Code section 303.3C as amended by 2007 Iowa Acts, House File 647, sections 1 and 2, a state agency shall give additional consideration or additional points in applying the rating or evaluation criteria to such applications.

These rules are intended to implement Iowa Code chapter 15A and 2007 Iowa Acts, House File 647.

CHAPTER 172
ENVIRONMENTAL LAW COMPLIANCE; VIOLATIONS OF LAW

261—172.1(15A) Environmental law compliance. Iowa Code section 15A.1(3) provides that a state agency shall not provide a grant, loan, or other financial assistance to a private person or on behalf of a private person unless the business for whose benefit the financial assistance is to be provided makes a report detailing the circumstances of its violations, if any, of a federal or state environmental protection statute, regulation, or rule within the previous five years. The state agency shall take into consideration before allowing financial assistance this report of the business. If the business generates solid or hazardous waste, the business must conduct and submit documentation of in-house audits and must submit a copy of the management plan developed to reduce the amount of the waste and to safely dispose of the waste.

172.1(1) Environmental report submitted. Any individual or business applying for assistance through the department shall report on the application for assistance any cited violation(s) of federal or state environmental statutes, regulations or rules within the past five years and detail the circumstances of the violation(s). If the individual or business fails to report a violation(s) and the department discovers such violation(s), the individual or business shall be declared ineligible to receive assistance until such time as the report is submitted.

172.1(2) Ineligibility for assistance. Any individual or business which has been referred by the department of natural resources to the attorney general for an environmental violation(s) shall be ineligible to receive assistance from the department until such time as the violation(s) has been determined to be corrected.

172.1(3) In-house audit. If the individual or business generates solid or hazardous waste, that individual or business shall be required to conduct an in-house audit and have management plans to reduce the amount of waste and to safely dispose of the waste. If the individual or business has conducted an in-house audit and developed a management plan within the last three years, submission of a copy of the audit and management plan will fulfill this requirement. If the individual or business has not conducted an audit within the past three years, the individual or business must initiate the audit prior to the department's disbursement of financial assistance and submit a copy of the completed audit within 90 days of disbursement of the financial assistance.

172.1(4) External audit. In lieu of an in-house audit, the individual or business may elect to authorize the department of natural resources or the Iowa waste reduction center established under Iowa Code section 268.4 to conduct the audit. A copy of the authorization for the department of natural resources or the Iowa waste reduction center to conduct the audit shall be submitted to the department prior to the department's disbursement of financial assistance. Within 30 days of receipt of the audit, the individual or business must submit to the department a copy of the completed audit conducted by the department of natural resources or by the Iowa waste reduction center.

261—172.2(15A) Violations of law. Financial assistance applications shall be reviewed by the department to determine if the business has a record of violations of the law over a period of time that tends to show a consistent pattern. The business shall provide the department with a report detailing violations of law within the most recent consecutive three-year period prior to application. If the department finds that a business has a record of violations of the law that tends to show a consistent pattern, the business shall not be eligible to receive financial assistance unless the department finds that the violations did not seriously affect public health or safety or the environment, or if the department did find that the violations seriously affected public health or safety or the environment, that there were mitigating circumstances. In making the findings and determinations regarding violations, mitigating circumstances, and whether the business is disqualified for tax incentives and assistance under the program, the department shall be exempt from Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 15A.1.

CHAPTER 173
STANDARD DEFINITIONS

261—173.1(15) Applicability. This chapter shall apply to the following programs and projects:

1. VAAPFAP (value-added agricultural products and processes financial assistance program) (261—Chapter 57).
2. CEBA (community economic betterment account) program (261—Chapter 53).
3. EVA (entrepreneurial ventures assistance) program (261—Chapter 60).
4. TSBFAP (targeted small business financial assistance program) (261—Chapter 55).

5. PIAP (physical infrastructure assistance program) (261—Chapter 61).
6. Brownfield redevelopment program (261—Chapter 65).
7. EDSA (economic development set-aside) program (261—Chapter 23).
8. EZ (enterprise zone) program (261—Chapter 59).
9. HQJC (high quality job creation) program (261—Chapter 68).
10. LCG (loan and credit guarantee) program (261—Chapter 69).
11. Projects approved by the grow Iowa values board that received direct financial assistance from the IVF(FES) fund during the period July 1, 2003, through June 16, 2004.
12. Projects approved under the NCIP (new capital investment program) (261—Chapter 64).
13. Projects approved under the NJIP (new jobs and income program) (261—Chapter 58).

261—173.2(15) Definitions.

"Agricultural products advisory council" or "APAC" means the council which is composed of five members appointed by the secretary of agriculture and five members appointed by the director of the Iowa department of economic development who are experienced in marketing or exporting agricultural commodities or products, financing the export of agricultural commodities or products, or adding value to and the processing of agricultural products as further described in Iowa Code section 15.203 and which reviews VAAPFAP applications and makes recommendations to the director and the board.

"Average county wage" means the average the department calculates quarterly using the most current four quarters of wage and employment information as provided in the Quarterly Covered Wage and Employment Data report as provided by the Iowa workforce development department, audit and analysis section. Agricultural/mining and governmental employment categories are deleted in compiling the wage information.

"Average regional wage" means the wage calculated annually by the department using a methodology in which each particular county is considered to be a geographic center of a larger economic region. The wage threshold for the central county is calculated using the average wage of that county, plus each adjoining Iowa county, so that the resulting figure reflects a regional average that is representative of the true labor market area. When the average regional wage is calculated, the greatest importance is given to the central county by "weighting" it by a factor of four, compared to a weighting of one for each of the other adjoining counties. The central county is given the greatest importance in the calculation because most of the employees in that central county will come from that same county, as compared to commuters from other adjoining counties.

"Award date" means the date the board or the director approved an application for direct financial assistance or tax credit incentives.

"Benefits" means all of the following: medical and dental insurance plans, pension and profit-sharing plans, child care services, life insurance coverage, vision insurance plan, and disability coverage.

"Benefit value" means a value calculated by the department of the benefit the business makes available to all full-time employees as described below:

a. Medical, dental, or vision insurance plans. The department shall use the greater of the business's portion of the annual premium for: (1) employee-only or single coverage, or (2) family coverage in the wage calculation. If the business's plan is self-insured, the department will look at the amount paid by the business for costs associated with the plan during the past three years and determine the average annual contribution per employee for that three-year period when determining the value of the medical, dental, or vision plan for the wage calculation.

b. Pension and profit-sharing plans. A retirement program offered by the business, such as a 401(k) plan, and to which the business makes a monetary contribution shall be considered the equivalent of a pension plan.

(1) For a pension plan, the department shall use the same calculation used by the business to determine the annual contribution per employee. The annual contribution per employee will be used in determining the value for the wage calculation.

(2) For a 401(k) plan or similar retirement program, the department shall use the average percentage of salary matched or contributed annually by the business on a per-employee basis in determining the value for the wage calculation.

(3) For a profit-sharing plan, the department shall look at the amount paid out over the past three years and determine the average annual bonus or contribution per employee for that three-year period when determining the value for the wage calculation.

c. Child care services. Child care services include on-site child care services at the facility in which the project will be located or off-site child care services subsidized by the business at the rate of 50 percent or more of the child care services costs incurred by an employee. The child care services valuation will be based on contributions made by the business for that service, as determined by the department, less any employee-paid costs for that service. The department may consider comparable costs in the local child care market in determining the value of the contribution made by the business. With respect to the wage calculation, the value of this benefit will be applied using the same percentage as the percentage of employees utilizing the business's child care benefit.

d. Life insurance and disability coverage. The portion of the annual premium or cost paid by the business for life insurance and disability coverage will be used in determining the value for the wage calculation. Life insurance premiums paid by the business for dependent coverage will not be included.

"Board" means the Iowa economic development board established under Iowa Code section 15.103.

"Brownfield advisory council" means the brownfield redevelopment advisory council as established in Iowa Code section 15.294 that makes recommendations for the brownfield redevelopment program established in Iowa Code section 15.292.

"Business" means a sole proprietorship, partnership or corporation organized for profit or not-for-profit under the laws of the state of Iowa or another state, under federal statutes, or under the laws of another country.

"Business's base employment" means the number of jobs that the business and the department have established as the job base for a project. The number of jobs the business has pledged to create and retain shall be in addition to the business's employment base.

"Created job" means new permanent full-time equivalent (FTE) positions added to a business's payroll, over and above the business's base employment at the time of application for assistance.

"Department" means the Iowa department of economic development created by Iowa Code section 15.105.

"Director" means the director of the Iowa department of economic development.

"Due diligence committee" or "DDC" means the due diligence committee composed of members of the board whose duties include, but are not limited to, carrying out any duties assigned by the board in relation to programs administered by the department, reviewing applications for financial assistance, conducting a thorough review of proposed proj-ects and making recommendations to the board regarding funding.

"Employee" means:

a. An individual filling a full-time position that is part of the payroll of the business receiving financial assistance from any of the programs identified in rule 261—173.1(15).

b. A business's leased or contract employee, provided all of the following elements are satisfied:

(1) The business receiving the state financial assistance has a legally binding contract with a third-party provider to provide the leased or contract employee.

(2) The contract between the third-party provider and the business specifically requires the third-party provider to pay the wages and benefits at the levels required and for the time period required by the department as conditions of the financial assistance award to the business.

(3) The contract between the third-party provider and the business specifically requires the third-party provider to submit payroll records to the department, in form and content and at the frequency found acceptable to the department, for purposes of verifying that the business's job creation/ retention and benefit requirements are being met.

(4) The contract between the third-party provider and the business specifically authorizes the department, or its authorized representatives, to access records related to the funded project.

(5) The business receiving the state financial assistance agrees to be contractually liable to the department for the performance or nonperformance of the third-party provider.

"Equitylike investment" means the provision of assistance in such a manner that the potential return on investment to the provider varies according to the profitability of the company assisted. This includes but is not limited to: royalty arrangements; warrant arrangements; or other similar forms of investments.

"FES" means the federal economic stimulus moneys which were received by the state of Iowa and which funded the 2003 grow Iowa values fund.

"Float loan" means a short-term loan (maximum of 30 months) from obligated but unexpended CEBA funds.

"Full-time equivalent job" or "full-time" means the employment of one person:

1. For 8 hours per day for a 5-day, 40-hour workweek for 52 weeks per year, including paid holidays, vacations and other paid leave; or

2. The number of hours or days per week, including paid holidays, vacations and other paid leave, currently established by schedule, custom, or otherwise, as constituting a week of full-time work for the kind of service an individual performs for an employing unit.

"Grant" means an award of assistance with the expectation that, with the fulfillment of the conditions of the award, repayment of funds is not required.

"IVF" means the grow Iowa values fund.

"IVF(FES)" means the 2003 grow Iowa values fund originally established by 2003 Iowa Acts, House File 692, section 83, which was funded with federal economic stimulus moneys. The original IVF legislation that established Iowa Code sections 15G.101 through 15G.107 was stricken pursuant to Rants v. Vilsack, 684 N.W.2d 193. "IVF(FES)" also includes 2004 Iowa Acts, 1st Ex., ch 1001, §1, 2; 2004 Iowa Acts, 1st Ex., ch 1002, §1-3, 5, which provided for the validation of contracts or approved projects or activities originally funded or intended to be funded through the 2003 grow Iowa values fund, if entered into or approved after June 30, 2003, but before June 16, 2004, and restored FES funding for IDED financial assistance programs.

"IVF (2005)" means the 2005 grow Iowa values fund established in Iowa Code chapter 15G and funded with a $35 million annual appropriation through June 30, 2015.

"Loan" means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A "deferred loan" is one for which the payment for principal, interest, or both, is not required for some specified period. A "forgivable loan" is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

"Loan and credit guarantee committee" means the loan and credit guarantee committee composed of members of the board and whose duties include, but are not limited to, carrying out any duties assigned by the board in relation to the loan and credit guarantee program administered by the department, reviewing loan and credit guarantee applications and making recommendations to the board regarding funding.

"Loan guarantee" means a guarantee of all or part of a loan made by a commercial lender. Payment of all or a portion of the loan guarantee would occur if the business defaults on its repayment of the loan, provided the lender has exhausted standard legal remedies in an attempt to secure repayment from the borrower.

"Maintenance date" means the specific time period established by the department past the project completion date through which the recipient shall maintain the project, the created jobs, and the retained jobs.

"Project completion," for the EZ and HQJC tax credit programs, for purposes of reporting to the Iowa department of revenue that a project has been completed, means:

1. For new manufacturing facilities, the first date upon which the average annualized production of finished product for the preceding 90-day period at the manufacturing facility is at least 50 percent of the initial design capacity of the facility.

2. For all other projects, the date of completion of all improvements necessary for the start-up, location, expansion or modernization of a business.

"Project completion date" means the specific date established by the department by which the business shall have completed all pledged project activities, met its job creation and job retention obligations, and otherwise satisfied the terms of the contract. (See 261—subrule 187.3(3) for a listing of the duration of the project completion period and maintenance period for IDED's job creation and tax credit programs.)

"Retained job" means existing full-time equivalent permanent positions, at the time of application, kept in continuous employment by the business that are at risk of being eliminated if the project does not proceed as planned.

These rules are intended to implement Iowa Code chapters 15 and 17A.

CHAPTER 174
WAGE, BENEFIT, AND INVESTMENT REQUIREMENTS

261—174.1(15) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).

261—174.2(15) Quarterly qualifying wage calculations.

174.2(1) The department will update all program wage thresholds on July 1, October 1, January 1, and April 1 of each fiscal year using the most recent four quarters of available wage data from the Iowa workforce development department.

174.2(2) Transition period. Businesses that submit a project review form to the department will be subject to wage thresholds in effect on the date the department receives the project review form, provided that the business's application is received and approved within six months of the date the project review form was received by the department. If more than six months have elapsed, the business will be subject to the wage thresholds in effect on the date the department receives the business's completed application.

261—174.3(15) Qualifying wage threshold requirements. For each financial assistance and tax credit program administered by the department, there are minimum wage threshold requirements that must be met in order for the project to be considered to receive an award. The qualifying wage threshold varies from program to program and according to funding source. This rule describes the qualifying wage thresholds, by funding source and by program, which a project must meet.

174.3(1) Qualifying wage threshold requirement—projects receiving IVF(FES) assistance. Awards funded during the time period beginning July 1, 2003, but before June 16, 2004, from IVF(FES) shall meet the wage requirements in effect at that time as reflected in the contract between the department and the business. Awards funded after June 16, 2004, using IVF(FES) moneys shall meet the qualifying wage thresholds for the programs through which funding is sought.

174.3(2) Qualifying wage threshold requirement—projects receiving IVF (2005) assistance. In order to receive financial assistance from the IVF (2005), applicants shall demonstrate that the annual wage, including benefits, of project jobs pay at least 130 percent of the average county wage. If an applicant is applying for IVF (2005) moneys, the department will first review the application to ensure that the IVF (2005) wage requirement is met. The department will then review the application for compliance with the requirements of the department program from which financial assistance is to be provided.

174.3(3) Qualifying wage threshold requirement—projects funded by program funds ("old money"). Prior to July 1, 2003, direct financial assistance programs administered by the department were funded through state appropriations. After the creation of IVF(FES) and IVF (2005), these programs no longer received separate state appropriations. These programs were funded with IVF(FES) and IVF (2005) moneys. Moneys remaining, recaptured or repaid to these program funds remain available for awarding to projects. The department will review an application for compliance with the requirements of the department program from which financial assistance is to be provided.

174.3(4) Qualifying wage threshold requirement—projects receiving EDSA funds. EDSA is the job creation component of the federal CDBG program. The department will review an application for compliance with the federal CDBG EDSA requirements.

174.3(5) Qualifying wage thresholds, by funding source and by program.

a. IVF (2005). Projects that are funded with IVF (2005) moneys through the following programs shall meet the qualifying wage threshold listed below:

Funding Source: IVF (2005)		Qualifying Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the qualifying wage threshold?
CEBA:	Small business gap financing component	130% of average county wage	Yes
	New business opportunities and new product development components	130% of average county wage	Yes
	Venture project component	130% of average county wage	Yes
	Modernization project component	130% of average county wage	Yes
VAAPFAP		130% of average county wage	Yes
PIAP		130% of average county wage	Yes
EVA		130% of average county wage	Yes

b. IVF(FES) and program funds. Projects that are funded with IVF(FES) through the following programs or directly from available program fund moneys shall meet the qualifying wage thresholds listed below:

Funding Source: IVF(FES) or Program Funds		Qualifying Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the qualifying wage threshold?
CEBA:	Small business gap financing component	100% of average county wage or average regional wage, whichever is lower 130% for awards over $500,000	No
	New business opportunities and new product development components	100% of average county wage or average regional wage, whichever is lower 130% for awards over $500,000	No
	Venture project component	100% of average county wage or average regional wage, whichever is lower	No

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Funding Source: IVF(FES) or Program Funds		Qualifying Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the qualifying wage threshold?
	Modernization project component	100% of average county wage or average regional wage, whichever is lower 130% for awards over $500,000	No
VAAPFAP		No statutory requirement	Not applicable
PIAP		No statutory requirement	Not applicable
EVA		No statutory requirement	Not applicable

c. EDSA. Projects that are funded with EDSA moneys shall meet the following wage threshold:

Program Source: CDBG	Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the wage threshold?
EDSA	100% of average county wage	No

d. EZ and HQJC. Tax credit program projects shall meet the following wage thresholds:

Tax Credit Programs	Wage Threshold Requirement	Can benefits value be added to the hourly wage to meet the wage threshold?
EZ	90% of average county wage or average regional wage, whichever is lower	No
HQJC	130% of average county wage More benefits are available if the wage rate is 160% or higher	Yes

261—174.4(15) IVF (2005) wage waivers; HQJC eligibility requirement waivers.

174.4(1) Waivers.

a. Applicants may request that the board waive the IVF(2005) wage requirement or HQJC eligibility requirements (see rule 261—68.2(15) for HQJC eligibility requirements) upon a showing of good cause. For purposes of this paragraph, "good cause" includes but is not limited to the following:

(1) The community in which the project will be located can demonstrate economic distress based on a combination of factors including but not limited to:

1. A county family poverty rate significantly higher than the state average.
2. A county unemployment rate significantly higher than the state average.
3. A unique opportunity to use existing unutilized facilities in the community.
4. A significant downsizing or closure by one of the community's major employers.
5. An immediate threat posed to the community's workforce due to the downsizing or closure of a business.

(2) The proposed project meets all of the following criteria:

1. The business is in one of the state's targeted industry clusters: life sciences, information solutions, and advanced manufacturing.
2. All jobs created as a result of the project will have a starting wage, not including benefits, equal to or greater than 100 percent of the average county wage.
3. The business is headquartered in Iowa or, as a result of the proposed project, will be headquartered in Iowa. In lieu of the business's being headquartered in Iowa, the project has unique aspects which will assist the department in meeting one or more of its strategic objectives.

b. Requests to waive an eligibility requirement must be submitted in writing to the department when the business's application is submitted. The waiver request shall include documentation from other sources confirming the statistical data cited in the request. The waiver request will be reviewed as part of the application review process and acted upon by the board. If the request for a waiver is approved, the board will proceed with a final decision on the application.

c. The board will give extra consideration to wage waiver requests when the request is for a VAAPFAP project or for a project located in an economic enterprise area. "Economic enterprise area" means an area that consists of at least one county containing no city with a population of more than 23,500 and that shall meet at least three of the following criteria:

(1) A per-capita income of 80 percent or less than the national average.

(2) A household median income of 80 percent or less than the national average.

(3) Twenty-five percent or more of the population of the economic enterprise area with an income level of 150 percent or less of the United States poverty level as defined by the most recently revised poverty income guidelines published by the U.S. Department of Health and Human Services.

(4) A population density in the economic enterprise area of less than ten people per square mile.

(5) A loss of population as shown by the 2000 certified federal census when compared with the 1990 certified federal census.

(6) An unemployment rate greater than the national rate of unemployment.

(7) More than 20 percent of the population of the economic enterprise area consists of people over the age of 65.

174.4(2) CEBA wage requirement waiver. Where the community can document to the department's satisfaction that a significant differential exists between the actual local county wage (as determined by a local employer survey) and the average county wage or average regional wage, the department may substitute the community survey results for the average county wage or average regional wage for consideration in a specific project. Qualification of a project would

not be anticipated unless the starting project wage was clearly above the survey wage.

261—174.5(15) Job obligations. Jobs that will be created or retained as a result of a project's receiving state or federal financial assistance or tax credit benefits from the department shall meet the qualifying wage threshold requirements. Jobs that do not meet the qualifying wage threshold requirements will not be counted toward a business's job creation or job retention obligations outlined in the contract between the department and the business.

261—174.6(15) Benefit requirements. To be eligible to receive state financial assistance or tax credit benefits, applicants shall meet the following benefit requirements:

Program	Benefit Requirement	Deductible Requirements	Is a monetary equivalent to benefits allowed?	Benefits Counted Toward Monetary Equivalent
EZ	80% medical and dental coverage, single coverage only OR the monetary equivalent	$750 maximum for single coverage/ $1500 maximum for family coverage	Yes	-Medical coverage (family portion) -Dental coverage (family portion) -Pension/401(k) (company's average contribution) -Profit-sharing plan -Life insurance -Short-/long-term disability insurance -Vision insurance -Child care
HQJC	No benefit requirement (If, however, the company does not provide 80% medical and dental coverage for a single employee, the award will be reduced by 10%.)	$750 maximum for single coverage/ $1500 maximum for family coverage	No (Providing 80% medical and dental coverage for a single employee is one of eight qualifying criteria the company may use to qualify for the program. Monetary equivalent of other benefits is not considered.)	Not applicable
EDSA	80% medical and dental for single employees OR 50% medical and dental for family coverage OR the monetary equivalent	$750 maximum for single coverage/ $1500 maximum for family coverage	Yes	-Medical coverage (family portion) -Dental coverage (family portion) -Pension/401(k) (company's average contribution) -Profit-sharing plan -Life insurance -Short-/long-term disability insurance -Vision insurance -Child care -Other documented benefits offered to all employees (i.e., uniforms, tuition reimbursement, etc.)
CEBA	80% medical and dental for single employees OR 50% medical and dental for family coverage OR the monetary equivalent	$750 maximum for single coverage/ $1500 maximum for family coverage	Yes	-Medical coverage (family portion) -Dental coverage (family portion) -Pension/401(k) (company's average contribution) -Profit-sharing plan -Life insurance -Short/long term disability insurance -Vision insurance -Child care -Other documented benefits offered to all employees (i.e., uniforms, tuition reimbursement, etc.)
VAAPFAP	Not applicable	Not applicable	Not applicable	Not applicable
PIAP	Not applicable	Not applicable	Not applicable	Not applicable
EVA	Not applicable	Not applicable	Not applicable	Not applicable
TSBFAP	Not applicable	Not applicable	Not applicable	Not applicable

261—174.7(15) Capital investment, qualifying investment for tax credit programs, and investment qualifying for tax credits.

174.7(1) Capital investment. The department reports on the amount of capital investment involved with funded projects. This rule lists the categories of expenditures that are in-

cluded when the department determines the amount of capital investment associated with a project.

174.7(2) Qualifying investment for tax credit programs. For the tax credit programs (EZ and HQJC) there are statutorily required minimum investment thresholds that must be met for the project to be considered to receive an award. Not all expenditures count toward meeting the investment threshold. This rule identifies the categories of expenditures that can be included when the amount of investment is calculated for purposes of meeting program eligibility threshold requirements.

174.7(3) Investment qualifying for tax credits. Not all of the expenditure categories used to calculate the investment amount needed to meet program threshold requirements qualify for purposes of claiming the tax credits. The following table identifies the expenditures that do not qualify for tax credits.

	Capital Investment[1]	Qualifying Investment[2]	Investment Qualifying for Tax Credits[3]
Land acquisition	Yes	Yes	Yes
Site preparation	Yes	Yes	Yes
Building acquisition	Yes	Yes	Yes
Building construction	Yes	Yes	Yes
Building remodeling	Yes	Yes	Yes
Mfg. machinery & equip.	Yes	Yes	Yes
Other machinery & equip.	Yes	No	No
Racking, shelving, etc.	Yes	No	No
Computer hardware	Yes	Yes	Yes
Computer software	No	No	No
Furniture & fixtures	Yes	Yes	No
Working capital	No	No	No
Research & development	No	No	No
Job training	No	No	No
Capital or synthetic lease	No	Yes	Yes
Rail improvements[4]	Yes	Yes	Yes
Public infrastructure[5]	Yes	Yes	Yes

[1]"Capital investment" is used to calculate project investment on depreciable assets.

[2]"Qualifying investment" is used to determine eligibility for EZ and HQJC programs.

[3]"Investment qualifying for tax credits" is used to calculate the maximum available tax credit award for a project.

[4]"Rail improvements" includes hard construction costs for rail improvements. (These costs are included as part of construction or site preparation costs.)

[5]"Public infrastructure" includes any publicly owned utility service such as water, sewer, storm sewer or roadway construction and improvements. (These costs are included as part of construction costs.)

These rules are intended to implement Iowa Code chapters 15, 15E and 15G.

CHAPTER 175
APPLICATION REVIEW AND APPROVAL PROCEDURES

261—175.1(15) Applicability. This chapter shall apply to the programs listed in rule 261—173.1(15). This chapter describes the application review and approval procedures and the role of the advisory groups or board committees and identifies the final decision maker for each program.

261—175.2(15) Application procedures for programs administered by the department.

175.2(1) IVF(FES). Beginning July 1, 2003, the grow Iowa values board approved direct funding for projects from the IVF(FES) and allocated IVF(FES) moneys to existing department programs (CEBA, VAAPFAP, EVA, TSBFAP). After June 16, 2004, IVF(FES) was no longer a separate program administered by the department; it became a funding source for existing department-administered programs. Moneys from IVF(FES) are used to provide financial assistance to the programs described in rule 261—173.1(15). If a project will be funded by IVF(FES), the department will review an application to ensure that the project meets the requirements for the programs through which an applicant is applying.

175.2(2) IVF (2005). IVF (2005) is not a separate program administered by the department; it is a funding source for existing department-administered programs. Moneys from IVF (2005) are used to provide financial assistance to the programs described in rule 261—173.1(15). If a project will be funded by IVF (2005), the department will first review the application to ensure that the IVF (2005) wage requirement is met. The department will then review the application to ensure that the project also meets all the requirements for the programs through which the applicant is applying.

175.2(3) Projects funded by program funds ("old money"). Prior to July 1, 2003, direct financial assistance programs administered by the department were funded through state appropriations. After the creation of IVF(FES) and IVF (2005), these programs no longer received separate state appropriations. The department's financial assistance programs identified in rule 261—173.1(15) were funded with IVF(FES) and IVF (2005) moneys. Moneys remaining, recaptured or repaid to these program funds remain available for awarding to projects. If a project will be funded by program funds, the department will review an application to ensure that it meets the requirements for the programs through which an applicant is applying.

175.2(4) Tax credit programs. The department administers tax credit programs that provide tax incentives for approved projects. The department will review an application to ensure that the project meets the requirements for the tax credit programs through which an applicant is applying.

175.2(5) EDSA programs. The department administers the federal CDBG program. EDSA is the job creation component of this federal funding source. The department will review an application to ensure that the project meets the requirements for the tax credit programs through which an applicant is applying.

175.2(6) Application required. A business or community seeking financial assistance or tax credit benefits from a department program shall submit an application to the department. The applicant shall comply with the department's application procedures, processes, rules, and wage and benefit requirements for that program and its funding source. Application forms and directions for completing the forms are available on line at the department's Web site at www.iowalifechanging.com or at the department's offices located at 200 East Grand Avenue, Des Moines, Iowa 50309.

175.2(7) Additional consideration for projects funded with IVF (2005) moneys. In reviewing applications for financial assistance, the board, the department and the due diligence committee shall consider providing assistance to projects that increase value-added income to individuals or organizations involved in agricultural business or biotechnology projects. Such projects need not create jobs specific to the project site; however, these projects must foster the knowledge and creativity necessary to promote the state's agricultural economy and to increase employment in urban and rural areas as a result. In providing financial assistance from the fund, the board shall, whenever possible, coordinate the assistance with other department programs.

175.2(8) Applicant's past or current performance. If an applicant has received a prior award(s) from the department, the department and board will take into consideration the applicant's past or current performance under the prior award(s).

261—175.3(15) Review and approval of applications.

175.3(1) Staff review. Applications received by the department will be reviewed by program staff to ensure that documentation of minimum program eligibility requirements has been submitted by the applicant. Complete applications will be forwarded to the appropriate decision maker for action.

175.3(2) Negotiations. Department staff may negotiate with the applicant concerning dollar amounts, terms, collateral requirements, conditions of award, or any other elements of the project. The board or director may offer an award in a lesser amount or that is structured in a manner different from that requested. Meeting minimum eligibility requirements does not guarantee that assistance will be offered or provided in the manner sought by the applicant.

175.3(3) Approval procedures. Application approval procedures shall comply with statutory requirements for the program or funding source and applicable program rules. The board shall approve all projects or activities funded through IVF (2005), CEBA projects, large HQJC projects (over 50 jobs and a $10 million investment), and brownfield projects. The director shall approve all other projects or activities. The following paragraphs describe the review and approval processes, by funding source and program.

a. Award approval procedures—IVF (2005). The approval process for projects that are funded with IVF (2005) moneys is as follows:

Funding Source: IVF (2005)		Role of Advisory Group	Final Decision Maker
CEBA:	Small business gap financing component	Due Diligence Committee recommendation	Iowa Economic Development Board
	New business opportunities and new product development components	Due Diligence Committee recommendation	Iowa Economic Development Board
	Venture project component	Due Diligence Committee recommendation	Iowa Economic Development Board
	Modernization project component	Due Diligence Committee recommendation	Iowa Economic Development Board
	Case management and entrepreneurial assistance	Due Diligence Committee recommendation	Iowa Economic Development Board
VAAPFAP		APAC recommendation, then Due Diligence Committee recommendation	Iowa Economic Development Board
PIAP		Due Diligence Committee recommendation	Iowa Economic Development Board
EVA		Due Diligence Committee recommendation	Iowa Economic Development Board
LCG		Loan & Credit Guarantee Committee recommendation	Iowa Economic Development Board
TSBFAP		TSB Financial Assistance Board recommendation, then Due Diligence Committee recommendation	Iowa Economic Development Board

b. Award approval procedures—IVF(FES) or program funds ("old money"). The approval process for projects that are funded with IVF(FES) through the following programs or directly from available program fund moneys is as follows:

Funding Source: IVF(FES) or Program Funds ("old money")		Role of Advisory Group	Final Decision Maker
CEBA:	Small business gap financing component	Due Diligence Committee recommendation	Iowa Economic Development Board
	New business opportunities and new product development components	Due Diligence Committee recommendation	Iowa Economic Development Board

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

Funding Source: IVF(FES) or Program Funds ("old money")		Role of Advisory Group	Final Decision Maker
	Venture project component (over $100,000)	Due Diligence Committee recommendation	Iowa Economic Development Board
	Venture project component (up to $100,000)		IDED Director
	Modernization project component (over $250,000)	Due Diligence Committee recommendation	Iowa Economic Development Board
	Modernization project component (up to $250,000)		IDED Director
	Case management and entrepreneurial assistance (over $25,000)		IDED Director
	Case management and entrepreneurial assistance (up to $25,000)		IDED Division Administrator, Business Development Division
VAAPFAP		APAC recommendation	IDED Director
PIAP:	Up to $1M award		IDED Director
	Over $1M	IDED Director to consult with Iowa Economic Development Board	IDED Director
EVA			IDED Director
Brownfields		Brownfield Advisory Council recommendation	Iowa Economic Development Board
TSBFAP		Targeted Small Business Advisory Committee recommendation	IDED Director

c. Award approval procedures—EDSA. The approval process for projects that are funded with EDSA moneys is as follows:

Program Source: CDBG	Role of Advisory Group	Final Decision Maker
EDSA		IDED Director

d. Award approval procedures—EZ and HQJC. The approval process for tax credit projects is as follows:

Tax Credit Programs	Role of Advisory Group	Final Decision Maker
EZ		IDED Director
HQJC (if less than 50 jobs and $10M investment)		IDED Director
HQJC (if more than 50 jobs and $10M investment)	Due Diligence Committee recommendation	Iowa Economic Development Board

These rules are intended to implement Iowa Code chapters 15, 15E and 15G.

ITEM 67. Adopt **new** 261—Part VIII as follows:

PART VIII
LEGAL AND COMPLIANCE

CHAPTER 187
CONTRACTING

261—187.1(15) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).

261—187.2(15) Contract required.

187.2(1) Notice of award. Successful applicants will be notified in writing of an award of assistance, including any conditions and terms of the approval.

187.2(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; the jobs to be created or retained; length of the project period and maintenance period; conditions to disbursement; a requirement for annual reporting to the department; and the repayment requirements of the business or other penalties imposed on the business in the event the business does not fulfill its obligations described in the contract and other specific repayment provisions ("clawback provisions") to be established on a project-by-project basis.

187.2(3) Contract-signing deadline. Successful applicants will be required to execute an agreement with the department within 120 days of the department's or board's approval of an award. Failure to do so may result in action by the entity that approved the award (the department or the board) to rescind the award. The 120-day time limit may be extended by the final decision maker that approved the award (the department or the board) for good cause shown.

261—187.3(15) Project completion date and maintenance date.

187.3(1) Projects shall be completed by the project completion date and maintained through the end of the main-

tenance date. The contract will establish the duration of the project period and maintenance period.

187.3(2) Projects receiving funding from programs or funding sources that have statutory project completion and maintenance periods shall comply with the requirements for that program or funding source.

187.3(3) Projects receiving assistance from programs without statutory project completion and maintenance periods shall conform to the time periods established by this rule, unless a different time period is negotiated and approved by the board or director.

187.3(4) By the project completion date, a recipient shall have completed the project as required by the contract. The jobs and project shall be maintained through the end of the maintenance date. The project completion date is calculated by the department from the end of the month during which an award is made. For example, if a CEBA award is made on June 13, 2007, the three-year project completion period will be calculated from June 30, 2007. The project completion date for this award would be June 30, 2010. The maintenance date would be June 30, 2012.

187.3(5) The following table describes, by program, the length of the project completion period and maintenance period:

Program	Project Completion Date	Maintenance Date	Total Contract Length
CEBA	3 years	2 more years	5 years
*PIAP	3 years	2 more years	5 years
*EVA	3 years	Until repayment obligation is fulfilled	variable
*VAAPFAP	3 years	2 more years	5 years
EDSA	3 years	2 more years	5 years
*If the project is funded with IVF(FES) or program funds ("old money"), these time periods do not apply.			
EZ	3 years	10 more years	13 years
HQJC 3-15 jobs	3 years	2 more years	5 years
HQJC 16 or more jobs	5 years	2 more years	7 years
Other contracts in IDED Project Portfolio (beginning 7/1/03)			
CEBA awards prior to approximately 9/1/05	3 years	Ranging from 13 more weeks to 3 more mos.; as stated in the contract	Variable
IVF(FES) direct project awards from 7/1/03 to 6/16/04	Up to 4 years or longer	Up to 6 years; as stated in the contract	Up to 10 years
NCIP	3 years	2 more years	5 years
NJIP	5 years	5 more years	10 years

261—187.4(15) Contract amendments and other situations requiring board, DDC or director approval.

187.4(1) General rule. Generally, the final decision maker that approved the initial award shall approve any amendments or changes to that award.

187.4(2) Board delegation to the due diligence committee. The due diligence committee shall have the authority to act on behalf of the board and take final action on the requests described in 187.4(3). The committee may decide to take final action or to refer the matter to the full board for action.

187.4(3) Amendments and other items requiring board, due diligence committee or director approval. The table below identifies the situations that require action by the board, the due diligence committee or the director. It is not an all-inclusive list.

AMENDMENTS AND OTHER ITEMS REQUIRING BOARD, DDC OR DIRECTOR APPROVAL			
SUBJECT	DDC	BOARD	DIRECTOR
120-day contract-signing extensions - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and $10M) awards originally approved by the board	Recommendation	Final decision	
120-day contract-signing extensions - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and $10M)			Final decision
2-year CEBA disbursement obligation (Iowa Code § 15.317(4))	Recommendation	Final decision	
Contract time extensions - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and $10M) awards originally approved by the board	Final decision		
Contract time extensions - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and $10M)			Final decision
Other contract amendments - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and $10M) awards originally approved by the board	Final decision		

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

SUBJECT	DDC	BOARD	DIRECTOR
Other contract amendments - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and $10M)			Final decision
Discontinuance or suspension of collection efforts - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and $10M) awards originally approved by the board	Final decision		
Discontinuance or suspension of collection efforts - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and $10M)			Final decision
Negotiated settlements - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and $10M) awards originally approved by the board	Final decision		
Negotiated settlements - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and $10M)			Final decision
Rescission of awards - for all IVF (2005), IVF(FES), CEBA, HQJC (over 50 jobs and $10M) awards originally approved by the board	Recommendation	Final decision	
Rescission of awards - for IVF(FES) or program fund awards originally approved by director, HQJC (under 50 jobs and $10M)			Final decision

187.4(4) Amendments and other requests the department is authorized to implement. The department is authorized by the board to take action on nonsubstantive changes, including but not limited to the following:

a. Recipient name, address and similar changes.

b. Collateral changes that are the same or better security than originally approved by the board or director (e.g., securing a letter of credit to replace a UCC blanket filing) or collateral changes that do not materially and substantially impact the department's security.

c. Line item budget changes that do not reduce overall total project costs.

d. Loan repayment amounts or due dates that do not extend the final due date of a loan.

261—187.5(15) Default.

187.5(1) Events of default. The department may, for cause, determine that a recipient is in default under the terms of the contract. The reasons for which the department may determine that the recipient is in default of the contract include, but are not limited to, any of the following:

a. Any material representation or warranty made by the recipient in connection with the application that was incorrect in any material respect when made.

b. A material change in the business ownership or structure that occurs without prior written disclosure and the permission of the department.

c. A relocation or abandonment of the business or jobs created or retained through the project.

d. Expenditure of funds for purposes not described in the application or authorized in the agreement.

e. Failure of the recipient to make timely payments under the terms of the agreement, note or other obligation.

f. Failure of the recipient to fulfill its job obligations.

g. Failure of the recipient to comply with wage or benefit packages.

h. Failure of the recipient to perform or comply with the terms and conditions of the contract.

i. Failure of the recipient to comply with any applicable state rules or regulations.

j. Failure of the recipient to file the required annual report.

187.5(2) Layoffs or closures. If a recipient experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after executing a contract to receive the incentives and assistance, the department may consider this an event of default and the business may be subject to repayment of all or a portion of the incentives and assistance that it has received.

187.5(3) Department actions upon default—direct financial assistance programs.

a. The department will take prompt, appropriate, and aggressive debt collection action to recover any funds misspent by recipients.

b. If the department determines that the recipient is in default, the department may seek recovery of all program funds plus interest, assess penalties, negotiate alternative repayment schedules, suspend or discontinue collection efforts, and take other appropriate action as the department deems necessary.

c. Determination of appropriate repayment plan. Upon determination that the recipient has not met the contract obligations, the department will notify the recipient of the amount to be repaid to the department. If the enforcement of such penalties would endanger the viability of the recipient, the department may extend the term of the loan to ensure payback, stability, and survival of the recipient. In certain instances, additional flexibility in a repayment plan may be necessary to ensure payback, stability, and survival of the recipient. Flexibility in a repayment plan may include, but is not limited to, deferring principal payments or collecting monthly payments below the amortized amount. In these cases, review and approval by the board, committee or director, as applicable, are necessary before the department may finalize the repayment plan.

d. The department shall attempt to collect the amount owed. Negotiated settlements, write-offs or discontinuance

of collection efforts is subject to final review and approval by the board, committee or director, as applicable.

e. If the department refers defaulted contracts to outside counsel for collection, then the terms of the agreement between the department and the outside counsel regarding scope of counsel's authorization to accept settlements shall apply. No additional approvals by the board, committee or director shall be required.

187.5(4) Department actions upon default—tax credit programs. Collection efforts for tax credit programs are handled by the local community that approved the local tax incentive and the Iowa department of revenue, the state agency responsible for the state tax incentives.

a. Repayment. If an eligible business or eligible housing business has received incentives or assistance under the Act and fails to meet and maintain any one of the requirements of the Act or these rules to be an eligible business or eligible housing business, the business is subject to repayment of all or a portion of the incentives and assistance that it has received.

b. Calculation of repayment due for a business. If the department, in consultation with the city or county, determines that a business has failed in any year to meet any one of the requirements of the Act or these rules to be an eligible business, the business is subject to repayment of all or a portion of the amount of incentives received.

(1) Job creation. If a business does not meet its job creation requirement or fails to maintain the required number of jobs, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to create in jobs.

2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to create in jobs.

3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to create in jobs.

4. If the business has not met the minimum job creation requirement of ten new full-time jobs, the business shall repay all of the incentives and assistance that it has received.

(2) Wages and benefits. If a business fails to comply with the wage or benefit requirements, the business shall not receive incentives or assistance for each year during which the business is not in compliance.

(3) Capital investment. If a business does not meet the capital investment requirement, repayment shall be calculated as follows:

1. If the business has met 50 percent or less of the requirement, the business shall pay the same percentage in benefits as the business failed to invest.

2. If the business has met more than 50 percent but not more than 75 percent of the requirement, the business shall pay one-half of the percentage in benefits as the business failed to invest.

3. If the business has met more than 75 percent but not more than 90 percent of the requirement, the business shall pay one-quarter of the percentage in benefits as the business failed to invest.

4. If the business has not met the minimum investment requirement of $500,000, the business shall repay all of the incentives and assistance that it has received.

c. Department of revenue; county/city recovery. Once it has been established, through the business's annual certification, monitoring, audit or otherwise, that the business is required to repay all or a portion of the incentives received, the department of revenue and the city or county, as appropriate, shall collect the amount owed. The city or county, as applicable, shall have the authority to take action to recover the value of taxes not collected as a result of the exemption provided by the community to the business. The department of revenue shall have the authority to recover the value of state taxes or incentives provided under Iowa Code section 15E.193A or 15E.196. The value of state incentives provided under Iowa Code section 15E.193A or 15E.196 includes applicable interest and penalties.

d. Layoffs or closures. If an eligible business experiences a layoff within the state or closes any of its facilities within the state prior to receiving the incentives and assistance, the department may reduce or eliminate all or a portion of the incentives and assistance. If a business experiences a layoff within the state or closes any of its facilities within the state after receiving the incentives and assistance, the business shall be subject to repayment of all or a portion of the incentives and assistance that it has received.

e. Extensions. If an eligible business or eligible housing business fails to meet its requirements under the Act, these rules, or the agreement described in rule 261—18.72(15), the department, in consultation with the city or county, may elect to grant the business a one-year extension period to meet the requirements.

These rules are intended to implement Iowa Code chapters 15, 15E and 15G.

CHAPTER 188
CONTRACT COMPLIANCE AND JOB COUNTING

261—188.1(15) Applicability. This chapter is applicable to the programs identified in 261—173.1(15).

261—188.2(15) Contract compliance. The department shall provide oversight and contract administration to ensure that funded projects are meeting contract requirements. On-site monitoring will be conducted at the project completion date and the end of the maintenance period.

261—188.3(15) Job counting and tracking. Projects awarded on or after July 1, 2003, shall follow the job counting and tracking procedures described in this chapter. Only jobs that meet or exceed the qualifying wage thresholds will count toward the business's contract job obligations.

261—188.4(15) Business's employment base. "Business's employment base" means the number of jobs that the business and the department have established as the job base for a project. The number of jobs the business has pledged to create and retain shall be in addition to the business's employment base.

188.4(1) The business's employment base shall be project-specific. In most situations, this will include the number of full-time employees working at the facility receiving funding.

188.4(2) There are projects where the funded activity occurs at more than one physical location. If this is the case, the total number of full-time employees working at the identified locations constitutes the business's employment base.

188.4(3) If there are multiple awards made in different years to the same location, the business's employment base will be calculated by using the payroll document from the oldest award that is open. Moving forward, the job obligations from each new award will be added to this base.

EXAMPLES:

Company X receives award 1 on 5/1/06. The department has verified that the business's employment base is 100

FTEs. Award 1 obligates company X to create 10 jobs and retain 30 jobs; there are 10 other jobs in the project (the 10 other jobs are created jobs that do not meet the qualifying wage). The qualifying wage for this award is $16.50/hr and the benefit value is $4.00/hr. The award is made from the IVF (2005) program.

Company X receives award 2 on 9/1/06. After the payroll is reviewed, the actual number of FTEs at the facility is 107, but 120 (original base + award 1 obligations) will be used as the business's employment base for this award. Award 2 obligates company X to create an additional 25 jobs.

Company X receives award 3 on 3/1/07. After the payroll is reviewed, the actual number of FTEs at the facility is 140, but 145 (original base + award 1 obligations + award 2 obligations) will be used as the business's employment base for this award.

188.4(4) The business's employment base is calculated as part of the application process and is determined before an award is made. The following data points will be verified regarding a business's employment base:

a. The total number of FTEs at the funded facility (the business's employment base).

b. The average wage of all FTEs.

c. The qualifying wage used in the award.

d. The benefit value used in the award.

e. The total number of FTEs at the funded facility that are currently at or above the qualifying wage.

f. The average wage of the FTEs identified in paragraph "e."

g. The total number of FTEs at the funded facility that are currently at or above the qualifying wage after the benefit value has been added.

h. The average wage of the FTEs identified in paragraph "g."

188.4(5) Business's employment base verification. Payroll documents must be collected to calculate and verify the business's employment base used in each award. The payroll document must include an ID (name, employer ID number, or social security number) and the hourly rate of pay for all FTEs. If the FTEs at the facility do not typically work 40 hours/week, documentation must be collected from the business outlining what the business considers a full-time workweek and how the business's interpretation fits within the norms of its industry standards. This interpretation may or may not be accepted by the department.

261—188.5(15) Job counting using base employment analysis. The department will count jobs to be created or retained as part of a funded project using a base employment analysis. At the time of application, a baseline employment number will be established using payroll records. The baseline data will include details about how many jobs at the project location already meet the qualifying wage thresholds (with and without the value of benefits added to the hourly wage). Changes in these baseline employment numbers will be collected and analyzed by the department as part of the annual reporting process.

188.5(1) A base employment analysis will be performed at the following stages of an award:

a. At the time of application, before the award is made.

b. Annually during the reporting cycle.

c. At the project completion date.

d. At the end of the maintenance date.

188.5(2) Payroll documents or lists run from payroll systems will be used to calculate and verify the base employment analysis. If a list run from a payroll system is used, the list must be signed stating that it is true and correct under penalty of perjury by the person submitting the documents. The following items will be calculated and verified as part of the annual status report:

a. The total number of FTEs at the funded facility as of the date of the report.

b. The average wage of all FTEs.

c. The qualifying wage used in the award.

d. The benefit value used in the award.

e. The total number of FTEs at the funded facility that are currently at or above the qualifying wage.

f. The average wage of the FTEs identified in paragraph "e."

g. The total number of FTEs at the funded facility that are currently at or above the qualifying wage after the benefit value has been added.

h. The average wage of the FTEs identified in paragraph "g."

188.5(3) For projects involving more than two physical locations or involving more than 500 employees, an independent auditing service will be used to set the business's employment base and provide payroll analysis.

a. The following data points will be verified by the independent auditor regarding jobs:

(1) The total number of FTEs at the funded facility (the business's employment base).

(2) The average wage of all FTEs.

(3) If applicable, the total number of FTEs working at other company facilities within the state of Iowa (statewide base).

(4) The qualifying wage used in the award (provided by IDED).

(5) The benefit value used in the award (provided by IDED).

(6) The total number of FTEs at the funded facility that are currently at or above the qualifying wage.

(7) The average wage of the FTEs identified in subparagraph (6).

(8) The total number of FTEs at the funded facility that are currently at or above the qualifying wage after the benefit value has been added.

(9) The average wage of the FTEs identified in subparagraph (8).

b. All businesses are required to submit annual reports to the department. However, if an independent auditing agreement is in place, the business will be required to report only on the following data points concerning jobs:

(1) The total number of FTEs at the funded facility as of the date of the report.

(2) The average wage of all FTEs.

c. The business will not be required to verify this information as submitted for the annual reports and will not be required to submit annual payroll information.

d. Information submitted concerning the expenditures for the annual report will not change, but verification documents used at project closeout and at the end of project maintenance will be generated by the independent auditor.

188.5(4) Following is an example of the format that the department will use for job counting and tracking using the base employment method.

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261](cont'd)

[program] JOB OBLIGATIONS Project Completion Date: Project Maintenance Date:	Employment Base	Jobs to Be Created	Total Job Obligations
Total employment at project location	1	9	12
Average wage of total employment at project location	2		
Qualifying wage (per hr)	3		
Benefit value (per hr)	4		
Number of jobs at or above qualifying wage	5	10	13
Average wage of jobs at or above qualifying wage	6		
Number of jobs at or above qualifying wage w/benefits	7	11	14
Average wage of jobs at or above qualifying wage w/benefits	8		

1. The number entered in this cell is the total number of FTEs working at the project location at the time of application. This number must be verified with payroll documents.

2. The number entered in this cell is the average wage of all the FTEs identified in cell #1. This number must be verified with payroll documents.

3. The number entered in this cell is the 90%, 100%, 130%, etc., qualifying wage threshold used in the award. This data point must include the wage/hr and the percentage in parentheses. [ex: $15.34/hr (130%)]

4. The number entered in this cell is the benefit value used in the award. N/A (not applicable) should be used for all projects that are not funded with IVF (2005) or HQJC. All supporting documentation must be included in the file.

5. The number entered in this cell is the number of jobs identified in cell #1 that meet or exceed the wage reflected in cell #3. This number is calculated using the payroll documents. If this project is not funded with IVF (2005) or HQJC, the number of "retained" jobs and retained "other" jobs must be included in this entry. Please note that the number of retained jobs and the number entered here may not match as all jobs existing at the project site may not be considered retained.

6. The number entered in this cell is the average wage of all FTEs identified in cell #5. This number is calculated using the payroll documents.

7. The number entered in this cell is the number of jobs identified in cell #1 that meet or exceed the wage reflected in cell #3, after the value identified in cell #4 has been added to all base hourly wages reflected in the payroll documents. If this project is an IVF (2005) or HQJC, the number of "retained" and retained "other" jobs must be included in this entry. Please note that the number of retained jobs and the number entered here may not match as all jobs existing at the project site may not be considered retained.

8. The number entered in this cell is the average wage of all FTEs identified in cell #7.

9. The number entered in this cell includes the number of "created" jobs, as well as the number of created "other" jobs.

10. The number entered in this cell is the number of "created" jobs in the project. This entry is used only for projects that are not IVF (2005) or HQJC.

11. The number entered in this cell is the number of "created" jobs in the project. This entry is used only for projects that are IVF (2005) or HQJC.

12. The number entered in this cell is the sum of cell #1 and cell #9.

13. The number entered in this cell is the sum of cell #5 and cell #10.

14. The number entered in this cell is the sum of cell #7 and cell #11.

These rules are intended to implement Iowa Code chapters 15, 15E and 15G.

CHAPTER 189
ANNUAL REPORTING

261—189.1(15) Annual reporting by businesses required (for period ending June 30). Recipients shall report annually to the department, in form and content acceptable to the department, about the status of the funded project. The report shall include, but not be limited to, data about base employment, qualifying wages, benefits, project costs, capital investment, and compliance with the contract.

261—189.2(15) January 15 report by IDED to legislature. IDED will use the data it collects from businesses to prepare a report, which is due to the legislature by January 15 each year. This report by the department will include the statutorily required information pursuant to the following Iowa Code reporting requirements and may also include any information about programs administered by the department:

1. §15.104(9) Grow Iowa values fund report required, including information about awards made under the renewable fuel infrastructure fund pursuant to Iowa Code section 15G.206.
2. §15.113, report on CEBA and HQJC.
3. §15E.111(8), report on VAAPFAP.

These rules are intended to implement Iowa Code chapters 15, 15E and 15G.

ITEM 68. Renumber the heading of **261—Part VIII** as **261—Part X** and the heading of **261—Part IX** as **261—Part XI** and add the following **new** 261—Part IX, heading, to precede 261—Chapter 195:

PART IX

UNIFORM PROCEDURES: RECORDS, RULE MAKING, DECLARATORY ORDERS, RULE WAIVERS

[Filed Emergency 6/15/07, effective 6/15/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6030B

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 15.104 and 15.106, the Iowa Department of Economic Development adopts new Chapter 36, "Film, Television, and Video Project Promotion Program," Iowa Administrative Code.

Chapter 36 implements a new tax credit program authorized by 2007 Iowa Acts, House File 892. The rules describe the application process, the tax credit benefits available if approved and contract administration processes.

The Iowa Economic Development Board adopted these rules on June 13, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable and contrary to the public interest. There are two major independent feature projects pending commencement of production by the end of June 2007.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the rules should be waived and the rules should be made effective upon filing with the Administrative Rules Coordinator on June 15, 2007. Having administrative rules in effect on this date will allow an application and review process to be in place for pending projects.

These rules are also published herein under Notice of Intended Action as **ARC 6031B** to allow for public comment.

These rules became effective on June 15, 2007.

These rules are intended to implement 2007 Iowa Acts, House File 892.

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.

Adopt **new** 261—Chapter 36 as follows:

CHAPTER 36
FILM, TELEVISION, AND VIDEO PROJECT PROMOTION PROGRAM

261—36.1(82GA,HF892) Purpose. The purpose of the film, television, and video project promotion program is to assist and encourage the production of legitimate film, television, and video projects within the state of Iowa.

261—36.2(82GA,HF892) Definitions. The following definitions apply to this chapter:

"Act" means 2007 Iowa Acts, House File 892, that authorizes tax credits for film, television, and video projects.

"IDED" means the Iowa department of economic development.

"Investor" means a person or entity that participates financially in a film, television, or video project that is registered by IDED.

"Producer" or "production company" means the legally designated entity that undertakes and pays for the project activities in Iowa.

"Project" means a film, television, or video production operation that involves expenditures and is undertaken in Iowa during the period of time defined in the application.

"Registered" or "registered project" means a film, television, or video production operation that has been determined by IDED to meet the criteria in 261—36.3(82GA,HF892).

261—36.3(82GA,HF892) Request for registration of a film, television, or video project. To be eligible to receive tax credits under this program, a request for registration shall be submitted to IDED. Requests for registration of projects must be received at least one week prior to the commencement of the production activities in the state. The Iowa film office at IDED will specify the form and content of the requests, which, at a minimum, shall document that the project:

36.3(1) Is a legitimate effort to produce an entire film, television, or video episode or a film, television, or video segment in the state.

36.3(2) Will include expenditures of at least $100,000 in the state and have an economic impact on the economy of the state or locality sufficient to justify assistance under the program.

36.3(3) Will further tourism, economic development, and population retention or growth in the state or locality.

36.3(4) Is intended to be widely distributed beyond the Midwest region.

36.3(5) Will not depict or describe any obscene material, as defined in Iowa Code section 728.1.

261—36.4(82GA,HF892) IDED list of registered film, television, or video projects.

36.4(1) Upon review of the information provided in an applicant's request for registration, if the request meets the criteria listed in rule 261—36.3(82GA,HF892), IDED will include the project on IDED's list of registered film, television, or video projects.

36.4(2) Projects included on IDED's list of registered film, television, or video projects will be eligible for the tax credits authorized by the Act.

261—36.5(82GA,HF892) Contract administration.

36.5(1) Notice of approval. Successful applicants will be notified in writing of approval of a request for registration, including any conditions and terms of the approval.

36.5(2) Contract required. The department shall prepare a contract, which includes, but is not limited to, a description of the project to be completed by the business; terms and conditions for receipt of tax credit benefits; and the repayment requirements or other penalties imposed in the event the recipient does not fulfill its obligations described in the contract.

36.5(3) Contract amendments. Projects approved under this program are limited to the descriptions and criteria stated on the application. Changes to a registered project must be reported in writing immediately to the Iowa film office along with a request for contract amendment. Upon review, the department will approve or deny the request for amendment. If the request is approved, a written contract amendment will be executed by the recipient and the department.

36.5(4) Default. Failure to complete the registered project in compliance with the descriptions and terms established in the application shall constitute a default and result in loss of tax credit benefits.

261—36.6(82GA,HF892) Benefits available. Approved projects are eligible to claim the following tax credit benefits:

1. Qualified expenditure tax credit.
2. Qualified investment tax credit.

261—36.7(82GA,HF892) Qualified expenditure tax credit.

36.7(1) Description.

a. For tax years beginning on or after January 1, 2007, a qualified expenditure tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for a portion of a taxpayer's qualified expenditures in a project registered under the program.

b. The tax credit shall equal 25 percent of the qualified expenditures on a project.

c. Under rule 261—36.7(82GA,HF892), an individual may claim a tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

d. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

e. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

36.7(2) Qualified expenditures. A qualified expenditure by a taxpayer is a payment to an Iowa resident or an Iowa-based business for the sale, rental, or furnishing of tangible personal property or for services directly related to the registered project including, but not limited to:

1. Aircraft.
2. Vehicles.
3. Equipment.
4. Materials.
5. Supplies.
6. Accounting.
7. Animals and animal care.
8. Artistic and design services.
9. Graphics.
10. Construction.
11. Data and information services.
12. Delivery and pickup services.
13. Labor and personnel. "Labor and personnel" does not include the director, producers, or cast members other than extras and stand-ins.
14. Lighting.
15. Makeup and hairdressing.
16. Film.
17. Music.
18. Photography.
19. Sound.
20. Video and related services.
21. Printing.
22. Research.
23. Site fees and rental.
24. Travel related to Iowa distant locations.
25. Trash removal and cleanup.
26. Wardrobe.

36.7(3) Approval of tax credit—process.

a. After verifying the eligibility for a tax credit under this program, IDED shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer's tax return.

b. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

c. A tax credit certificate issued may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than $1000 shall not be transferable. A maximum of two transfers shall be allowed.

d. A qualified expenditure tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

e. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24.

36.7(4) Approval of tax credit—reporting. All qualified expenditures made for a registered project must be submitted on Form Z, Schedule of Qualified Expenses, once the producer has completed the project. No other form of reporting will be accepted. No additional claims will be accepted once the Schedule of Qualified Expenses has been received by the Iowa film office.

261—36.8(82GA,HF892) Qualified investment tax credit.

36.8(1) Description.

a. For tax years beginning on or after January 1, 2007, an investment tax credit shall be allowed against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for a portion of a taxpayer's investment in a project registered under the program.

b. The tax credit shall equal 25 percent of the investment in the project. Under rule 261—36.8(82GA,HF892), an individual may claim a tax credit of a partnership, limited liability company, S corporation, estate, or trust electing to have income taxed directly to the individual. The amount claimed by the individual shall be based upon the pro rata share of the individual's earnings from the partnership, limited liability company, S corporation, estate, or trust.

c. Any tax credit in excess of the taxpayer's liability for the tax year may be credited to the tax liability for the following five years or until depleted, whichever is earlier.

d. A tax credit shall not be carried back to a tax year prior to the tax year in which the taxpayer claims the tax credit.

36.8(2) Approval of tax credit—process.

a. After verifying the eligibility for a tax credit, the Iowa department of economic development shall issue a film, television, and video project promotion program tax credit certificate to be attached to the taxpayer's tax return.

b. The tax credit certificate shall contain the taxpayer's name, address, tax identification number, the date of project completion, the amount of credit, other information required by the department of revenue, and a place for the name and tax identification number of a transferee and the amount of the tax credit being transferred.

c. A tax credit certificate issued may be transferred to any person or entity. Within 90 days of transfer, the transferee shall submit the transferred tax credit certificate to the department of revenue along with a statement containing the transferee's name, tax identification number, and address, and the denomination that each replacement tax credit certificate is to carry and any other information required by the department of revenue. Within 30 days of receiving the transferred tax credit certificate and the transferee's statement, the department of revenue shall issue one or more replacement tax credit certificates to the transferee. Each replacement tax credit certificate must contain the information required for the original tax credit certificate and must have the same expiration date that appeared in the transferred tax credit certificate. Tax credit certificate amounts of less than $1000 shall not be transferable. A maximum of two transfers shall be allowed.

d. An investment tax credit shall not be claimed by a transferee until a replacement tax credit certificate identifying the transferee as the proper holder has been issued.

e. The transferee may use the amount of the tax credit transferred against the taxes imposed in Iowa Code chapter 422, divisions II, III, and V, and in Iowa Code chapter 432, and against the moneys and credits tax imposed in Iowa Code section 533.24, for any tax year the original transferor could have claimed the tax credit. Any consideration received for the transfer of the tax credit shall not be included as income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24. Any consideration paid for the transfer of the tax credit shall not be deducted from income under Iowa Code chapter 422, divisions II, III, and V, under Iowa Code chapter 432, or against the moneys and credits tax imposed in Iowa Code section 533.24.

36.8(3) Limitation. The same taxpayer cannot claim both an expenditure tax credit and an investment tax credit on the same project.

36.8(4) Calculation. The total of all investment tax credits per project cannot exceed 25 percent of qualified expenditures on that project. This amount will be awarded proportionally to each individual's investment in the registered project.

261—36.9(82GA,HF892) Reduction of gross income due to payments received from qualified expenditures in registered projects.

36.9(1) For tax years beginning on or after January 1, 2007, a reduction in adjusted gross income is allowed for purposes of taxes imposed in Iowa Code chapter 422, divisions II and III, for payments received from the sale, rental, or furnishing of tangible personal property or services directly related to the production of a project registered under this chapter which meets the criteria of a qualified expenditure under rule 261—36.7(82GA,HF892).

36.9(2) A taxpayer claiming a qualified expenditure tax credit, a business in which such taxpayer has an equity interest, or a business in whose management such taxpayer participates is not eligible to receive the adjusted gross income reduction under this rule.

These rules are intended to implement 2007 Iowa Acts, House File 892.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 5980B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 239B.4 and 249A.4, the Department of Human Services amends Chapter 41, "Granting Assistance," and Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

In 2007 Iowa Acts, Senate File 254, section 6, the General Assembly directed the Department to provide a 58 percent work incentive disregard under the Family Investment Program (FIP). In 2007 Iowa Acts, House File 909, section 98, subsection (1), paragraph "b," the General Assembly also appropriated $9,337,435 to provide the same disregard for parents under the Family Medical Assistance Program (FMAP) and the Child Medical Assistance Program (CMAP). Eligibility in the FMAP and CMAP programs generally follows FIP income policies. FIP participants usually attain Medicaid eligibility through these coverage groups.

These amendments implement that legislation by changing the way the Department calculates countable income for FIP, FMAP, and CMAP. The amendments increase the work incentive disregard from 50 percent to 58 percent, in effect raising the income limits for working parents. The effective date of 2007 Iowa Acts, Senate File 254, is July 1, 2007. However, August 1, 2007, is the earliest date that data processing system changes can be put in place to implement the new calculation method.

These amendments also make technical changes to update the name of the report supporting the average statewide standard deduction for personal care services available to residential care facility residents in the Medically Needy program. The Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities has been renamed Compilation of Various Costs and Statistical Data. The report was previously released annually based on information from the prior fiscal year. The report is currently issued in January based on the averages from December only and is issued again in July based on the averages for the previous state fiscal year. The amendment clarifies that the personal care deduction will be based on the report that includes the costs for the entire fiscal year. There is no cost associated with this change.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations, since they confer a benefit on the people affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments June 13, 2007.

The Department finds that notice and public participation on the amendments changing the work incentive disregard are unnecessary because they implement legislative direction and are impracticable because the legislation takes effect on July 1, 2007. Notice on the amendment to subrule 75.1(3) is unnecessary because the amendment is merely a technical change. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit to FIP households and to parents and caretakers of children who receive Medicaid by counting less earned income toward the net income limit, resulting in a higher income threshold and, for FIP applicants, a higher FIP grant. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 5981B** to allow for public comment.

These amendments are intended to implement Iowa Code section 239B.7 as amended by 2007 Iowa Acts, Senate File 254, section 6, and Iowa Code section 249A.4.

These amendments shall become effective August 1, 2007.

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 subrule **41.27(1)** as follows:

Amend paragraph **"g,"** subparagraph **(1)**, as follows:

(1) Except as described in ~~the next~~ subparagraph *(2)*, the needs of any person who refuses to take all steps necessary to apply for and, if eligible, to accept other financial benefits shall be removed from the eligible group. The person ~~is~~ *remains* eligible for the ~~50 percent~~ work incentive ~~deduction~~ *disregard described* in paragraph 41.27(2)"c."

Amend paragraph **"j"** as follows:

j. Every person in the eligible group shall apply for and accept health or medical insurance when it is available at no cost ~~to the applicant or recipient,~~ or when the cost is paid by a third party, including the department of human services. The needs of any ~~individual~~ *person* who refuses to cooperate in applying for or accepting this insurance shall be removed from the eligible group. The ~~individual is~~ *person remains* eligible for the ~~50 percent~~ work incentive ~~deduction~~ *disregard described* in paragraph 41.27(2)"c."

ITEM 2. Amend subrule **41.27(2)**, paragraph **"c,"** as follows:

c. *Work incentive disregard.* After deducting the allowable work expense as defined in *paragraph* 41.27(2)"a" and income diversions as defined in subrules 41.27(4) and 41.27(8), ~~50~~ *the department shall disregard 58* percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each ~~individual~~ *person* whose income must be considered ~~is deducted~~ in determining eligibility and the amount of the assistance grant.

(1) The ~~50 percent~~ work incentive ~~deduction~~ *disregard* is not time-limited.

(2) Initial eligibility is determined without the application of the ~~50 percent~~ work incentive ~~deduction~~ *disregard* as described at *subparagraphs* 41.27(9)"a"(2) and (3).

ITEM 3. Amend subrule **41.27(8)** as follows:

Amend paragraph **"a,"** subparagraph **(1)**, as follows:

(1) A parent who is living in the home with the eligible child(ren) but whose needs are excluded from the eligible group is eligible for the ~~20 percent~~ earned income deduction~~,~~ *described at paragraph 41.27(2)"a,"* the ~~50 percent~~ work incentive ~~deduction~~ *disregard* described at *paragraph* 41.27(2)~~"a" and~~ "c," and diversions described at *subrule* 41.27(4)~~, and~~.

(2) The excluded parent shall be permitted to retain that part of the parent's income to meet the parent's needs as determined by the difference between the needs of the eligible group with the parent included and the needs of the eligible group with the parent excluded except as described at *subrule* 41.27(11).

(3) All remaining income of the *excluded* parent shall be applied against the needs of the eligible group.

Amend paragraph **"b,"** subparagraph **(6)**, as follows:

(6) The stepparent shall be allowed the ~~50 percent~~ work incentive ~~deduction~~ *disregard described at paragraph 41.27(2)"c"* from monthly earnings. The ~~deduction~~ *disregard* shall be applied to earnings that remain after all other deductions in *subparagraphs* 41.27(8)"b"(1) through (5) have been subtracted from the earnings. However, the ~~50 percent~~ work incentive ~~deduction~~ *disregard* is not allowed when determining initial eligibility as described at *subparagraphs* 41.27(9)"a"(2) and (3).

ITEM 4. Amend subrule **41.27(9)** as follows:

Amend paragraph **"a"** as follows:

Amend subparagraphs **(2)** and **(3)** as follows:

(2) When countable gross nonexempt earned and unearned income in the month of decision, or in any other month after assistance is approved, exceeds 185 percent of the standard of need for the eligible group, the application shall be rejected or the assistance grant canceled. Countable gross income means nonexempt gross income, as defined in rule 441—41.27(239B), without application of any disregards, deductions, or diversions. When the countable gross nonexempt earned and unearned income in the month of decision equals or is less than 185 percent of the standard of need for the eligible group, initial eligibility under the standard of need shall then be determined. Initial eligibility under the standard of need is determined without application of the ~~earned income~~ *work incentive* disregard as specified in *paragraph* 4l.27(2)"c." All other appropriate exemptions, deductions and diversions are applied. Countable income is then compared to the standard of need for the eligible group. When countable net earned and unearned income in the month of decision equals or exceeds the standard of need for the eligible group, the application shall be denied.

(3) When the countable net income in the month of ~~the~~ decision is less than the standard of need for the eligible group, the ~~earned income~~ *work incentive* disregard *described* in *paragraph* 41.27(2)"c" shall be applied when there is eligibility for this disregard. When countable net earned and unearned income in the month of decision, after application of

the ~~earned income~~ *work incentive* disregard ~~in 41.27(2)"c"~~ and all other appropriate exemptions, deductions, and diversions, equals or exceeds the payment standard for the eligible group, the application shall be denied.

When the countable net income in the month of decision is less than the payment standard for the eligible group, the ~~application shall be approved~~ *eligible group meets income requirements*. The amount of the family investment program grant shall be determined by subtracting countable net income in the month of decision from the payment standard for the eligible group, except as specified in *subparagraph* 41.27(9)"a"(4).

Rescind and reserve subparagraph **(7)**.

Amend paragraph **"b,"** subparagraph **(4)**, as follows:

(4) The ~~20 percent~~ earned income deduction for each wage earner~~,~~ as defined in *paragraph* 41.27(2)"a~~,~~" and the ~~50 percent~~ work incentive ~~deduction,~~ *disregard* as defined in *paragraph* 41.27(2)"c~~,~~" shall be allowed.

ITEM 5. Amend subrule **75.1(35)**, paragraph **"g,"** subparagraph **(2)**, numbered paragraph **"2,"** as follows:

2. An average statewide monthly standard deduction for the cost of medically necessary personal care services provided in a licensed residential care facility shall be allowed as a deduction for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eating, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facilities participating in the state supplementary assistance program for a 30.4-day month as computed in the ~~Unaudited~~ Compilation of ~~Cost~~ *Various Costs* and Statistical Data ~~for Residential Care Facilities~~ (Category: All; Type of Care: Residential *Care Facility*; Location: All; ~~and~~ Type of Control: All). The average statewide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months after the release of the ~~Unaudited~~ Compilation of ~~Cost~~ *Various Costs* and Statistical Data ~~for Residential Care Facilities~~ *for the previous fiscal year.*

ITEM 6. Amend subrule **75.57(2)**, paragraph **"c,"** as follows:

c. *Work incentive disregard.* After deducting the allowable work expenses as defined at paragraphs 75.57(2)"a" and "b" and income diversions as defined at ~~subrules~~ *subrule* 75.57(4) ~~and 75.57(8)~~, ~~50~~ *58* percent of the total of the remaining monthly nonexempt earned income, earned as an employee or the net profit from self-employment, of each ~~individual~~ *person* whose income must be considered is ~~deducted~~ *disregarded* in determining eligibility for the family medical assistance program (FMAP) and those FMAP-related coverage groups subject to the three-step process for determining initial eligibility as described at rule 441—75.57(249A).

(1) The ~~50 percent~~ work incentive ~~deduction~~ *disregard* is not time-limited.

(2) Initial eligibility under the first two steps of the three-step process is determined without the application of the ~~50 percent~~ work incentive ~~deduction~~ *disregard* as described at subparagraphs 75.57(9)"a"(2) and (3).

(3) ~~Individuals~~ *A person* who ~~are~~ *is* not eligible for Medicaid because ~~they have~~ *the person has* refused to cooperate in applying for or accepting benefits from other sources, in accordance with the provisions of rule 441—75.2(249A), 441—75.3(249A), or 441—75.21(249A), ~~are~~ *is* eligible for the ~~50 percent~~ work incentive ~~deduction~~ *disregard*.

ITEM 7. Amend subrule **75.57(8)** as follows:

Amend paragraph **"a"** as follows:

a. Treatment of income in excluded parent cases. A parent who is living in the home with the eligible children but who is not eligible for Medicaid is eligible for the 20 percent earned income deduction, child care expenses for children in the eligible group, the ~~50~~ *58* percent work incentive ~~deduction~~ *disregard* described at paragraphs 75.57(2)"a," "b," and "c," and diversions described at subrule 75.57(4). All remaining nonexempt income of the parent shall be applied against the needs of the eligible group.

Amend paragraph **"b,"** subparagraph **(6)**, as follows:

(6) The stepparent shall be allowed the ~~50~~ *58* percent work incentive ~~deduction~~ *disregard* from monthly earnings. The ~~deduction~~ *disregard* shall be applied to earnings that remain after all other deductions at subparagraphs 75.57(8)"b"(1) through (5) have been subtracted from the earnings. However, the ~~50 percent~~ work incentive ~~deduction~~ *disregard* is not allowed when determining initial eligibility as described at subparagraphs 75.57(9)"a"(2) and (3).

ITEM 8. Amend subrule **75.57(9)**, paragraph **"a,"** as follows:

Amend subparagraphs **(2)**, **(3)** and **(4)** as follows:

(2) *Test 1.* When countable gross nonexempt earned and unearned income exceeds 185 percent of the schedule of living costs (Test 1), as identified at subrule 75.58(2) for the eligible group, eligibility does not exist under any coverage group for which these income tests apply. Countable gross income means nonexempt gross income, as defined at rule 441—75.57(249A), without application of any disregards, deductions, or diversions.

(3) Test 2. When the countable gross nonexempt earned and unearned income equals or is less than 185 percent of the schedule of living costs for the eligible group, initial eligibility under the schedule of living costs (Test 2) shall then be determined. Initial eligibility under the schedule of living costs is determined without application of the ~~50~~ *58* percent ~~earned income~~ *work incentive* disregard as specified at paragraph 75.57(2)"c." All other appropriate exemptions, deductions and diversions are applied. Countable income is then compared to the schedule of ~~basic needs~~ *living costs* (Test ~~3~~ *2*) for the eligible group. When countable net earned and unearned income equals or exceeds the schedule of ~~basic needs~~ *living costs* for the eligible group, eligibility does not exist under any coverage group for which these income tests apply.

~~(3)~~ *(4) Test 3.* ~~When the countable net income is less than the schedule of living costs (Test 2) for the eligible group~~ *After application of Tests 1 and 2 for initial eligibility or of Test 1 for ongoing eligibility,* the ~~50~~ *58* percent earned income *work incentive* disregard at paragraph 75.57(2)"c" shall be applied when there is eligibility for this disregard. When countable net earned and unearned income, after application of the ~~earned income~~ *work incentive* disregard ~~at paragraph 75.57(2)"c"~~ and all other appropriate exemptions, deductions, and diversions, equals or exceeds the schedule of basic needs (Test 3) for the eligible group, eligibility does not exist under any coverage group for which these tests apply. When the countable net income is less than the ~~payment standard~~ *schedule of basic needs* for the eligible group, the ~~application shall be approved~~ *eligible group meets FMAP or CMAP income requirements*.

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~(4) The family circumstances shall be considered, based upon the anticipated circumstances during each month.~~

Rescind and reserve subparagraph **(7)**.

ITEM 9. Amend subrule 75.59(4) as follows:

75.59(4) Situations where parent's needs are excluded. In situations where the parent's needs are excluded but the parent's income and resources are considered in the eligibility determination (e.g., minor unmarried parent living with self-supporting parents), the excluded parent shall be allowed the earned income deduction, child care expenses and the ~~50 per cent~~ work incentive disregard as provided at paragraphs 75.57(2)"a," "b," and "c."

[Filed Emergency 6/13/07, effective 8/1/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 5982B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 217.6 and 2007 Iowa Acts, House File 896, the Department of Human Services amends Chapter 58, "Emergency Assistance," Iowa Administrative Code.

This amendment modifies the new program of state assistance for needy individuals who have disaster-related expenses or serious needs that cannot be met by other financial assistance. This program was originally implemented under the authority of 2007 Iowa Acts, Senate File 305, which authorized its operation during state fiscal year 2007. Legislation enacted in 2007 Iowa Acts, House File 896, creates new Iowa Code section 29C.20A, which gives standing authority for operation of the program. The language of the new legislation supports the program requirements previously adopted.

This legislation provides for reimbursement for repair or replacement of personal property, home repairs, and temporary housing for families whose income is less than 130 percent of the federal poverty level for a household of that size. The amount of assistance available to a family in a single disaster is capped at 25 percent of the income limit for a one-person household (currently $3,319).

The Department administers the Disaster Reimbursement Grant Program jointly with the Homeland Security and Emergency Management Division of the Department of Public Defense and local emergency management coordinators who are appointed by local emergency management commissions. Emergency management coordinators will receive applications from affected households and will certify each household's residence and disaster-related expenses. Department staff will determine eligibility, issue notices and payments, and handle any appeals.

The amendments implementing 2007 Iowa Acts, Senate File 305, were previously Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5784B**. Notice of Intended Action to solicit comments on those amendments was published simultaneously in the Iowa Administrative Bulletin as **ARC 5785B**. The Department received no comments on the Notice of Intended Action. In this filing, the Department has made the following changes to those amendments:

- Items 1 and 3 in the initial filings, changing the chapter title and preamble and amending Division II of Chapter 58, have been omitted from this filing, as further rule-making action is unnecessary.
- Division I of the chapter has been revised to update the parenthetical implementation statutes for each rule and the implementation sentence at the end of the division to reflect the new legislation.
- Language in paragraph 58.3(2)"e" has been clarified to indicate that an applicant must agree to refund any part of the grant that is duplicated by other assistance. Previous language indicated the entire grant would have to be refunded.
- Rule 58.8(29C) has been amended to clarify the relationship between the state Disaster Reimbursement Grant Program and the Individuals and Households/Other Needs Assistance Program authorized by the federal government, which is also administered by the Department. The state program is intended to meet needs that are not covered under other programs, so offering assistance through both programs simultaneously is not appropriate.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on June 13, 2007.

The Department finds that this amendment confers a benefit on the public by maintaining continuous authority for operating the program. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is intended to implement Iowa Code chapter 29C as amended by 2007 Iowa Acts, House File 896.

This amendment became effective July 1, 2007.

The following amendment is adopted.

Amend 441—Chapter 58, Division I, as follows:

DIVISION I

DISASTER REIMBURSEMENT GRANT PROGRAM

PREAMBLE

This division implements a state program of financial assistance to meet disaster-related expenses, food-related costs, or serious needs of individuals or families who are adversely affected by a state-declared disaster emergency. The program is intended to meet needs that cannot be met by other means of financial assistance.

441—58.1(~~82GA,SF305~~ *29C*) Definitions.

"Emergency management coordinator" means the person appointed by the local emergency management commission pursuant to Iowa Code sections 29C.9 and 29C.10 to be responsible for development of the countywide emergency operations plan and for coordination and assistance to government officials when an emergency or disaster occurs.

"Household" means all adults and children who lived in the pre-disaster residence who request assistance, as well as any persons, such as infants, spouses, or part-time residents, who were not present at the time of the disaster but who are expected to return during the assistance period.

"Necessary expense" means the cost associated with acquiring an item or items, obtaining a service, or paying for any other activity that meets a serious need.

"Safe, sanitary, and secure" means free from disaster-related health hazards.

"Serious need" means the item or service is essential to the household to prevent, mitigate, or overcome a disaster-related hardship, injury, or adverse condition.

441—58.2(~~82GA,SF305~~ *29C*) Program implementation. The disaster reimbursement grant program shall be implemented when the governor issues a declaration of a state of disaster emergency and shall be in effect only in those counties named in the declaration. Assistance shall be provided for a period not to exceed 120 days from the date of declaration.

441—58.3(~~82GA,SF305~~ *29C*) Application for assistance. To request reimbursement for disaster-related expenses, the household shall complete Form 470-4448, Individual Disaster Assistance Application, and submit it within 45 days of the disaster declaration to the county emergency management coordinator along with receipts for the claimed expenses.

58.3(1) Application forms are available from county emergency management coordinators and local offices of the department of human services, as well as the Internet Web site of the department at www.dhs.iowa.gov.

58.3(2) The application includes:

a. A declaration of the household's annual income.

b. A release of confidential information to personnel involved in administering the program.

c. A certification of the accuracy of the information provided.

d. An assurance that the household had no insurance coverage for claimed items.

e. A commitment to refund any *part of a* grant awarded that is duplicated by insurance or by any other assistance program, such as but not limited to local community development groups and charities, the Small Business Administration, or the Federal Emergency Management Administration.

441—58.4(~~82GA,SF305~~ *29C*) Eligibility criteria. To be eligible for assistance, an applicant household must meet all of the following conditions:

58.4(1) The household's residence was located in the area identified in the disaster declaration during the designated incident period and the household verifies occupancy at that residence.

58.4(2) Household members are citizens of the United States or are legally residing in the United States.

58.4(3) The household's self-declared annual income is less than 130 percent of the federal poverty level for a household of that size.

a. Poverty guidelines are updated annually.

b. All income available to the household is counted, including wages, child support, interest from investments or bank accounts, social security benefits, and retirement income.

58.4(4) The household has disaster-related expenses or serious needs that are not covered by insurance.

58.4(5) The household has not previously received assistance from this program or another program for the same loss.

441—58.5(~~82GA,SF305~~ *29C*) Eligible categories of assistance. The maximum assistance available to a household in a single disaster is 25 percent of the annual income limit for a household of one person. Reimbursement is available under the program for the following disaster-related expenses:

58.5(1) Reimbursement may be issued for personal property, including repair or replacement of the following items, based on the item's condition:

a. Kitchen items, up to a maximum of $560, including:

(1) Equipment and furnishings, up to a maximum of $560.

(2) Food, up to a maximum of $50 for one person plus $25 for each additional person in the household.

b. Personal hygiene items, up to a maximum of $30 per person and $150 per household.

c. Clothing and bedroom furnishings, up to a maximum of $875, including:

(1) Mattress, box spring, frame, and storage containers, up to a maximum of $250 per person.

(2) Clothing, up to a maximum of $145 per person.

d. Other items, including:

(1) Infant car seat, up to a maximum of $40.

(2) Dehumidifier, up to a maximum of $150.

(3) Sump pump (in a flood event only), up to a maximum of $200 installed.

(4) Electrical or mechanical repairs, up to a maximum of $300.

(5) Water heater, up to a maximum of $425 installed.

(6) Vehicle repair, up to a maximum of $500.

(7) Heating and air-conditioning systems, up to a maximum of $2,100 installed. Air conditioning is covered only with proof of medical necessity.

58.5(2) Reimbursement may be issued for home repair as needed to make the home safe, sanitary, and secure, up to a maximum of $1,000. Assistance will be denied if preexisting conditions are the cause of the damage. Reimbursement may be authorized for the repair of:

a. Structural components, such as the foundation and roof.

b. Floors, walls, ceilings, doors, windows, and carpeting of essential interior living space that was occupied at the time of the disaster.

58.5(3) Reimbursement may be issued for temporary housing assistance, up to a limit of $50 per day, for lodging at a licensed establishment, such as a hotel or motel, if the household's home is destroyed, uninhabitable, inaccessible, or unavailable to the household.

441—58.6(~~82GA,SF305~~ *29C*) Eligibility determination and payment.

58.6(1) The county emergency management coordinator or designee shall:

a. Certify the household's residence and disaster-related expenses; and

b. Submit the household's application form to the DHS Division of Results-Based Accountability, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. The envelope shall be marked "DRGP application."

58.6(2) Designated disaster staff in the department of human services shall:

a. Review the application.

b. Determine eligibility and the amount of payment.

c. Notify the applicant household of the eligibility decision.

d. Authorize payment to an eligible household.

441—58.7(~~82GA,SF305~~ *29C*) Contested cases.

58.7(1) Reconsideration. The household may request reconsideration of the department's decisions regarding eligibility and the amount of reimbursement awarded.

HUMAN SERVICES DEPARTMENT[441](cont'd)

a. To request reconsideration, the household shall submit a written request to the DHS Division of Results-Based Accountability, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 15 days of the date of the department's letter notifying the household of its decision.

b. The department shall review any additional evidence or documentation submitted and issue a reconsideration decision within 15 days of receipt of the request.

58.7(2) Appeal. The household may appeal the department's reconsideration decision according to procedures in 441—Chapter 7.

a. Appeals must be submitted in writing, either on Form 470-0487 or 470-0487(S), Appeal and Request for Hearing, or in any form that provides comparable information, to the DHS Appeals Section, 1305 East Walnut Street, Des Moines, Iowa 50319-0114, within 15 days of the date of the reconsideration decision.

b. A written appeal is filed on the date the envelope sent to the department is postmarked or, when the postmarked envelope is not available, on the date the appeal is stamped received by the agency.

441—58.8(~~82GA,SF305~~ *29C*) Discontinuance of program.

58.8(1) *Deferral to federal assistance. Upon declaration of a disaster by the President of the United States under the Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. Sections 5121 to 5206, the state disaster reimbursement grant program administered under this chapter shall be discontinued in the geographic area included in the presidential declaration. Upon issuance of the presidential declaration:*

a. No more applications shall be accepted.

b. Any applications that are in process but are not yet approved shall be denied.

c. Persons seeking assistance under this program shall be advised to apply for federal disaster assistance.

58.8(2) *Exhaustion of funds.* The program shall be discontinued when funds available for the program have been exhausted. To ensure equitable treatment, applications for assistance shall be approved on a first-come, first-served basis until all funds have been depleted. "First-come, first-served" is determined by the date the application is approved for payment.

~~**58.8(1)** *a.*~~ Partial payment. Because funds are limited, applications may be approved for less than the amount requested. Payment cannot be approved beyond the amount of funds available.

~~**58.8(2)** *b.*~~ Reserved funds. A portion of allocated funds shall be reserved for final appeal decisions reversing the department's denial that are received after funds for the program have been awarded.

~~**58.8(3)** *c.*~~ Untimely applications. Applications received after the program is discontinued shall be denied.

These rules are intended to implement *Iowa Code chapter 29C as amended by* 2007 Iowa Acts, ~~Senate~~ *House* File ~~305~~ *896*.

441—58.9 to **58.20** Reserved.

[Filed Emergency After Notice 6/13/07, effective 7/1/07]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 5986B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments update the description of the methodology used in determining the Medicaid eligibility and financial participation of a married person residing in a medical institution (an "institutionalized spouse") who has a spouse who does not live in an institution (a "community spouse"). The amendments replace specific dollar amounts with references to the maximum amounts allowed by federal Medicaid law or regulations. The Medicare Catastrophic Coverage Act provides that these amounts are indexed for inflation according to the consumer price index and are updated annually by the Centers for Medicare and Medicaid Services.

Previously, the Department has included the specific dollar amounts in the rules and has amended the rules each year. Under these amendments, future increases in the amounts allowed will not require further amendments to the Department's rules. The specific dollar amounts will be published in the Department's Employees Manual and on its Web site.

The maximum amount of the couple's resources that may be attributed to the community spouse for 2007 increased from $99,540 to $101,640. This amount is set by Section 1924(f)(2)(A)(i) of the Social Security Act (42 U.S.C. § 1396r-5(f)(2)(A)(i)). This limit affects the amount of resources that is designated as a community spouse resource allowance and therefore is not counted as available to the institutionalized spouse. An increase in the maximum effectively decreases the amount of resources counted when determining the institutionalized spouse's financial eligibility for Medicaid.

The maximum monthly maintenance needs allowance for the community spouse for 2007 increased from $2,488.50 to $2,541.00. This amount is set by Section 1924(d)(3)(C) of the Social Security Act (42 U.S.C. § 1396r-5(d)(3)(C)). This amount affects the amount of the Medicaid member's income that is considered available to contribute toward the cost of care in the medical facility. This change increases the maintenance needs allowance and decreases the amount of the Medicaid member's income that is considered available to contribute toward the cost of care in the medical facility.

These amendments do not provide for waivers in specified situations, since these amounts are set at the maximums allowed by federal law.

The Council on Human Services adopted these amendments June 13, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because these amendments merely implement established methodology in federal and state law and federal regulations.

The Department finds that these amendments confer a benefit on the public by making cost-of-living adjustments for treatment of resources and income of couples with one spouse in a medical institution. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments should be waived.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments are also published herein under Notice of Intended Action as **ARC 5987B** to allow for public comment.

These amendments are intended to implement Iowa Code section 249A.4.

These amendments became effective July 1, 2007.

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 subrule **75.5(3)**, paragraph **"d,"** introductory paragraph, as follows:

d. Method of attribution. The resources attributed to the institutionalized spouse shall be one-half of the documented resources of both the institutionalized *spouse* and *the* community spouse as of the first moment of the first day of the month of the spouse's first entry to a medical facility. However, if one-half of the resources is less than $24,000, then $24,000 shall be protected for the community spouse. Also, when one-half of the resources attributed to the community spouse exceeds ~~$99,540~~ *the maximum amount allowed as a community spouse resource allowance by Section 1924(f)(2)(A)(i) of the Social Security Act (42 U.S.C. § 1396r-5(f)(2)(A)(i))*, the amount over ~~$99,540~~ *the maximum* shall be attributed to the institutionalized spouse. (The maximum limit ~~shall be~~ *is* indexed annually according to the consumer price index.)

ITEM 2. Amend subrule **75.16(2)**, paragraph **"d,"** subparagraph **(3)**, as follows:

(3) Needs of spouse. The maintenance needs of the spouse shall be determined by subtracting the spouse's gross income from ~~$2,488.50~~ *the maximum amount allowed as a minimum monthly maintenance needs allowance for the community spouse by Section 1924(d)(3)(C) of the Social Security Act (42 U.S.C. § 1396r-5(d)(3)(C)*. (This amount ~~shall be~~ *is* indexed for inflation annually according to the consumer price index.)

However, if either spouse established through the appeal process that the community spouse needs income above the ~~$2,488.50~~ *minimum monthly maintenance needs allowance*, due to exceptional circumstances resulting in significant financial duress, an amount adequate to provide additional income as is necessary shall be substituted.

Also, if a court has entered an order against an institutionalized spouse for monthly income to support the community spouse, then the community spouse income allowance shall not be less than this amount.

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ARC 5988B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment adds exemptions to the federal requirements for verifying citizenship and identity in order to receive Medicaid that were established by the Deficit Reduction Act of 2005. Federal legislation in the Tax Relief and Health Care Act of 2006 (Public Law 109-432, passed in December 2006) exempts children who are receiving federally funded foster care, adoption subsidy, or child welfare services and people receiving Medicare, Social Security disability, or Supplemental Security Income benefits from the verification requirement. This amendment incorporates those exemptions into Iowa rules.

This amendment does not provide for waivers in specified situations because it removes a restriction on the persons affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments June 13, 2007.

The Department finds that notice and public participation are unnecessary because the amendment merely implements exceptions to federal requirements created by federal law. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(2).

The Department finds that this amendment removes a restriction on the people affected by simplifying the application process. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 5989B** to allow for public comment.

This amendment is intended to implement Iowa Code section 249A.3.

This amendment became effective July 1, 2007.

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.

Amend subrule **75.11(2)** as follows:

Amend paragraph **"c"** as follows:

c. ~~Effective July 1, 2006,~~ *Except as provided in paragraph "f,"* applicants *or members* who attest that they are citizens or nationals of the United States shall present satisfactory documentation of citizenship or nationality ~~upon application for Medicaid~~ as defined in paragraph "d" or "e."

~~(1) Persons receiving Medicaid benefits as of July 1, 2006, shall present this documentation at the next redetermination of their Medicaid eligibility.~~

~~(2)~~ An applicant or ~~recipient~~ *member* shall have a reasonable period to obtain and provide proof of citizenship or nationality.

(1) For the purposes of this requirement, the "reasonable period" begins on the date a written request to obtain and provide proof is issued to an applicant or ~~recipient~~ *member* and

continues to the date when the proof is provided or the date when the department establishes that the applicant or ~~recipient~~ *member* is no longer making a good-faith effort to obtain the proof, whichever is earlier.

(2) Medicaid eligibility shall continue for ~~recipients~~ *members* during the reasonable period. Medicaid shall not be approved for applicants until acceptable documentary evidence is provided.

(3) A reference to a form in paragraph "d" or "e" includes any successor form.

Adopt the following **new** paragraph **"f"**:

f. A person who attests to status as a citizen or national of the United States is not required to present documentation of citizenship or nationality for Medicaid eligibility if any of the following circumstances apply:

(1) The person is entitled to or enrolled for benefits under any part of Title XVIII of the federal Social Security Act (Medicare).

(2) The person is receiving federal social security disability insurance (SSDI) benefits under Title II of the federal Social Security Act, Section 223 or 202, based on disability (as defined in Section 223(d)).

(3) The person is receiving supplemental security income (SSI) benefits under Title XVI of the federal Social Security Act.

(4) The person is a child in foster care who is eligible for child welfare services funded under Part B of Title IV of the federal Social Security Act.

(5) The person is eligible for adoption or foster care assistance funded under Part E of Title IV of the federal Social Security Act; or

(6) The person has previously presented satisfactory documentary evidence of citizenship or nationality, as specified by the United States Secretary of Health and Human Services.

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ARC 6019B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2007 Iowa Acts, House File 909, section 8(6), the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

This amendment revises Medicaid policy regarding personal needs allowances for members who reside in a medical institution. Legislation passed in 2006 allowed Medicaid members in nursing facilities to retain $50 of their income for a personal needs allowance, instead of $30. Legislation in 2007 Iowa Acts, House File 909, section 44, directs the Department to make the same increase in the personal needs allowance for residents of intermediate care facilities for persons with mental retardation (ICFs/MR), intermediate care facilities for persons with mental illness (ICFs/MI), and psychiatric medical institutions for children (PMICs).

The legislation allows the state to supplement the income of people who have less than $50 monthly income, to bring their income up to $50, but only if specifically appropriated. For state fiscal year 2008, this supplemental payment is funded only for residents of nursing facilities.

This amendment does not provide for waivers in specified situations. There are other provisions for excluding income from client participation to meet other needs, such as medical expenses not otherwise covered or maintenance needs of a spouse or dependents. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment June 13, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because this amendment merely implements state law and are impracticable because the effective date of legislation increasing the personal needs allowance to $50 does not allow time for notice and public comment.

The Department finds that this amendment confers a benefit on residents of medical institutions by raising their personal needs allowance, giving more of their income for their personal use. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 6021B** to allow for public comment.

This amendment is intended to implement Iowa Code section 249A.30A as amended by 2007 Iowa Acts, House File 909, section 44.

This amendment became effective July 1, 2007.

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.

Amend subrule **75.16(2),** paragraph **"a,"** as follows:

Amend the introductory paragraph as follows:

a. Ongoing personal needs allowance. All clients shall retain ~~$30~~ *$50* of their monthly income for a personal needs allowance.

Rescind and reserve subparagraph **(3)**.

[Filed Emergency 6/15/07, effective 7/1/07]
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ARC 6023B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2007 Iowa Acts, House File 909, section 8(6), the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

HUMAN SERVICES DEPARTMENT[441](cont'd)

This amendment revises Medicaid policy regarding personal needs allowances for members who reside in a long-term care facility. Currently, Iowa allows residents of such facilities who receive a pension from the U.S. Department of Veterans Affairs to keep $90 of the pension after the month of entry to the facility in place of the personal needs allowance. The Centers for Medicare and Medicaid Services has informed the Department that 38 U.S.C. Section 5503 prohibits states from using a veteran's pension income to reduce Medicaid payment to the facility. Therefore, this amendment allows a veteran to retain the standard personal needs allowance in addition to the $90 from the veteran's pension.

This amendment does not provide for waivers in specified situations, since the change benefits the people affected, and the Department does not have the authority to waive federal law.

The Council on Human Services adopted this amendment June 13, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because this amendment merely implements federal law. Legislation at 2007 Iowa Acts, House File 909, section 8(6), allows the Department to adopt emergency rules to comply with federal requirements.

The Department finds that this amendment confers a benefit on residents of medical institutions who receive such pensions by raising their personal needs allowance, giving more of their income for their personal use. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 6024B** to allow for public comment.

This amendment is intended to implement Iowa Code section 249A.30A as amended by 2007 Iowa Acts, House File 909, section 44, and 38 United States Code Section 5503.

This amendment became effective July 1, 2007.

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.

Amend subrule **75.16(2)**, paragraph **"a,"** subparagraph **(1)**, as follows:

(1) If the client is a veteran or a surviving spouse of a veteran who receives a ~~Veterans' Administration~~ pension subject to limitation of $90 after the month of entry pursuant to 38 U.S.C. Section ~~3203(f)(2)~~ *5503*, the veteran or the surviving spouse of a veteran shall retain $90 from the veteran's pension ~~for the client's personal needs allowance~~ beginning the month after entry to a medical institution. The $90 allowance from a veteran's pension is in ~~lieu of~~ *addition to* the ~~$30~~ *$50* allowance from any *other* income~~, not in addition thereto~~.

[Filed Emergency 6/15/07, effective 7/1/07]
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ARC 5990B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments publish the Department's annual updates of the statewide average cost of nursing facility services to a private-pay resident and the statewide average charges or maximum Medicaid rate for various levels of institutional care.

The statewide average cost of nursing facility services to a private-pay resident is determined by a survey of facilities and is used to determine the period of ineligibility when a person transfers assets for less than market value. The monthly average cost has increased from $4,021.31 to $4,173.92. Since the amount transferred is divided by this cost to determine the number of months of ineligibility for nursing facility care and other long-term care services, the resulting periods of ineligibility will be slightly shorter.

Iowa Code chapter 633C requires the Department to determine and publish the statewide average charges or maximum Medicaid rate for various levels of institutional care, which are used to regulate the disposition of the income of a medical assistance income (Miller-type) trust. A Miller-type trust allows a person whose income is above Medicaid limits but is less than the cost of care in a medical institution to attain eligibility by depositing the income in a trust. An increase in the average charge allows more people to qualify for Medicaid.

Changes in the average charge or maximum figures are as follows:

- Nursing facility care: an increase to $3,737 per month (previously $3,733). (This figure is based on data from freestanding facilities only, since the cost of special care is considered separately.)
- ICF/MR care: an increase to $15,124 per month (previously $12,900).
- Mental health institute care: an increase to $16,451 per month (previously $14,852).
- Care in a psychiatric medical institution for children: a decrease to $4,725 per month (previously $5,035).

These amendments do not provide for waivers in specified situations since the basis for the figures is set by statute.

The Council on Human Services adopted these amendments on June 13, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because the Department has no discretion in setting these amounts.

The Department finds that these amendments confer a benefit on the public by carrying out the Department's statutory responsibility to make the specific amounts for the thresholds referenced in the statute available to the public. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are intended to implement Iowa Code section 249A.4 and Iowa Code chapter 633C.

These amendments became effective July 1, 2007.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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 subrule 75.23(3) as follows:

75.23(3) Period of ineligibility. The number of months of ineligibility shall be equal to the total cumulative uncompensated value of all assets transferred by the individual (or the individual's spouse) on or after the look-back date specified in 75.23(2), divided by the statewide average private-pay rate for nursing facility services at the time of application. The department shall determine the average statewide cost to a private-pay resident for nursing facilities and update the cost annually. For the period from July 1, ~~2006~~ *2007*, through June 30, ~~2007~~ *2008*, this average statewide cost shall be ~~$4,021.31~~ *$4,173.92* per month or ~~$132.28~~ *$137.30* per day.

ITEM 2. Amend subrule **75.24(3)**, paragraph **"b,"** first unnumbered paragraph and subparagraphs **(1)**, **(4)**, **(5)**, and **(6)**, as follows:

For disposition of trust amounts pursuant to Iowa Code sections 633.707 to 633.711, the average statewide charges and Medicaid rates for the period from July 1, ~~2006~~ *2007*, to June 30, ~~2007~~ *2008*, shall be as follows:

(1) The average statewide charge to a private-pay resident of a nursing facility is ~~$3,733~~ *$3,737* per month.

(4) The maximum statewide Medicaid rate for a resident of an intermediate care facility for the mentally retarded is ~~$12,900~~ *$15,124* per month.

(5) The average statewide charge to a resident of a mental health institute is ~~$14,852~~ *$16,451* per month.

(6) The average statewide charge to a private-pay resident of a psychiatric medical institution for children is ~~$5,035~~ *$4,725* per month.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6009B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 108, "Licensing and Regulation of Child-Placing Agencies," Chapter 113, "Licensing and Regulation of Foster Family Homes," and Chapter 200, "Adoption Services," Iowa Administrative Code.

These amendments require a person applying for a foster parent license or for approval for adoption to be fingerprinted for a national criminal history check. The amendments implement the requirements of the Adam Walsh Child Protection and Safety Act of 2006 (Public Law 109-248), which amends Section 471(a)(20)(C)(i) of the Social Security Act.

Public Law 109-248 requires states to conduct fingerprint-based checks with the National Crime Information Database for prospective foster and adoptive parents and adult members of their households as a condition of receiving federal foster care and adoption assistance funds. 2007 Iowa Acts, Senate File 503, section 12, amends Iowa Code section 237.8(2)"a" to require a person applying for a foster parent license to be fingerprinted for a national criminal history check.

The fingerprints will be submitted to the Department of Public Safety for submission to the Federal Bureau of Investigation in the U.S. Department of Justice for a check against national crime information databases. The Department of Human Services is responsible for the cost of the criminal history check.

The fingerprint checks are in addition to the record checks currently completed by the Department. If the criminal and child abuse record checks have been completed and the person does not have a record of crime or founded abuse, or the Department's evaluation of the record has determined that prohibition of the person's approval is not warranted, the person may be provisionally approved pending the outcome of the fingerprint-based criminal history check.

These amendments do not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments June 13, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are impracticable because there is insufficient time to obtain public comment before the July 1, 2007, effective date of 2007 Iowa Acts, Senate File 503, section 12.

The Department finds that these amendments confer a benefit on children being placed with foster or adoptive parents by ensuring safer placements, as the fingerprinting allows a national background check which is more comprehensive than current state criminal record checks. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 6012B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 238 and 600 and Iowa Code section 237.8(2) as amended by 2007 Iowa Acts, Senate File 503, section 12.

These amendments became effective July 1, 2007.

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 subrule **108.8(1)**, paragraph **"c,"** by rescinding subparagraph **(13)** and adopting the following **new** subparagraph in lieu thereof:

(13) Record checks. The licensed child-placing agency shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The licensed child-placing agency shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. Each person subject to record checks shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in

completing required record checks, including fingerprinting. Any criminal or abuse records discovered shall be evaluated according to the procedures in rule 441—113.13(237).

ITEM 2. Amend rule 441—113.13(237), introductory paragraph, as follows:

441—113.13(237) Record checks. The department shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have any founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. *Each person subject to record checks shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.*

ITEM 3. Amend subrule **200.4(1)**, paragraph **"b,"** introductory paragraph, as follows:

b. Record checks. The department shall submit record checks for each applicant and for anyone who is 14 years of age or older living in the home of the applicant to determine whether they have founded child abuse reports or criminal convictions or have been placed on the sex offender registry. The department shall use Form 470-0643, Request for Child Abuse Information, and Form 595-1396, DHS Criminal History Record Check, Form B, for this purpose. *Each person subject to record checks shall also be fingerprinted for a national criminal history check. The department's contractor for the recruitment and retention of resource families shall assist applicants in completing required record checks, including fingerprinting.*

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 5992B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6 and 2007 Iowa Acts, House File 909, section 31(13), the Department of Human Services amends Chapter 150, "Purchase of Service," Chapter 156, "Payments for Foster Care and Foster Parent Training," and Chapter 185, "Rehabilitative Treatment Services," Iowa Administrative Code.

These amendments implement the following changes for service providers:

- A 3 percent across-the-board increase for social service providers is implemented as directed by 2007 Iowa Acts, House File 909, section 31(5). This increase affects adoption services, supervised apartment living services, and shelter care. The increase will be applied to reimbursement rates in effect on June 30, 2007, or to the provider's actual and allowable cost for each service plus inflation, whichever is less. (The amendments eliminate references to adoptive home studies, home study updates, and family planning services, which are no longer available through purchase of service contracts. Notice of Intended Action on the family planning changes was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5875B**.)
- The basic reimbursement rates for foster family care and, by reference, the maximum payments for foster care supervised apartment living, adoption maintenance subsidy, and guardianship subsidy are increased as directed by 2007 Iowa Acts, House File 909, section 31(4). With this increase, the rates are restored to 65 percent of the USDA estimate of the cost to raise a child in 2006, in compliance with Iowa Code section 234.38.
- The rule regarding shelter contracts is revised to maintain the statewide availability of a daily average of 273 guaranteed emergency juvenile shelter care beds during the fiscal year beginning July 1, 2007, as directed by 2007 Iowa Acts, House File 909, section 18(7).
- A 3 percent cost-of-living adjustment to reimbursement rates for family-centered supportive services and foster care services is implemented as directed by 2007 Iowa Acts, House File 909, section 31(6). Most increases will be applied to a provider's negotiated rate in effect on June 30, 2007. For family-centered community resource procurement, the fixed fee is increased by 3 percent. (The amendment eliminates references to the relative home study, as that service is no longer purchased under an RTSS contract, as referenced in **ARC 5937B**, published in the Iowa Administrative Bulletin on June 6, 2007.)

These amendments do not provide for waivers in specified situations, since a rate increase benefits the providers affected. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments June 13, 2007.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary and impracticable because these amendments implement 2007 Iowa Acts, House File 909, section 31(13), which authorizes the Department to adopt rules without notice and public participation and requires the increases to be effective July 1, 2007.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived, as authorized by 2007 Iowa Acts, House File 909, section 31(13).

These amendments are also published herein under Notice of Intended Action as **ARC 5993B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 234.6, 234.35, and 234.38 and 2007 Iowa Acts, House File 909, section 31.

These amendments became effective July 1, 2007.

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 subrule **150.3(5)**, paragraph **"p,"** as follows:

p. Rate limits. Interruptions in service programs will not affect the rate. If an agency assumes the delivery of service from another agency, the rate shall remain the same as for the former agency.

(1) The combined service and maintenance reimbursement rate paid to a shelter care provider shall be based on the

HUMAN SERVICES DEPARTMENT[441](cont'd)

financial and statistical report submitted to the department. For the fiscal year beginning July 1, ~~2006~~ *2007*, the maximum reimbursement rate shall be ~~$88.79~~ *$91.45* per day, based on a 365-day year. If the department reimburses the provider at less than the maximum rate, the department shall adjust the provider's reimbursement rate to the provider's actual and allowable cost plus the inflation factor or to the maximum reimbursement rate, whichever is less.

(2) For the fiscal year beginning July 1, ~~2006~~ *2007*, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption, shelter care, ~~family planning,~~ and supervised apartment living) shall be increased to 3 percent over the rates in effect on June 30, ~~2006~~ *2007*, or increased to the provider's actual and allowable cost plus inflation, whichever is less. The rates may also be adjusted under any of the following circumstances:

1. If a new service was added after June 30, ~~2006~~ *2007*, the initial reimbursement rate for the service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

For adoption, the only time a provider shall be considered to be offering a new service is if the provider adds ~~the adoptive home study, the adoptive home study update,~~ placement ~~services,~~ or postplacement services for the first time. Preparation of the child, preparation of the family and preplacement visits are components of the services listed above.

For shelter care, if the provider is currently offering shelter care under social services contract, the only time the provider shall be considered to be offering a new service is if the provider adds a service other than shelter care.

~~For family planning, the only time the provider shall be considered to be offering a new service is when a new unit of service is added by administrative rule.~~

For supervised apartment living, the only time a provider shall be considered to be offering a new service is when the agency adds a cluster site or a scattered site for the first time. If, for example, the agency has a supervised apartment living cluster site, the addition of a new site does not constitute a new service.

If the department defines, in administrative rule, a new service as a social service that may be purchased, this shall constitute a new service for purposes of establishment of a rate. Once the rate for the new service is established for a provider, the rate will be subject to any limitations established by administrative rule or law.

2. No change.

ITEM 2. Amend subrule 156.6(1) as follows:

156.6(1) Basic rate. A monthly payment for care in a foster family home licensed in Iowa shall be made to the foster family based on the following schedule:

Age of child	Daily rate
0 through 5	~~$15.31~~ *$15.89*
6 through 11	~~$15.99~~ *$16.54*
12 through 15	~~$17.57~~ *$18.16*
16 and over	~~$17.73~~ *$18.37*

ITEM 3. Amend subrule **156.11(3)**, paragraph **"c,"** as follows:

c. Shelter contracts for the state fiscal year beginning July 1, ~~2006~~ *2007*, shall provide for the statewide availability of a daily average of 273 guaranteed emergency juvenile shelter care beds during the fiscal year.

ITEM 4. Amend rule 441—185.112(234) as follows:

Amend subrule **185.112(1)**, paragraph **"k,"** as follows:

k. Once a negotiated rate is established based on the provisions of this subrule, it shall not be changed or renegotiated during the period of this rule except in the following circumstances:

(1) By mutual consent of the provider and the service area manager of the host area based upon the factors delineated at paragraph 185.112(1)"f," except that rates shall not be changed or renegotiated for the period of July 1, 2000, through June 30, ~~2007~~ *2008*.

(2) In accordance with paragraph 185.112(6)"b," except that rates shall not be changed or renegotiated for services not assumed by a new provider for the period of July 1, 2000, through June 30, ~~2007~~ *2008*.

(3) Rates may be changed when funds are appropriated for an across-the-board increase. A 3 percent cost-of-living adjustment will be applied to those rates in effect as of June 30, ~~2006~~ *2007*.

Amend subrule **185.112(14)** as follows:

Rescind and reserve paragraph **"c."**

Amend paragraph **"d"** as follows:

d. Community resource procurement. The rate for community resource procurement services as described in 441—subrules 182.2(7) and 182.8(1) is ~~$10.61~~ *$10.93* per unit of service.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 5996B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

These amendments allow the use of a claim form specifically designed for Child Care Assistance as an alternative to the generic claim form that is used for various Department programs. Legislation found in 2007 Iowa Acts, Senate File 601, section 99, directs the Department to allow child care providers to bill on either a biweekly or a monthly basis, to remit payment within ten business days of receiving a bill, and to notify the provider of any errors in the bill within five business days of its receipt. The Department believes that use of a simplified claim form that is easier for providers to understand and that offers clear directions on how to complete the form will expedite claims processing. Use of the new claim form is optional to allow large child care centers that have automated their billing process using the current form to continue this practice.

The amendments also make technical changes to update the amounts used in the examples illustrating the application of the sliding fee schedule. These changes were inadvertently omitted when the amendments updating the fee schedule were adopted in **ARC 5854B**, which was published in the Iowa Administrative Bulletin on May 9, 2007.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations. Claims must be submitted on one of the prescribed forms.

The Council on Human Services adopted these amendments on June 13, 2007.

The Department finds that notice and public participation on the amendment adding the claim form are impracticable because there is not sufficient time to obtain public comment before the legislation requiring expedited claims processing takes effect on July 1, 2007. The Department will make all providers aware of the new claim form before the effective date of the rule. Providers that wish to continue using the current claim form are free to do so. Public comment on the technical changes to match the fee examples to the amended fee schedule is unnecessary. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on providers by offering a simplified claim form that is easier to use and confer a benefit on families receiving assistance by eliminating confusion in the fee examples. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 5998B** to allow for public comment.

These amendments are intended to implement Iowa Code section 237A.13 as amended by 2007 Iowa Acts, Senate File 601.

These amendments became effective July 1, 2007.

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 paragraph **170.4(2)"a,"** subparagraph **(5)**, examples **"1," "2,"** and **"3,"** as follows:

1. Family 1 has two members, monthly income of ~~$1,075~~ *$1,100*, and one child in care. Since the income is at or above the Level A amount but less than the Level B amount, Family 1 pays $0.00 for each unit of child care service that the child receives.

2. Family 2 has three members, monthly income of ~~$1,400~~ *$1,450*, and one child in care. Since the income is at or above the Level B amount but less than the Level C amount, Family 2 pays $0.20 for each unit of child care service that the child receives.

3. Family 3 has three members, monthly income of ~~$1,400~~ *$1,450*, and two children in care. The younger child receives ten units of child care service per week. The older child is school-aged and receives only five units of service per week. Since the income is at or above the Level B amount but less than the Level C amount, Family 3 pays $0.45 for each unit of child care service that the younger child receives.

ITEM 2. Amend subrule **170.4(7)**, second unnumbered paragraph, as follows:

The department shall issue payment when the provider submits correctly completed documentation of attendance and charges. Providers shall submit either *(1)* Form 470-0020, Purchase of Services Provider Invoice, *or Form 470-4466, Child Care Provider Claim,* accompanied by Form 470-3872, Child Care Assistance Attendance Sheet, signed by the parent~~.~~*;* or *(2)* Form 470-3896, PROMISE JOBS Child Care Attendance and Invoice.

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ARC 6005B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency After Notice

Pursuant to the authority of Iowa Code section 235A.14(1), the Department of Human Services amends Chapter 175, "Abuse of Children," Iowa Administrative Code.

These amendments specify the method to add or correct information in a child abuse assessment summary by completion of an addendum. Iowa Code section 232.71B requires the Department to complete an assessment summary within 20 business days of the receipt of a report of suspected child abuse. All information is not necessarily available to the Department or to the subjects of the report within that period. When more information becomes available after the summary is written, or when a review or contested case proceeding changes the findings of the assessment summary, it is the Department's practice to file a written addendum to the summary. Provisions relating to the addendum were removed from Chapter 175 in 1998.

Notice of Intended Action was published in the Iowa Administrative Bulletin on April 11, 2007, as **ARC 5840B**. The Department received no comments on the Notice of Intended Action.

Following publication of the Notice of Intended Action, a technical change has been added to establish the Safety Plan referenced in subrule 175.26(2) as a separate form with its own number, 470-4461. Since the safety assessment is done early in the assessment process, while the safety plan may be done at several points in the life of the case, it is more appropriate to separate these functions.

These amendments do not provide for waivers in specified situations because the requirements are imposed on the Department. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Department finds that these amendments confer a benefit on people who are subjects of a child abuse assessment. Restoration of this provision in the rules will make the Department's policy and practice clearer to the public, particularly to subjects who are seeking changes to the child abuse assessment summary. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

The Council on Human Services adopted these amendments on June 13, 2007.

These amendments are intended to implement Iowa Code sections 235A.14 and 235A.19.

These amendments became effective July 1, 2007.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule **175.26(1)** by adopting the following **new** paragraph **"h"**:

h. Addendum: An addendum to an assessment summary shall be completed within 20 business days when any of the following occur:

(1) New information becomes available that would alter the finding, conclusion, or recommendation of the summary.

(2) Substantive information that supports the finding becomes available.

(3) A subject who was not previously interviewed requests an interview to address the allegations of the case.

(4) A review or a final appeal decision modifies the summary.

ITEM 2. Amend subrule 175.26(2) as follows:

175.26(2) Assessment data. Form 470-4133, Family Risk Assessment, ~~and~~ Form 470-4132, Safety Assessment~~/Plan~~, *and Form 470-4461, Safety Plan, if applicable,* may be used as part of the child's *initial* case ~~permanency~~ plan, *referenced at 441—subrule 130.7(3),* for cases in which the department will provide treatment services.

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ARC 5983B

INSURANCE DIVISION[191]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 505.8 and 523A.801 and 2007 Iowa Acts, Senate File 559, the Insurance Division hereby amends Chapter 19, "Prearranged Funeral Contracts," Iowa Administrative Code.

This chapter, among other things, provides procedures for the Division's administration of the provisions of Iowa Code chapter 523A relating to sales of funeral services, funeral and cemetery merchandise, or a combination of funeral services and merchandise, pursuant to a prearranged funeral contract. New legislation, 2007 Iowa Acts, Senate File 559, necessitates changes to the procedures.

The transition rule in this chapter is designed to address certain changes, as adopted in 2007 Iowa Acts, Senate File 559, in the process by which a person is authorized to sell preneed agreements for funeral services, funeral merchandise and cemetery merchandise.

Commencing July 1, 2007, Iowa law no longer provides for establishment or sales permits. Instead, any individual wishing to sell preneed arrangements must have a sales agent license and be appointed to act as the agent of a licensed preneed seller. Likewise, any business wishing to sell preneed arrangements must now have a preneed seller license. Unlike establishment permits, which were specific to one business location, the preneed seller license covers all locations at which sales occur. Many establishment permits will become unnecessary and the June 30, 2008, renewal date has been established, in part, to allow the insurance division to identify inactive licenses that will not be renewed for this reason or other reasons. The Insurance Division will suspend these inactive licenses at that time.

In order to ensure a smooth transition and to provide a bridge between the two licensure schemes, the transition rule deems a holder of an establishment permit as authorized to sell preneed arrangements if the permit was in good standing on June 30, 2007. The insurance division will convert establishment permits to preneed seller licenses. However, persons holding converted licenses must file applications for new licenses no later than December 1, 2007, in order to keep their licenses in good standing.

Similarly, in order to ensure a smooth transition and to provide a bridge between the two licensure schemes, the transition rule deems a holder of a sales permit as authorized to sell preneed arrangements if the permit was in good standing on June 30, 2007. The insurance division will convert sales permits to sales agent licenses. However, persons holding converted licenses must file applications for new licenses no later than December 1, 2007, in order to keep their licenses in good standing.

License applications submitted by these licensees will be treated as applications for initial licenses, despite prior licensure as establishment or sales permit holders. The criminal history data and financial history requirements will apply. The continuing education requirements will not apply.

Processing applications with criminal history data and financial history checks will take a significant amount of time. The authority provided in the transition rule shall extend to July 1, 2008, or the date on which an application is processed by the division, whichever comes first.

This rule requires anyone holding an establishment permit or sales permit to file an application for a new license no later than December 1, 2007. The Insurance Division will process these applications in stages between December 1, 2007, and June 30, 2008. To allow for unforeseen delays, the rules ensure that a license will remain in good standing even if an application is not processed by the Insurance Division prior to June 30, 2008, as long as an application for a new license is filed by December 1, 2007. The December 1, 2007, filing date was established, in part, to give the Division time to set up a system for on-line filings of these license applications, using the Division's Web site and computer system. Licensees will be notified when this system is in place.

In compliance with Iowa Code section 17A.4(2), the Division finds that notice and public participation are unnecessary because the amendment is related only to transitional procedures. The transitional procedures will allow affected persons to comply more easily with the rules and the new legislation, which became effective July 1, 2007.

The Division also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment, 35 days after publication, should be waived and this amendment should be made effective on July 1, 2007, to coincide with the effective date of the legislation.

The Insurance Division adopted this amendment on June 13, 2007.

This amendment became effective on July 1, 2007.

This amendment is intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

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.

INSURANCE DIVISION[191](cont'd)

Amend **191—Chapter 19** by adopting the following **new** heading and rule:

TRANSITION RULES FOR COMPLIANCE WITH 191—CHAPTER 19 AND 2007 IOWA ACTS, SENATE FILE 559

191—19.72(523A,82GA,SF559) Conversion of establishment permits and sales permits.

19.72(1) Definitions. For the purposes of this rule, the definitions in rule 191—19.2(523A,523E), Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559, are incorporated by reference.

19.72(2) Conversion of establishment permits. The commissioner shall convert any establishment permit that was issued pursuant to this chapter and that is in effect and in good standing on June 30, 2007, to a preneed seller license as authorized by Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

19.72(3) Conversion of sales permits. The commissioner shall convert any sales permit that was issued pursuant to this chapter and that is in effect and in good standing on June 30, 2007, to a sales agent license as authorized by Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

19.72(4) Applications. Any person holding a license that is converted pursuant to subrule 19.72(2) or 19.72(3) shall submit an application for a preneed seller license or for a sales agent license on or before December 1, 2007.

19.72(5) Term of converted licenses. Any license that is converted pursuant to subrule 19.72(2) or 19.72(3) shall be in effect until the later of June 30, 2008, or the date on which an application that is submitted on or before December 1, 2007, has been processed by the division and a new license has been issued.

This rule is intended to implement Iowa Code chapter 523A and 2007 Iowa Acts, Senate File 559.

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ARC 5979B

SECRETARY OF STATE[721]

Adopted and Filed Emergency

Pursuant to the authority of 2007 Iowa Acts, House File 911, section 1, subsection 13, the Secretary of State hereby amends Chapter 22, "Voting Systems," Iowa Administrative Code.

This rule establishes a procedure for the Secretary of State to follow to reimburse counties for the cost of implementing changes mandated by 2007 Iowa Acts, Senate File 369, which requires voting machines to provide a paper record for review by the voter.

Pursuant to Iowa Code section 17A.4(2), the Secretary finds that notice and public participation are impracticable, because 2007 Iowa Acts, House File 911, mandates that the Secretary of State adopt rules that establish a procedure to reimburse counties for the cost of providing voting machines that provide a paper record for voter review and that the rules include a requirement that counties notify the Secretary of State on or before June 15, 2007, of the manner in which the counties intend to comply with new requirements to provide a paper record for voters to review. Accordingly, this rule must be filed on or before June 15, 2007. The Secretary of State has conferred with several counties regarding the contents of this rule in order to obtain compliance by June 15, 2007.

The time frame for adoption of administrative rules to implement 2007 Iowa Acts, House File 911, section 1, subsection 13, has been severely limited. The Governor did not sign 2007 Iowa Acts, House File 911, until May 29, 2007. Yet House File 911 mandates that the rules include the requirement that a county board of supervisors submit to the office of Secretary of State by June 15, 2007, a resolution by the board declaring the method by which the county intends to comply with Iowa Code section 52.7, subsection 1, paragraph "l," as amended by 2007 Iowa Acts, Senate File 369, section 7. Thus, the Secretary finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the rule should be made effective upon filing on June 12, 2007, because of the June 15, 2007, notification date.

The Secretary of State adopted this rule on June 12, 2007.

This rule became effective on June 12, 2007.

This rule is intended to implement 2007 Iowa Acts, House File 911, section 1, subsection 13.

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.

Adopt the following **new** rule:

721—22.32(52) Paper record requirement—reimbursement process. Counties currently using voting machines that do not produce an external paper record for review by the voter are required to make this feature available for all elections held on or after November 4, 2008. Funds are available to reimburse counties for the cost of compliance with this new requirement. The secretary of state will reimburse the counties by using the following procedures:

22.32(1) Eligibility requirements.

a. Counties that own direct recording electronic voting machines as of May 29, 2007, that do not provide a paper record for voter review are eligible for funding under this rule.

b. Counties that do not own any equipment as of May 29, 2007, are eligible for funding under this rule and are required to purchase ballot-marking devices to comply with 2007 Iowa Acts, Senate File 369.

c. Counties must file a declaration of intention with the secretary of state by June 15, 2007, as described in subrule 22.32(2), to be eligible for funding under this rule.

d. Counties that own a voting system as of May 29, 2007, that uses either a ballot-marking device or a paper record device are not eligible for funding under this rule.

22.32(2) Declaration of intention. On or before June 15, 2007, the county board of supervisors of each county shall submit to the office of secretary of state a resolution adopted by the board declaring the method by which the county intends to comply with Iowa Code section 52.7, subsection 1, paragraph "l," as amended by 2007 Iowa Acts, Senate File 369. For counties eligible for reimbursement, the following options are available:

1. Option A. A county that uses only direct recording electronic (DRE) voting machines may add paper record printer attachments that are compatible with the county's current DRE voting machines. Full reimbursement funds are available from the state for this option.

SECRETARY OF STATE[721](cont'd)

2. Option B. A county that uses only direct recording electronic (DRE) voting machines may acquire an optical scan voting system with ballot-marking devices for accessibility. Only partial reimbursement funds for ballot-marking devices are available from the state for this option.

3. Option C. A county whose primary voting system is an optical scan system with direct recording electronic (DRE) voting machines for accessibility may add paper record printer attachments that are compatible with the county's current DRE voting machines. Full reimbursement funds are available from the state for this option.

4. Option D. A county whose primary voting system is an optical scan system with direct recording electronic (DRE) voting machines for accessibility may acquire ballot-marking devices to replace the DREs. Only partial reimbursement funds are available from the state for this option.

22.32(3) Initial reimbursement amount. After June 15, 2007, the secretary of state shall determine the initial reimbursement amount for each county based upon the following considerations:

a. The number of noncompliant DREs owned by the county on May 29, 2007.

b. The actual cost of purchasing one paper record device for each DRE owned by the county on May 29, 2007.

c. For counties that do not own equipment as of May 29, 2007, the number of precincts in the county.

22.32(4) Conditions for reimbursement.

a. The secretary of state shall not provide reimbursement funds to any county that fails to file the required declaration by June 15, 2007, or, if applicable, an amended declaration by December 1, 2007.

b. After the declaration is filed, the board of supervisors of a county may amend the board's declaration only under the following circumstances:

(1) The specific device selected in the declaration of intention is not certified with the county's primary voting system for use in Iowa by December 1, 2007.

(2) The specific device selected in the declaration of intention is not available for purchase by December 1, 2007.

(3) A new product meeting the requirements of Iowa law is certified and is available.

22.32(5) Application for reimbursement. After the county has paid for the necessary equipment, the board of supervisors may apply for reimbursement. Each application shall include all of the following documents:

a. A receipt from the vendor from whom the equipment was purchased showing the purchase price, a description of each item purchased, and the date upon which the vendor received payment from the county.

b. Documentation of any moneys received by the county or deducted from the purchase price for a trade-in on equipment replaced as part of the transaction required to comply with Iowa Code section 52.7, subsection 1, paragraph "l," as amended by 2007 Iowa Acts, Senate File 369.

22.32(6) Initial reimbursement payments. Upon receipt of the application for reimbursement required in subrule 22.32(5), the secretary of state shall reimburse the county the actual cost or the amount determined in the initial reimbursement established by the formula in subrule 22.32(3), whichever is less.

a. If the county selected either Option A or Option C, no further reimbursement will be made.

b. If the county selected either Option B or Option D, additional funds may be available based upon calculations after initial reimbursement payments have been calculated.

22.32(7) Reimbursement for purchase of ballot-marking devices.

a. Definitions.

(1) "Cost to county" means the total cost of the electronic ballot-marking devices after subtracting the amount of any trade-in allowance from the vendor.

(2) "Amount of remaining funds" means the result determined by subtracting the amount of the initial reimbursement payments made under subrule 22.32(6) from $2 million (the amount appropriated for this program).

b. Final reimbursement amount. The final reimbursement amount shall be determined by dividing the number of precincts in all counties choosing Option B and Option D into the amount of remaining funds.

c. Adjustment. If the cost to any county is less than the final reimbursement amount based on the calculations in paragraph "b," the county shall receive only the amount of the actual cost to the county. The additional funds will be reallocated to the other counties choosing Option B or Option D.

22.32(8) Report to the joint appropriations subcommittee. On or before December 31, 2007, the secretary of state shall submit a report to the chairpersons and ranking members of the joint appropriations subcommittee on administration and regulation regarding the expenditures of the moneys appropriated in 2007 Iowa Acts, House File 911, section 1, subsection 13. The report shall also include recommendations, if necessary, to the general assembly for enacting waiver provisions for counties unable to comply with the requirements of Iowa Code section 52.7, subsection 1, paragraph "l."

22.32(9) Federal funding. If any federal funding is received by the secretary of state for the same or similar purposes as the state appropriation in 2007 Iowa Acts, House File 911, section 1, subsection 13, paragraph "a," an amount of this state appropriation equal to the federal funding received, but not more than $2 million, shall revert to the rebuild Iowa infrastructure fund at the end of the state fiscal year in which the federal funding is received.

22.32(10) Minimum payment. Each eligible county will be entitled to receive at least the amount necessary to add the paper record device to all DREs owned by the county, or, in the case of counties that do not own equipment, the amount necessary to add one paper record device in each precinct within the county.

This rule is intended to implement 2007 Iowa Acts, House File 911, section 1, subsection 13.

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ARC 6015B

STATE PUBLIC DEFENDER[493]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 12, "Claims for Indigent Defense Services," and Chapter 14, "Claims for Attorney Fees in 600A Terminations," Iowa Administrative Code.

STATE PUBLIC DEFENDER[493](cont'd)

These amendments implement 2007 Iowa Acts, Senate File 575, which revises the hourly rate paid for indigent defense cases.

Pursuant to Iowa Code section 17A.4(2), the State Public Defender finds that notice and public participation are impractical. These amendments are required because of the statutory changes noted above.

The State Public Defender also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that these amendments should be made effective July 1, 2007, because the amendments confer a benefit on the public by increasing payments to court-appointed attorneys handling indigent defense cases.

These amendments are also published herein under Notice of Intended Action as **ARC 6016B** to allow for public comment.

These amendments are intended to implement Iowa Code chapters 13B, 600A, and 815 and 2007 Iowa Acts, Senate File 575.

These amendments became effective July 1, 2007.

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 rule 493—12.4(13B,815) as follows:

493—12.4(13B,815) Rate of compensation. Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to pay ment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

Attorney time:		
	Class A felonies	60/hour
	Class B felonies	$55/hour
	All other criminal cases	*$50/hour*
	All other cases	$50/hour
Paralegal time*:*		$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, *and before July 1, 2007*:

Attorney time:		
	Class A felonies	$65/hour
	All other criminal cases	$60/hour
	All other cases	$55/hour
Paralegal time:		$25/hour

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007:

Attorney time:		
	Class A felonies	*$70/hour*
	Class B felonies	*$65/hour*
	All other criminal cases	*$60/hour*
	All other cases	*$60/hour*
Paralegal time:		*$25/hour*

12.4(1) Applicability to juvenile cases. In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney $50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney $55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. *In a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney $60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007.* However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.

12.4(2) to **12.4(4)** No change.

ITEM 2. Amend subrule 12.5(1) as follows:

12.5(1) Frivolous appeals. In an appeal to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of $50 per hour, with a maximum fee of $1,000 in each case. In an appeal to which the attorney was appointed after June 30, 2006, *and before July 1, 2007,* in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of $55 per hour, with a maximum fee of $1,100 in each case. *In an appeal to which the attorney was appointed after June 30, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of $60 per hour, with a maximum fee of $1,200 in each case.*

ITEM 3. Amend subrule **12.6(3)**, paragraph **"a,"** as follows:

a. In an appeal to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of $50 per hour, with a fee limitation of $1,000. In an appeal to which the attorney was appointed after June 30, 2006, *and before July 1, 2007,* in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of $55 per hour, with a fee limitation of $1,100. *In an appeal to which the attorney was appointed after June 30, 2007, in which the attorney withdraws based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of $60 per hour, with a fee limitation of $1,200.*

ITEM 4. Amend subrule **12.6(3)**, paragraph **"b,"** as follows:

b. In an appellate case to which the attorney was appointed after June 30, 1999, and before July 1, 2006, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of $50 per hour, with a fee limitation of $500. In an appellate case to which the attorney was appointed after June 30, 2006, *and before July 1, 2007,* in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at

STATE PUBLIC DEFENDER[493](cont'd)

the rate of $55 per hour, with a fee limitation of $550. *In an appellate case to which the attorney was appointed after June 30, 2007, in which an appointed attorney joins in all or part of the brief of another party, the attorney shall be paid at the rate of $60 per hour, with a fee limitation of $600.*

ITEM 5. Amend rule 493—14.3(13B,600A,815) as follows:

493—14.3(13B,600A,815) Hourly rate and fee limitations. Unless the attorney has a contract with the state public defender that provides for a different rate or manner of payment, claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after March 11, 2004, and before July 1, 2006, shall be paid at the rate of $50 per hour, with a fee limitation of $500 for the trial court proceedings and $500 for appellate proceedings. Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2006, *and before July 1, 2007,* shall be paid at the rate of $55 per hour, with a fee limitation of $550 for the trial court proceedings and $550 for appellate proceedings. *Claims for attorney fees in a termination of parental rights case under Iowa Code chapter 600A to which the attorney was appointed after June 30, 2007, shall be paid at the rate of $60 per hour, with a fee limitation of $600 for the trial court proceedings and $600 for ap pellate proceedings.* Claims shall not be approved for an amount in excess of these fee limitations.

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ARC 6000B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.105(3), the Environmental Protection Commission hereby adopts amendments to Chapter 64, "Wastewater Construction and Operation Permits," Iowa Administrative Code.

The amendments to Chapter 64 reissue General Permits Nos. 1, 2 and 3 which authorize the discharge of storm water. General Permits 1 and 2 were issued in 1992 for a five-year duration, were reissued in 1997 and again in 2002 for additional five-year periods, and expire October 1, 2007. General Permit No. 3 was issued in 1997 for a five-year duration, was reissued in 2002 for an additional five-year period, and expires October 1, 2007. This action will renew all three permits, extending their coverage another five years to October 1, 2012. General permits for storm water discharges are required to be adopted as rules and are effective for no more than five years as specified in the Code of Iowa. Also, the stipulation that storm water discharge may commence 24 hours after the applicant submits the Notice of Intent for Coverage has been removed and replaced with a requirement that discharge not commence until the discharge authorization has been issued by the Department.

The amendments to Chapter 64 also add a provision to subrule 64.6(6) which requires compliance responsibility transfers to be sent to the Department. Since 1999, land developers have been required to notify the Department when responsibility for compliance with the terms of General Permit No. 2 has been contractually transferred to those who have purchased lots within residential or commercial developments. These amendments allow the seller of the lots to transfer responsibility for maintaining permit coverage to the buyer of the lots. The reference to the minimum area required to be permitted is also being changed from five acres to one acre to reflect current federal and state regulation requirements. These amendments also remove the requirement that a Notice of Intent be submitted 24 hours prior to the date operation is to begin and remove the automatic authorization of storm water discharge upon submittal of a complete Notice of Intent.

The fee structure of the current permits has been retained.

It is not the intent of the Department that the textual changes in the general permits be included in the Iowa Administrative Code, but that these changes be made in the general permits themselves which are adopted by reference.

Notice of Intended Action was published in the Iowa Administrative Bulletin on February 28, 2007, as **ARC 5753B**. Comments regarding these amendments were received during the comment period and at the public hearing on March 30, 2007. The comments and the Department's response are contained within the responsiveness summary. There is one change from the Notice of Intended Action resulting from the public comments. The following wording has been inserted at the end of the proposed 64.6(6) "c":

"and the transferor's authorization issued under NPDES General Permit No. 2 for, and only for, the transferred property, shall be deemed by the department as being discontinued without further action of the transferor."

This statement has been inserted to clarify the intent of the Department.

These amendments will become effective October 1, 2007.

These amendments are intended to implement Iowa Code chapter 455B, division III, part 1.

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 [64.3(4)"b"(4), 64.6(2), 64.6(6), 64.15(1) to 64.15(3)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 5753B**, IAB 2/28/07.

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[Published 7/4/07]

[For replacement pages for IAC, see IAC Supplement 7/4/07.]

ARC 5999B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.304, the Environmental Protection Commission hereby amends Chapter 101, "Solid Waste Comprehensive Planning Requirements" and Chapter 104, "Sanitary Disposal Projects with Processing Facilities"; rescinds Chapter 111, "Financial Assurance Requirements for Municipal Solid Waste Landfills"; and rescinds Chapter 113, "Sanitary Landfills: Municipal Solid Waste," and adopts new Chapter 113, "Sanitary Landfills for Municipal Solid Waste: Groundwater Protection Systems for the Disposal of Nonhazardous Wastes," Iowa Administrative Code.

These amendments were published under Notice of Intended Action in the Iowa Administrative Bulletin on December 6, 2006, as **ARC 5597B**.

Chapters 101 and 104 are amended to provide more clarity and consistency with the adoption of new Chapter 113. Chapter 101 is amended by deleting numbered paragraphs 101.13(1)"j"(4)"1" and "2." Both items are included in new Chapter 113. Additionally, Chapter 104 is amended by adding new rule 567—104.25(455B) to address certification requirements for operators of solid waste incinerators. These requirements were found in existing Chapter 113 rules. Chapter 111 is rescinded and incorporated in its entirety as rule 567—113.14(455B). Chapter 113 is rescinded in its entirety and a new chapter adopted in lieu thereof to implement the U.S. Environmental Protection Agency (EPA) requirements found in 40 Code of Federal Regulations (CFR) Part 258 (commonly referred to as RCRA Subtitle D standards). The Department has concluded that the existing rules for municipal solid waste landfills (MSWLFs) are out of date, not protective of the environment (particularly groundwater), and violate RCRA Subtitle D standards. All states must have enforceable standards technically comparable to RCRA Subtitle D, which establishes the minimum national criteria for all MSWLFs. The revisions to Chapter 113 are needed to complete this transition to meet minimum federal standards.

The rules in Chapter 113 are based upon portions of the existing rules, the RCRA Subtitle D standards and the rules of surrounding states. Part of the revision process was to negotiate a new compliance date with the EPA to bring all

MSWLFs into compliance. The EPA has given Iowa until October 1, 2007, to achieve compliance with the 1994 deadline for promulgation of RCRA Subtitle D in Iowa.

The initial comment period, ending January 26, 2007, was extended until March 5, 2007, and an additional public hearing was added to ensure that the public had ample opportunity to submit comment. In total, four public hearings were held: Manchester on January 22, 2007; Atlantic on January 24, 2007; and Des Moines on January 26, 2007, and February 21, 2007. Written and oral comments were received through March 5, 2007. Department staff also met with individual MSWLF owners and their consultants on 25 separate occasions to discuss how the proposed rules will affect their existing facilities. Meetings were held in January with stakeholder groups to discuss ideas for areas of improvement within the proposed rules and in April to review the revisions made to the proposed rules to ensure that they coincided with the public comments that were received. A responsiveness summary that addresses the approximately 160 comments is available from the Department or by telephoning (515)281-6807.

Twenty-eight individuals and organizations commented on the proposed amendments during the public comment period. Overall, there were 163 public comments pertaining to this rule making. The comments were varied but a common theme was a request for greater flexibility where design standards were prescribed in specific rules. The Department made more than 125 revisions that either offered additional flexibility or provided greater clarification to the proposed rules. Some of the more significant changes to Chapter 113 as a result of public comments include:

- Omitting the proposed amendment to rule 567—102.15(455B), which addressed the postclosure requirements for MSWLF units that stopped accepting waste prior to the promulgation of RCRA Subtitle D in Iowa on October 9, 1994.
- Allowing MSWLF units that continued accepting waste after the October 9, 1994, promulgation date of Subtitle D, but that will cease accepting waste prior to the October 1, 2007, effective date for new Chapter 113, to be closed and routinely monitored for groundwater contamination during the 30-year postclosure period in accordance with the existing requirements for Chapter 113.
- Requiring liners and leachate collection systems by October 1, 2007, for all MSWLF units that will continue accepting waste after the effective date of these rules, October 1, 2007.
- Allowing a three-year implementation time line to achieve compliance with the remaining portions of new Chapter 113. This compliance schedule allows additional time for a liner to be constructed on the side slopes of new MSWLF units that abut previous unlined or partially lined disposal areas.
- Allowing MSWLF units with a liner and leachate collection system that were constructed in accordance with the existing rules to continue being used for disposal. Compliance with the new rules will be required at the next time of construction, expansion or under the three-year implementation schedule.
- Allowing an equivalency review procedure that authorizes the Department to approve alternatives to the design requirements in specific rules within Chapter 113 (e.g., leachate collection system design) if it can be demonstrated that the alternative design achieves the performance standards in the rule for which the alternative to the design requirements in that rule is sought.
- Simplifying the public notice procedures for permit actions. This includes specifying major modifications that require public notice, clarifying the service area for public notification and allowing the public notice process to coincide with the Department's review of the permit action.
- Allowing greater flexibility for determining the interior slope requirements for drainage of leachate collection systems within MSWLF units.
- Providing flexibility for constructing alternative leachate collection systems while incorporating suggested improvements for the leachate collection system design standards already included in the rules.
- Incorporating improvements suggested by commenters to the quality control and assurance program to ensure MSWLF units are constructed in accordance with approved plans and specifications.
- Removing the requirement that four feet of select waste be placed over the entire MSWLF unit for freeze/thaw protection and instead allowing performance-based criteria to show that freeze/thaw has had no adverse affects to the clay portion of the liner system.
- Specifying that leachate recirculation is limited to MSWLF units constructed with a composite liner.
- Removing the requirement that subsurface migration of methane gas not occur beyond the property boundary and instead requiring that the level of methane gas not exceed the lower explosive limit. This change is consistent with RCRA Subtitle D.
- Allowing the drainage area routed through each groundwater underdrain outfall to exceed ten acres if it is demonstrated that site-specific factors such as drain flow capacity or site development sequencing requires an alternative drainage area.
- Allowing the MSWLF owner to manage contamination from a groundwater underdrain as leachate in lieu of assessment monitoring and corrective action.
- Allowing an alternative spacing between downgradient groundwater monitoring wells, greater than 300 feet, if it is demonstrated by site-specific analysis or modeling that an alternative well spacing is justified.
- Allowing the convergence of groundwater paths to be taken into consideration when determining placement of downgradient monitoring wells in order to minimize the overall length of the downgradient dimension.
- Allowing an alternative list of constituents for groundwater detection monitoring on a site-by-site basis if it can be demonstrated that the constituents removed are not reasonably expected to be in or derived from the waste contained in the MSWLF unit.
- Removing the nine indicator parameters from the routine groundwater detection monitoring program.
- Allowing an alternative list of inorganic indicator parameters for an MSWLF unit within Appendix I, in lieu of some or all of the heavy metals (constituents 1 to 15 in Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the groundwater.
- Allowing the first two semiannual sampling events to be used, rather than the first semiannual event only, as a basis for establishing background concentrations for the Appendix I parameters.
- Allowing slopes steeper than 25 percent in the final cover system if it can be demonstrated that a steeper slope is unlikely to adversely affect final cover system integrity.

Iowa Code section 455B.105(3) requires that whenever the Commission proposes or adopts rules to implement a spe-

cific federal environmental program and the rules impose requirements more restrictive than the federal program being implemented requires, the Commission shall identify in its Notice of Intended Action or the preamble of the Adopted and Filed rule making each rule that is more restrictive than the federal program requires and shall state the reasons for proposing or adopting the more restrictive requirements. In addition, the Commission shall include with its reasoning a financial impact statement detailing the general impact upon the affected parties. Chapter 113 contains some variation from the federal requirements and addresses necessary areas of regulation not specifically addressed in the federal requirements. The determination of whether these provisions are more restrictive than the federal requirements will vary, depending upon site-specific factors, and may be subjective. Courts have held that, if there is no comparable federal requirement, i.e., the Quality Control and Assurance (QC&A) rules, then by definition the state rule is not more restrictive than the federal rule. See Friends of Agric. For the Reform of State Entl. Regulations v. Zimmerman, 51 S.W.3rd 64 (Mo.Ct.App 2001). Additionally, the limited federal case law indicates that state rules are not considered more restrictive than the federal solid waste regulations if they merely describe the "manner" to be used to comply with the federal rule. See Covington v. Jefferson County, 358 F.3d 626, C.A.9 (Idaho) 2004. The Department has determined that it is appropriate to provide information in regard to variations from or additions to the federal program, regardless of whether such variation is, in fact, more restrictive than the federal language.

1. Subrule 113.2(5) allows MSWLFs that will stop accepting waste prior to October 1, 2007, the proposed effective date of these rules, and MSWLF units that are not contiguous to MSWLF units that will continue to accept waste after October 1, 2007, to continue routine semiannual groundwater monitoring throughout the 30-year postclosure period under the existing rules in effect at the time of closure. This consideration is different than the federal rules, as they do not recognize an exemption for MSWLF units that continued accepting waste after October 9, 1994. Subrule 113.2(5) authorizes closing MSWLF units to monitor for an alternative set of parameters than what is required in the federal rules. The alternate sampling list is much smaller than the 62 Appendix I parameters required by the federal rules and creates a significant cost savings to these facilities that would otherwise have had to monitor for the expanded list of 62 parameters. The cost savings for MSWLF units that meet the requirement of subrule 113.2(5) are estimated to be approximately $500,000 per site for the 30-year postclosure period. This estimate assumes an annual increase of $16,497 at each MSWLF in laboratory costs for sampling the Appendix I parameters.

2. Subrule 113.2(8) adds the requirement that the operator comply with all other state and local regulations in addition to the preexisting federal requirements. This language is currently found in sanitary disposal project permits issued by the Department to all types of solid waste management facilities, including municipal solid waste landfills. The Department believes it is beneficial to provide this notification. In addition, because the operator must comply with other state and local requirements, regardless of the presence of this language, the Department does not assert that the inclusion of this language is more restrictive than what the EPA intended when developing the federal requirements.

3. Subrule 113.2(11) has been added at the request of stakeholders to allow the Department to approve an alternative to the design requirements specified in specific rules within the chapter through an equivalency review procedure. This procedure is optional and allows for greater flexibility when a prescriptive design requirement is specified. It is not expected to create a financial burden but instead may result in a significant cost savings when alternative designs are approved that cost less to construct.

4. In rule 113.3(455B), in the definition of "aquifer," the Department has elected to retain the "aquifer" definition contained in the existing rules for solid waste management and disposal under 567—Chapter 100. While this definition varies from the federal definition, it has been previously approved and conforms to the terminology of existing water supply rules. The Department considers "significant quantities," as described in the federal regulations, to be interchangeable with "usable quantities" as a characteristic of an aquifer. It is unclear whether the federal definition recognizes this distinction but the definition in the adopted rules appears to fit with federal guidance. The unintended consequence of not making this correlation is that owners or operators may attempt to designate groundwater that is many hundreds of feet below the MSWLF unit as the aquifer to be monitored. This would allow groundwater in usable quantities closer to the ground's surface to go unmonitored for potential contamination. The Department does not anticipate additional costs associated with this clarification. In most cases, groundwater monitoring wells may be drilled to shallower depths resulting in a cost savings. The following definitions included in 113.3(455B) will also be affected:

"Existing MSWLF unit." The federal regulation contains a specific effective date. The adopted rule substitutes "as of the most recent permit renewal" in place of the specific date. This change is intended to clarify the applicability of certain subrules and to differentiate between currently existing landfill units and those future landfills which must be constructed in compliance with the rules pertaining to a "new MSWLF unit," as defined below. This clarification is not anticipated to have any additional financial impact associated with it.

"Facility." The adopted rule adds clarifying language as requested by stakeholders. The request was made because it was assumed that there may be a financial burden to the MSWLF owner by not clarifying that buffer lands around a facility do not have to be included in the permitted boundary of that facility. Therefore, it is anticipated that there will be no financial impact and potentially a cost savings, such as not having to install additional perimeter fencing around buffer lands, associated with this clarification.

"High water table." A definition of high water table, as defined in 567—Chapter 100, has been added as requested by stakeholders during the public comment period for clarification purposes and is not anticipated to result in additional financial impact as a result of this rule making.

"Liner." A definition has been added since the Notice for clarification purposes but is not considered to be any more restrictive than the federal interpretation that exists. For an MSWLF unit to be considered compliant with the minimum federal requirements, the liner must be a continuous layer of recompacted natural soil, synthetic materials, or both, that is beneath and on the sides of an MSWLF unit so that it restricts the downward or lateral escape of solid waste, leachate, and gas.

"Municipal solid waste landfill (MSWLF) unit." The adopted rule adds "construction and demolition debris" to the list of other types of waste that may be accepted by an MSWLF landfill for clarification and is not more restrictive than the federal definition.

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

"New MSWLF unit." The federal regulation contains the specific date of October 9, 1993. The adopted rule substitutes "as of the most recent permit renewal" in place of the specific date. This change is intended to clarify the applicability of certain subrules and to differentiate between currently existing landfill units and those future landfills which must be constructed in compliance with the rules. This clarification is not anticipated to have any additional financial impact associated with it. The use of the federal language would cause the retroactive application of certain rules and would have a significant fiscal impact. The Department has varied from the federal language to avoid this retroactive application.

"Open burning." The Department has elected to retain the "open burning" definition contained in the existing rules for solid waste management and disposal under 567—Chapter 100. While this definition varies from the federal definition, its use and application are similar and therefore this difference is not anticipated to have any additional financial impact associated with it.

"Operator." The Department has elected to retain the "operator" definition contained in the existing rules for solid waste management and disposal under 567—Chapter 100. While this definition varies from the federal definition, its use and application are similar and therefore this difference is not anticipated to have any additional financial impact associated with it.

"Point of compliance (POC)." A definition has been added to rule 113.3(455B) at the request of stakeholders following the public comments received by the Department. The term "point of compliance" is used in several areas of both the federal rules and these rules as it relates to the location for demonstrating compliance with liner performance standards and groundwater monitoring. The added definition is for clarification purposes and does not result in any financial impact as a result of this rule making. Additional discussion regarding the rationale and impacts for the specified separation distance of 50 feet between the point of compliance and the waste management unit boundary is detailed in numbered paragraph 15 below.

"Statistically significant increase (SSI)." The term SSI is used repeatedly throughout rule 113.10(455B) and the federal rules as it relates to determining if there has been an impact to groundwater from landfilling operations. A definition for SSI has been added at the request of stakeholders and does not result in any added financial impact to MSWLF owners or operators.

5. Separation from groundwater (paragraph 113.6(2)"i"). The issue of separation from groundwater is not specifically addressed in the federal regulations. The Department asserts that such separation is necessary to the protection of groundwater pursuant to the goals and policies of the Groundwater Protection Act as stated at Iowa Code sections 455E.3 through 455E.5. This provision is a continuation of the current rule. Depending on the design selected by the owner or operator, the additional financial impacts associated with this requirement range from no cost to $17,661.50 per MSWLF based on a 0.65-acre disposal cell. The cost presented is for the installation of a groundwater underdrain that provides an artificial means of maintaining separation between groundwater and the MSWLF liner. As set forth in Iowa Code sections 455E.3 and 455E.4, the protection of groundwater is a priority of the state. One of the primary purposes of state and federal solid waste regulations is the protection of groundwater. The Department asserts that paragraph 113.6(2)"i" is essential to the groundwater protection goals of the state.

6. Well separation distance (paragraph 113.6(2)"j"). The solid waste rule is a restatement of the separation distance established for wells at 567—subrule 43.3(7) and 567—subrule 49.6(1). This provision makes those separation distances reciprocal. The setback distance addressed in Chapters 43 and 49 does not address plumes beyond the waste management unit boundary. Paragraph 113.6(2)"j" applies the 1,000-foot separation distance to both projected plumes and the waste management unit boundary. The Department recognizes both to be equal threats to public health, safety, and welfare. In the event that an MSWLF owner would plan to extend the waste management unit boundary within this setback distance, the owner would have to pay for abandonment of the water supply well and provide the user with an alternative water supply. These costs are anticipated by the Department to be approximately $15,000 for each well abandoned and new water supply connection established.

7. Property line setback (paragraph 113.6(2)"k"). This issue is not specifically addressed in the federal regulations. However, the federal regulations require that the point of compliance and groundwater monitoring systems be located on property owned by the landfill operator. The 50-foot setback is necessary to allow for the placement of monitoring wells. The Department also believes that a 50-foot setback is necessary to prevent the deposition of wind-blown litter on neighboring properties and to allow vehicle access around all waste boundaries. This setback is contained in existing rules. The financial impact associated with a 50-foot property line setback would be the cost to acquire additional land around the perimeter of the MSWLF unit. Based on average land prices, the cost to purchase additional land to maintain a 50-foot buffer around a 0.65-acre cell would be $3,200, the estimated cost for an acre of farmland.

8. Housing and sensitive populations (paragraph 113.6(2)"l"). This rule requires a 500-foot separation distance between the MSWLF and any occupied residence, recreation area, child care facility, educational facility, or health care facility. The rule is intended to carry out the purposes of Iowa Code section 455B.305A in regard to siting of a sanitary landfill. Paragraphs "b," "c" and "d" of Iowa Code section 455B.305A(2) require that a landfill meet the following criteria:

"b. The project is designed, located and proposed to be operated so that the public health, safety, and welfare are protected.

"c. The project is located so as to minimize incompatibility with the character of the surrounding area and to minimize the effect on the value of the surrounding property....

"d. The plan of operations for the project is designed to minimize the danger to the surrounding area from fire, spills, or other operational accidents."

The 500-foot separation distance is necessary to carry out the purposes of Iowa Code section 455B.305A. The Department does not anticipate any additional costs to the MSWLF owner for maintaining this separation distance.

9. Soil and hydrogeologic investigations (subrule 113.6(3)). This rule is necessary to the characterization of the hydrology of the site for the purpose of designing adequate groundwater monitoring systems, which are required by the federal regulations. This requirement is in the existing rules and has been met at all existing MSWLFs. The financial impact to conduct a hydrogeologic investigation for a new MSWLF unit based on a 0.65-acre cell is estimated to be as much as $125,000.

10. Site exploration and characterization report (subrule 113.6(4)). This subrule requires the preparation of a report documenting the information obtained through compliance with rule 113.6(455B). Preparation of the report is estimated to cost $5,000.

11. MSWLF unit subgrade (subrule 113.7(4)). This rule is necessary to ensure the integrity and stability of the liner. This subrule replaces paragraph 113.26(1)"u," which should result in conformance with the specific criteria set forth in the adopted rule. If the MSWLF unit is already constructed, there is no additional financial impact with this requirement. The financial impact associated with ensuring the integrity and stability of the subgrade beneath the liner system for a new MSWLF unit in accordance with paragraphs "a" through "f" of subrule 113.7(4) could be as much as $96,000 for a 0.65-acre disposal cell. Costs will vary depending upon the existing quality of the subgrade.

12. Paragraph 113.7(5)"a." The rule requires that a liner be constructed in 8-inch lifts of compacted soil. This is a continuation of the existing rule. The Department asserts that this rule provides the method for compliance with the federal rule and therefore is not more restrictive than the federal rule. Because the federal rule does not provide for the method of compliance, federal guidance has been issued. Federal guidance calls for the soil to be compacted in 6-inch lifts. The Iowa rule is less restrictive than federal guidance but is in compliance with the federal rule. The Department has determined that the placement of the liner in 8-inch lifts will provide for compliance with the federal rule in Iowa.

13. Paragraph 113.7(5)"a." The rule requires that a composite liner have a slope toward the leachate collection pipes of at least 2 percent. The federal regulation requires the leachate collection system to be designed and constructed to maintain less than a 30-cm depth of leachate. The 2 percent slope requirement is designed to meet the federal standard. This is a continuation of the current rule requirement. While the minimum slope requirement is intended to establish a method of compliance, the Department acknowledges that the technical standards in the adopted rules for the leachate collection system design may be considered more prescriptive than the performance standard found in the federal regulations. However, it cannot be said with certainty that the adopted rule is more restrictive or that there is a greater financial impact associated with the technical standard versus the performance standard. A cost will be incurred regardless of whether the design is specified by the Department or determined by the MSWLF owner because both the federal and state rules require the design and construction of a leachate collection system to maintain less than a 30-cm depth of leachate. Rather than attempting to identify and quantify the costs for every type of leachate collection system design, the Department has included an equivalency review procedure, which allows the Department to approve alternatives to the prescriptive design specified in this rule. An equivalency review is similar to a variance process, which would allow an alternative design as long as it performs to the same standards required in this rule. The equivalency review describes in detail the conditions that need to be addressed when submitting an alternative design for Department review and approval. Several other states have used an equivalency review procedure with success. It allows the Department to provide a technical standard for the leachate collection system design that requires no further justification but still allows MSWLF owners and consultants to demonstrate an alternative design.

14. Numbered paragraph 113.7(5)"a"(2)"1." The rule requires that a liner be constructed in 8-inch lifts of compacted soil. This is a continuation of the existing rule. The Department asserts that this rule provides the method for compliance with the federal rule and therefore is not more restrictive than the federal rule. Because the federal rule does not provide for the method of compliance, federal guidance has been issued. Federal guidance calls for the soil to be compacted in 6-inch lifts. The Iowa rule is less restrictive than federal guidance but is in compliance with the federal rule. The Department has determined that the placement of the liner in 8-inch lifts will provide for compliance with the federal rule in Iowa.

15. Numbered paragraph 113.7(5)"a"(2)"2." The landfill liner, pursuant to state and federal regulations, must be designed to ensure that contaminants escaping the landfill do not exceed the specified concentration levels for parameters sampled at an established "point of compliance." This rule establishes the point of compliance at 50 feet from the waste boundary, unless site conditions dictate otherwise. The federal regulation provides:

40 CFR Part 258.40, paragraph (d), states:

"(d) The relevant point of compliance specified by the Director of an approved State shall be no more than 150 meters from the waste management unit boundary and shall be located on land owned by the owner of the MSWLF unit. In determining the relevant point of compliance State Director shall consider at least the following factors:

"(1) The hydrogeologic characteristics of the facility and surrounding land;

"(2) The volume and physical and chemical characteristics of the leachate;

"(3) The quantity, quality, and direction, of flow of groundwater;

"(4) The proximity and withdrawal rate of the groundwater users;

"(5) The availability of alternative drinking water supplies;

"(6) The existing quality of the groundwater, including other sources of contamination and their cumulative impacts on the groundwater, and whether the groundwater is currently used or reasonably expected to be used for drinking water;

"(7) Public health, safety, and welfare effects; and

"(8) Practicable capability of the owner or operator."

The federal regulation, in 40 CFR Part 258.51, paragraph (a), further provides, in regard to placement of monitoring systems:

"(a) A groundwater monitoring system must be installed that consists of a sufficient number of wells, installed at appropriate locations and depths, to yield groundwater samples from the uppermost aquifer (as defined in §258.2) that:

"(1) Represent the quality of background groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where:

"(i) Hydrogeologic conditions do not allow the owner or operator to determine what wells are hydraulically upgradient; or

"(ii) Sampling at other wells will provide an indication of background groundwater quality that is as representative or more representative than that provided by the upgradient wells; and

"(2) Represent the quality of groundwater passing the relevant point of compliance specified by Director of an approved State under §258.40(d) or at the waste management unit boundary in unapproved States. The downgradient monitoring system must be installed at the relevant point of

compliance specified by the Director of an approved State under §258.40(d) or at the waste management unit boundary in unapproved States that ensures detection of groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing units, the down-gradient monitoring system may be installed at the closest practicable distance hydraulically downgradient from the relevant point of compliance specified by the Director of an approved State under §258.40 that ensure detection of groundwater contamination in the uppermost aquifer."

Pursuant to the federal regulations, the groundwater monitoring system and the point of compliance must be the same. The existing rules do not comply with the federal requirements. The existing rules allow a point of compliance of up to 150 meters from the waste boundary. Under the existing rules, the monitoring wells are required to be within 50 feet of the waste boundary. Thus, a system was created in which the liner was not designed to ensure that contaminants escaping the landfill do not exceed the specified concentration levels at the monitoring system location. Contamination above specified limits at the monitoring wells could still indicate compliance with approved design parameters.

Based upon the known soil types and hydrology of this state, the Department believes that a groundwater monitoring system must be no further than 50 feet from the waste boundary in order to ensure that contamination can be discovered and addressed in a timely manner. Groundwater moves relatively slowly through the soils found at most Iowa landfill locations. If specific site conditions warrant an alternative distance, the adopted rule allows for consideration of those conditions. It is also important to note that the federal regulations require the point of compliance and groundwater monitoring systems to be on the landfill property. Increasing the allowable distances for these wells will decrease the potentially usable area of the site. The point of compliance requirement applies to MSWLF units that are constructed with an alternative liner versus a composite liner. Seventeen of the 59 operating MSWLFs are currently constructed with alternative liners. The financial impact of specifying a POC at 50 feet from the waste management unit boundary is that an owner or operator will need to remodel the POC at 50 feet prior to constructing an alternative liner for any new disposal cells. Modeling may have initially been completed for a distance up to 492 feet from the waste management unit boundary. The cost to run the model is approximately $20,000. This is not an additional cost for new MSWLF units because a model must be performed to verify the integrity of the alternative liner regardless of the POC distance. The model is anticipated to cost less if it were run previously for the MSWLF because some of the up-front work has already been completed and there is the potential for previously compiled data to be input into the model. The consequence of modeling the POC at 50 feet versus 492 feet may be that the liner thickness will have to increase. Historically, alternative liners have consisted of 4 feet of compacted clay. In instances where 4 feet of clay is not sufficient for the 50-foot POC modeling, an increase to 5 feet of compacted clay or more may be required or the MSWLF owner may decide to construct a composite liner instead. The cost to construct an alternative liner with 5 feet of compacted clay thickness is estimated to cost $36,801 for a 0.65-acre cell (a 4-foot clay liner is estimated to cost $29,469). Construction costs for a 0.65-acre composite-lined disposal cell are estimated to be $30,232.

16. Subparagraph 113.7(5)"a"(2), numbered paragraph "3," fourth bulleted paragraph. This rule allows the Department to consider the sensitivities and limitations of the modeling program used by the operator when determining the point of compliance. Different programs have varying strengths and weaknesses, and these variations must be considered when determining if the point of compliance will be an adequate indicator of the protection of groundwater provided by the proposed alternative liner. The Department will consider the sensitivities and limitations of the modeling program regardless of the presence of this language, but it is being included because the Department believes it is beneficial to provide this notification to MSWLF owners. The Department does not assert that the inclusion of this language results in more restrictive requirements than those intended by EPA when it developed the federal requirements.

17. Numbered paragraph 113.7(5)"a"(2)"4." The rule requires that an alternative liner have a slope toward the leachate collection pipes of at least 2 percent. The federal regulation requires the leachate collection system to be designed and constructed to maintain less than a 30-cm depth of leachate. The 2 percent slope requirement is designed to meet the federal standard. This is a continuation of the existing rule requirement. The Department acknowledges that the technical standards in the adopted rules for the leachate collection system design may be considered more restrictive than the performance standard found in the federal regulations; however, it cannot be said with certainty that there is a greater financial impact associated with the technical standard versus the performance standard. A cost will be incurred regardless of whether the design is specified by the Department or determined by the MSWLF owner because both the federal and state rules require the design and construction of a leachate collection system. Rather than attempting to identify and quantify the costs for every type of leachate collection system design, the Department has included an equivalency review procedure, which allows the Department to approve alternatives to the prescriptive design specified in this rule. An equivalency review is similar to a variance process, which would allow an alternative design as long as it performs to the same standards as those required in this rule. The equivalency review describes in detail the conditions that need to be addressed when an owner or operator submits an alternative design for Department review and approval. Several other states have used an equivalency review procedure with success. It allows the Department to provide a technical standard for the leachate collection system design that requires no further justification but still allows MSWLF owners and consultants to demonstrate an alternative design.

18. Leachate collection system (paragraph 113.7(5)"b"). The federal regulation simply requires a leachate collection system that is designed and constructed to maintain less than a 30-cm depth of leachate over the liner. The adopted rule is designed to provide the method for compliance with the federal requirement. The Department acknowledges that the technical standards in the adopted rules for the leachate collection system design may be considered more prescriptive than the performance standard found in the federal regulations. However, it cannot be said with certainty that there is a greater financial impact associated with the technical standard versus the performance standard. A cost will be incurred regardless of whether the design is specified by the Department or determined by the MSWLF owner because both the federal and state rules require the design and construction of a leachate collection system to maintain less than a 30-cm depth of leachate. Rather than attempting to identify and quantify the costs for every type of leachate collection system design, the Department has included an equivalency review procedure, which allows the Department to approve alternatives to the prescriptive design specified in

this rule. An equivalency review is similar to a variance process, which would allow an alternative design as long as it performs to the same standards as those adopted in this rule. The equivalency review describes in detail the conditions that need to be addressed when an owner or operator submits an alternative design for Department review and approval. Several other states have used an equivalency review procedure with success. It allows the Department to provide a technical standard for the leachate collection system design that requires no further justification but still allows MSWLF owners and consultants to demonstrate an alternative design.

19. Quality control and assurance programs (subrule 113.7(6)). There is no equivalent federal rule for comparison with which to make a restrictiveness comparison. Iowa has developed a Quality Control and Assurance Program in conjunction with, and supported by, the regulated community. The QC&A Program requires that a professional engineer be designated to oversee and document compliance with the statutes and regulations applicable to the landfill. This program is intended to assist the landfill operator in maintaining compliance and ensuring that landfill systems continue to function as intended. The financial impact of having a QC&A Program will vary depending on the extent of the cell construction. Costs for QC&A to construct a 0.65-acre cell are estimated to be $15,450. It is also important to note that there may be a potential cost savings in the long run by having a program in place that ensures proper design and construction of a disposal cell. An improperly constructed disposal cell may result in future construction expenses to ensure compliance that could have been avoided otherwise. Poor construction may also result in contamination to groundwater and ultimately lead to abandonment of the disposal cell resulting in additional costs to construct a new disposal area.

20. Prohibited operations and activities (subrule 113.8(1)). This rule is required due to the statutory definition of solid waste found at Iowa Code section 455B.301(20). This rule is further required to provide notice to the landfill operator in regard to the prohibitions and restrictions found elsewhere in the Iowa Administrative Code or in statute. The Department believes it is beneficial to provide this notification and, regardless of the presence of this language, the Department does not assert that this language is more restrictive than the federal requirements.

21. Disposal operations and activities (subrule 113.8(2)). This rule establishes basic operating requirements for the staking of the landfill, filling operations, and covering of waste. Some of the requirements related to landfill cover are addressed in the federal regulations, but the majority of these operational considerations are omitted from the federal requirements. The Department asserts that these requirements are not more restrictive than the federal requirements because each requirement is either not addressed by the federal rules or provides a method to achieve the basic objectives of the federal rules. There are costs associated with daily operations of the MSWLF and it is estimated that it may take an additional quarter of an employee's time to perform these operational activities throughout the year. Additional costs are estimated to be $12,500 based on an annual salary of $50,000 for an MSWLF-certified operator. Other costs considered are one-time land surveying costs for the site perimeter boundary and establishing two survey monuments of $6,000 and annual surveying costs thereafter of $500. These are existing costs, which are not attributable to this rule making.

22. Facility operations and activities (subrule 113.8(3)). This rule establishes additional basic requirements for proper landfill management and incorporates the federal regulations in regard to access control and vector control. An on-site scale is required by Iowa Code section 455B.304(15) and is not a new requirement imposed by this rule making. A scale to weigh all incoming waste is estimated to cost $75,000. All existing MSWLFs have a scale in place. Certification of the scale by the Iowa Department of Agriculture and Land Stewardship costs $84 annually. Leachate collection system cleaning every three years is estimated to cost $1,500 and is necessary to maintain compliance with federal leachate requirements. Other items required in subrule 113.8(3) are operator duties that would be included in the cost of operator salary and included in the costs described in numbered paragraph 21 above.

23. Development and operations plan (subrule 113.8(4)). This rule requires the landfill operator to maintain a plan which details how the facility will operate and how compliance will be maintained. Such a plan should be a standard operational practice for a municipal solid waste landfill. The cost to prepare a development and operations plan is estimated to be $1,500.

24. Emergency response and remedial action plan (subrule 113.8(5)). This rule is required by Iowa Code section 455B.306(6)"d" and should not be recognized as a new requirement as a result of this rule making.

25. MSWLF operator certification (subrule 113.8(6)). There is no equivalent federal rule for comparison with which to make a restrictiveness comparison. The Department, in conjunction with the regulated community, has established a program for operator certification to ensure that a properly qualified operator is on site at a landfill during all hours of operation. The training is sponsored and provided by industry associations and organizations. Historically, both the Department and the regulated community have strongly supported the certification program. There is an initial one-time cost of approximately $320 for becoming a certified operator in the state of Iowa. This includes costs for a training course, the examination and certificate. The annual fee to maintain the operator certification is approximately $80. This includes continuing education credits as well as the certificate renewal fee.

26. Paragraphs 113.10(2)"c" and "d." The adopted rules establish technical requirements for the numbering, construction, and closure of monitoring wells. A uniform numbering system is necessary for reporting purposes and for the purpose of data comparison and compliance evaluation. It is assumed that there will be no additional costs for numbering wells. The well casing and closure requirements are necessary for the protection of groundwater and are based upon the state's existing requirements for well construction and closure and federal guidance. The federal rules specify casing of a well in a manner that maintains the integrity of the well, sealing of the well to prevent contamination and operation and maintenance so that it performs to the design specification throughout the life of the monitoring program. Federal guidance also specifies that a monitoring well should be properly decommissioned to eliminate physical hazards, prevent groundwater contamination, conserve aquifer yield and hydrostatic head and prevent intermixing of subsurface water. The adopted rules clarify federal guidance and are not anticipated to pose any additional costs for the owner or operator above what would already be required.

27. Hydrologic monitoring system plan (paragraph 113.10(2)"e"). This rule requires the preparation of a monitoring plan to ensure compliance with applicable requirements. This subject is not addressed by the federal regula-

tions but is necessary to ensure that the groundwater and surface water monitoring systems are designed and functioning in compliance with the applicable requirements. Subparagraph 113.10(2)"e"(2) requires a separation distance between monitoring wells of no more than 300 feet unless it can be demonstrated by site-specific analysis or modeling that an alternative well spacing is justified. The existing rules allow for a 600-foot separation and the federal rules do not specify a well spacing separation distance.

Groundwater monitoring programs have been required for Iowa sanitary disposal projects for approximately 15 years. Based upon the data collected during that period, the Department has determined that leachate releases from unlined landfills are occurring in the state. The data indicates that plume widths of 600 feet or greater are rare and such plumes would typically be 200 feet wide or less. It is expected that the performance of leachate collection systems in newer landfills will decrease the plume widths associated with any leachate release. Therefore, the separation distance must be reduced in order to detect such releases. Federal guidance states that groundwater monitoring wells must be adequately spaced to intercept potential pathways for contaminant migration. Federal rules specify a multitude of factors that must be considered when determining the number and spacing of monitoring wells. By allowing MSWLF owners and operators to demonstrate an alternative well spacing to the 300-foot prescriptive requirement, the Department contends that subparagraph 113.10(2)"e"(2) is no more restrictive than the federal requirements.

28. Monitoring well maintenance and performance reevaluation plan (paragraph 113.10(2)"f"). The adopted rule requires the preparation and implementation of a plan designed to ensure the ongoing reliability of the monitoring wells. Such a plan is necessary to ensure that the existing monitoring systems continue to function adequately to protect the groundwater of the state. This requirement is contained in the existing rules. According to estimates provided by area consultants, the cost to prepare and implement this plan would range from $300 to $1,000. Several of the items required in the plan are already being performed as a normal part of other routine sampling and evaluation so there would be no additional cost. Costs that may be incurred included obtaining field test data, performing the reevaluation and developing the report to be submitted to the Department.

29. Subrule 113.10(4). The adopted rule relates to the submission of groundwater data. The rule requires the use of a laboratory certified by the Department. This requirement is necessary to ensure the quality of the data received. Laboratory certification is required by the existing rules. Iowa laboratory certification rules are set forth in 567—Chapter 83. Subrule 83.1(1) requires that "a laboratory certification program is required for laboratories performing analyses of samples which are required to be submitted to the Department as a result of Iowa Code provision, rules, operation permits, or administrative orders." Paragraph 83.1(3)"d" states that the requirements of Chapter 83 also apply to all laboratories conducting analyses of solid waste parameters pursuant to 567—Chapters 100 through 130. The language in subrule 113.10(4) duplicates that in Chapter 83 and, therefore, no additional financial impact is expected with the inclusion of this language in the adopted rules.

30. Surface water monitoring systems (subrule 113.10(3)). The adopted rule allows the Department to require a surface water monitoring system if there is reason to believe that a surface water of the state has been impacted as a result of facility operations. The federal regulations do not address this issue. In the event that leachate migration or other landfill operations are impacting a surface water of the state, this rule is designed to allow for the assessment of those impacts and the imposition of such requirements as are necessary to protect the surface waters of the state in compliance with applicable state and federal regulations for the protection of surface waters. If a surface water monitoring program were required at a landfill, it is anticipated to cost approximately $3,000 annually. This includes the cost of sampling one upgradient and one downgradient monitoring point semiannually for the Appendix I parameters. It is important to note that for some MSWLFs the new language will result in a cost savings compared to what is currently required under the existing rules. Existing rule 567—113.19(455B) states in part that a surface water monitoring plan shall include monitoring points on all standing and flowing bodies of water which will receive surface runoff or groundwater discharge from the site. Currently, all MSWLF owners are required to monitor and sample nearby surface waters. The adopted rule removes this requirement and instead will only require monitoring of surface waters if there is reason to believe that a surface water of the state has been impacted by facility operations. Examples of "reason to believe" include but are not limited to when the field office has reported evidence of a leachate seep on the outer side slope of an MSWLF unit or when it has been confirmed that groundwater beneath the MSWLF unit that is near a surface water body has been impacted by landfill operations.

31. Subparagraph 113.10(4)"i"(2). The adopted rule establishes a 45-day time period, from completion of sampling and analysis, for the landfill operator to determine whether there has been a statistically significant increase in the level of a contaminant in any monitoring well. The federal regulations state "a reasonable period of time." The Department asserts that 45 days is a reasonable time period in which to review the results of the sampling analysis and that the 45-day time period is not any more restrictive than what the federal rules intended with the "reasonable period of time" language. The action must be completed regardless of whether a time period is specified or not. No financial impact is associated with specifying the time frame in which the owner or operator must determine whether there has been a statistically significant increase over a background level.

32. Paragraph 113.10(6)"g." The adopted rule addresses the actions that must be taken when contamination is discovered. This is a federal requirement. Both the state and federal regulations allow a landfill operator to avoid the otherwise required actions if the landfill operator can show that the contamination has come from another source or has resulted from an error in sampling or analysis or that the contamination is due to a natural variation in groundwater quality. The adopted rule requires Department approval of any attempted demonstration of an alternate reason for the contamination. The Department asserts that where contamination is detected, Department review is necessary prior to any decision by the landfill operator to ignore such contamination. The financial impact of this requirement is borne by the Department for the time needed to review the demonstration. Depending on the depth of the demonstration, it is estimated to take the Department as little as a half hour to as much as three working days or $50 to $600.

33. Paragraph 113.10(6) "j." The adopted rule relates to the establishment of groundwater protection standards. Two additions to the federal language are contained in the adopted rule. The first is a recognition that the state must consider the policies of the Iowa Groundwater Protection Act. Paragraph 113.10(6)"j" is an acknowledgment that, when multiple con-

taminants have been detected, the effects of those contaminants are cumulative and must be considered together. The need to consider the cumulative effects is implicit in the federal requirement that the existence of multiple contaminants be considered. Therefore, no financial impact is associated with this requirement.

34. Paragraph 113.10(7)"a." The adopted rule addresses the assessment of corrective measures when contamination has been detected. Both the state and federal regulations allow 90 days to initiate an assessment. The adopted rule establishes an additional 90-day deadline to submit the assessment. The combined effect of these deadlines is to allow 180 days from detection of contamination to the submission of a proposed assessment. The Department believes this is a reasonable period to allow for the completion of an assessment where groundwater contamination exists. No financial impact is associated with specifying the time frame in which the owner or operator must complete the assessment.

35. Paragraph 113.10(7)"d." The federal regulations require a public meeting with interested and affected parties to discuss the results of the assessment triggered by the detection of contaminants. The adopted rule provides additional clarification defining the public meeting requirements and establishes a 60-day time frame for holding the public meeting once the Department has approved the assessment of corrective measures. The clarification in these rules defines "interested and affected parties," as stated in the federal rules, as owners and occupiers of property adjacent to the facility boundary, the Department and the Department field office with jurisdiction over the MSWLF. The costs associated with this clarification are for notifying interested and affected parties. Notification may be by mail, telephone or electronic mail and the costs are minimal (i.e., less than $30).

36. Paragraph 113.10(8)"a." The federal regulations require the owner or operator to select a corrective action remedy after the public meeting is held based on the results of the corrective measures assessment. However, a time frame for selecting the corrective action remedy is not specified. The adopted rule provides a 60-day time frame for selecting a remedy after the public meeting is held but still allows the Department to establish an alternative schedule if necessary. Specifying this time frame is not considered to be more restrictive than the federal rules.

37. Subparagraph 113.10(8)"c"(5). The federal regulations require the consideration of community concerns when selecting a remedy to address detected contamination. The adopted rule defines that community concern to include concerns identified at the required public meeting and is not more restrictive than the federal rules.

38. Paragraph 113.10(9)"f." The adopted rule addresses the completion of the remedy to correct groundwater contamination. The federal rule requires certification of completion of the remedy. The adopted rule requires Department approval of the certification of completion. The Department asserts that such approval is necessary to ensure that the contamination has been fully addressed. The financial impact of this requirement is borne by the Department for the time needed to review the demonstration. Depending on the depth of the demonstration, it is estimated to take the Department as little as a half hour to as much as three working days or $50 to $600.

39. Subrule 113.11(1). The adopted rule sets forth the documents that must be maintained in the facility files of the landfill operator. In addition to the documents listed in the federal regulation, the adopted rule adds documents that are required elsewhere in Chapter 113. Maintaining documents in the facility files is required by federal rules, and any financial impact would be associated with preparation of the reports. These costs have been discussed previously.

40. Paragraph 113.12(1)"a." The adopted rule requires a maximum final cover permeability of 1×10^{-7} cm/sec. This final cover permeability is currently standard practice at Iowa landfills as suitable soils are routinely available. Federal regulations also require the final cover to "have a permeability less than or equal to the permeability of any bottom liner system or natural subsoils present, or a permeability no greater than 1×10^{-5} cm/sec, whichever is less." Since all municipal landfills under this rule must have a liner whose permeability is no greater than 1×10^{-7} cm/sec, the adopted rule is consistent with federal regulations and does not affect landfills that are in compliance with the federal requirements for bottom liner systems. The adopted variation from 1×10^{-5} cm/sec to 1×10^{-7} cm/sec will only affect unlined landfills. Decreasing the permeability of the cover system for unlined landfills will minimize the amount of leachate, which could impact groundwater. It is also the Department's understanding that the 1×10^{-5} standard described in federal regulations applies to those unlined landfills exempted from the liner requirements due to their small size and location in arid environs, which are located in more western states than Iowa. Area consultants were asked to quantify the cost difference to compact soil from a permeability 1×10^{-5} cm/sec to 1×10^{-7} cm/sec. One response indicated that if the soils on site are acceptable to use, the cost difference is minimal. Differences between recent bids for placement of the compacted layer versus the uncompacted vegetative layer were minimal. Therefore, it is assumed in this case that there would be no substantial cost savings. Another consultant indicated that it was difficult to quantify because hauling distances would vary at every site if soil were not readily available. According to the consultant, the compaction time is a small portion of the costs. A bid received from a contractor was $700/acre less for the two-foot uncompacted erosion layer compared to the two-foot compacted layer. The consultant estimated that $500/acre would be reasonable since a compactive effort would still be needed.

41. Paragraphs 113.12(1)"b," "c," and "d." The adopted rules establish the final cover requirements for a closed landfill. The adopted rules increase the thickness of the erosion layer from 6 inches to 24 inches. The Department asserts that a 24-inch erosion layer is necessary to provide an adequate final vegetative cover for the site. The vegetative cover is essential to prevent erosion and infiltration of surface waters. The financial impact for the increased thickness of the erosion layer was determined by reviewing the most recent closure cost estimates from April 2006. The additional costs for increasing the thickness of the erosion layer an additional 18 inches is approximately $6,000 per acre.

42. Paragraph 113.12(1)"e." The adopted rule requires a final cover slope between 5 percent and 25 percent unless it can be demonstrated that a steeper slope is unlikely to adversely affect final cover system integrity. The slope of the final cover is not addressed in the federal regulations; however, the Department contends that this requirement is no more restrictive than the federal rules because demonstrations for steeper slopes are allowed.

43. Subrule 113.12(5). The adopted rule adds additional clarifying language to the closure notification requirements contained in the federal regulations. It is assumed that there are minimal costs associated with notifying local govern-

ments of the MSWLF owner's intent to close as this can be done at a regularly scheduled board or commission meeting.

44. Submission of documents. Throughout adopted Chapter 113, the Department has substituted the requirement that an operator submit a document to the Department in place of federal rule language that requires that the operator place the document in the operator's operating record. 40 CFR 258.29 requires that the operator notify the Department whenever such documents are placed in the operating record and further requires that the actual document be furnished upon request or be made available for inspection. The Department believes that the submission of the actual documents in lieu of the submission of written notification and additional submission upon request does not increase the burden placed upon the operator. Additionally, site visits are normally conducted by environmental specialists who may lack technical expertise necessary to review engineering documents. The financial impact associated with submission of documents that would otherwise only be required to be placed in the operator's operating record are the costs for photocopying and postage. On average, this may cost as much as $500 annually.

These amendments will become effective October 1, 2007.

These amendments are intended to implement Iowa Code section 455B.304.

The following amendments are adopted.

ITEM 1. Rescind subparagraph **101.13(1)"j"(4)**.

ITEM 2. Amend 567—Chapter 104 by adopting the following **new** rule:

567—104.25(455B) Operator certification. Solid waste incinerator operators shall be trained, tested, and certified by a department-approved certification program.

104.25(1) A solid waste incinerator operator shall be on duty during all hours of operation of a solid waste incinerator, consistent with the respective certification.

104.25(2) To become a certified operator, an individual shall complete a basic operator training course that has been approved by the department or alternative, equivalent training approved by the department and shall pass a departmental examination as specified by this rule. An operator certified by another state may have reciprocity subject to approval by the department.

104.25(3) A solid waste incinerator operator certification is valid from the date of issuance until June 30 of the following even-numbered year.

104.25(4) Basic operator training course. The required basic operator training course for a certified solid waste incinerator operator shall have at least 12 contact hours and shall address the following areas, at a minimum:

a. Description of types of wastes;
b. Incinerator design;
c. Interpreting and using engineering plans;
d. Incinerator operations;
e. Environmental monitoring;
f. Applicable laws and regulations;
g. Permitting processes;
h. Incinerator maintenance;
i. Ash and residue disposal.

104.25(5) Alternative basic operator training must be approved by the department. It shall be the applicant's responsibility to submit any documentation the department may require to evaluate the equivalency of alternative training.

104.25(6) Fees.

a. The examination fee for each examination is $20.

b. The initial certification fee is $8 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year.

c. The certification renewal is $24.

d. The penalty fee is $12.

104.25(7) Examinations.

a. The operator certification examinations will be based on the basic operator training course curriculum.

b. All persons wishing to take the examination required to become a certified operator of a solid waste incinerator shall complete the Operator Certification Examination Application, Form 542-1354. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate the basic operator training course taken. Evidence of training course completion must be submitted with the application for certification. The completed application and the application fee shall be sent to the department addressed to 502 East 9th Street, Des Moines, Iowa 50319. Application for examination must be received by the department at least 30 days prior to the date of examination.

c. A properly completed application for examination shall be valid for one year from the date the application is approved by the department.

d. Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days before taking a subsequent examination.

e. Upon each reexamination when a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

f. Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

g. Completed examinations will be retained by the department for a period of one year after which they will be destroyed.

h. Oral examinations may be given at the discretion of the department.

104.25(8) Certification.

a. All operators who passed the operator certification examination by July 1, 1991, are exempt from taking the required operator training course. Beginning July 1, 1991, all operators will be required to take the basic operator training course and pass the examination in order to become certified.

b. Application for certification must be received by the department within 30 days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

c. Applications for certification by examination which are received more than 30 days but less than 60 days after notification of successful completion of the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days of notice of successful completion of the examination will not be certified on the basis of that examination.

d. For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification without examination will be recommended.

e. For applicants who have been certified under voluntary certification programs in other states, certification will be considered. The applicant must have successfully completed a basic operator training course and an examination generally equivalent to the Iowa examination. The department may require the applicant to successfully complete the Iowa examination.

f. Applicants who seek Iowa certification pursuant to paragraph 104.25(8)"d" or 104.25(8)"e" shall submit an application for examination accompanied by a letter requesting certification pursuant to this subrule. Application for certification pursuant to this subrule shall be received by the department in accordance with paragraphs 104.25(8)"b" and 104.25(8)"c."

104.25(9) Renewals. All certificates shall expire every two years, on even-numbered years, and must be renewed every two years to maintain certification. Application and fee are due prior to expiration of certification.

a. Late application for renewal of a certificate may be made provided that such late application shall be received by the department or postmarked within 30 days of the expiration of the certificate. Such late application shall be on forms provided by the department and accompanied by the penalty fee and the certification renewal fee.

b. If a certificate holder fails to apply for renewal within 30 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification may be allowed at any time following such termination, provided that the applicant successfully completes an examination. The applicant must then apply for certification in accordance with subrule 104.25(8).

c. An operator may not continue to operate a solid waste incinerator after expiration of a certificate without renewal thereof.

d. Continuing education must be earned during the two-year certification period. All certified operators must earn ten contact hours per certificate during each two-year period. The two-year period will begin upon certification.

e. Only those operators fulfilling the continuing education requirements before the end of each two-year period will be allowed to renew their certificates. The certificates of operators not fulfilling the continuing education requirements shall be void upon expiration, unless an extension is granted.

f. All activities for which continuing education credit will be granted must be related to the subject matter of the particular certificate to which the credit is being applied.

g. The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three months within which the applicant may fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made 60 days prior to expiration of certification.

h. The certified operator is responsible for notifying the department of the continuing education credits earned during the period. The continuing education credits earned during the period shall be shown on the application for renewal.

i. A certified operator shall be deemed to have complied with the continuing education requirements of this rule during periods that the operator serves honorably on active duty in the military service; or for periods that the operator is a resident of another state or district having a continuing education requirement for operators and meets all the requirements of that state or district for practice there; or for periods that the person is a government employee working as an operator and is assigned to duty outside of the United States; or for other periods of active practice and absence from the state approved by the department.

104.25(10) Discipline of certified operators.

a. Disciplinary action may be taken on any of the following grounds:

(1) Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator. Duties of certified operators include compliance with rules and permit conditions applicable to incinerator operation.

(2) Failure to submit required records of operation or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

(3) Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

b. Disciplinary sanctions allowable are:

(1) Revocation of a certificate.

(2) Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation.

c. The procedure for discipline is as follows:

(1) The department shall initiate disciplinary action. The commission may direct that the department investigate any alleged factual situation that may be grounds for disciplinary action under paragraph 104.25(10)"a" and report the results of the investigation to the commission.

(2) A disciplinary action may be prosecuted by the department.

(3) Written notice shall be given to an operator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The operator shall be given 20 days to present any relevant facts and indicate the operator's position in the matter and to indicate whether informal resolution of the matter may be reached.

(4) An operator who receives notice shall communicate verbally, in writing, or in person with the department, and efforts shall be made to clarify the respective positions of the operator and department.

(5) The applicant's failure to communicate facts and positions relevant to the matter by the required date may be considered when appropriate disciplinary action is determined.

(6) If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the commission concurs, a written stipulation and settlement between the department and the operator shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

(7) If an agreement as to appropriate disciplinary action, if any, cannot be reached, the department may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 561—Chapter 7 related to contested and certain other cases pertaining to licensee discipline.

104.25(11) Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

104.25(12) A temporary operator of a solid waste incinerator may be designated for a period of six months when an existing certified operator is no longer available to the facility. The facility must make application to the department, explain why a temporary certification is needed, identify the temporary operator, and identify the efforts which will be made to obtain a certified operator. A temporary operator designation shall not be approved for greater than a six-month period except for extenuating circumstances. In any event, not more than one six-month extension to the temporary operator designation may be granted. Approval of a temporary operator designation may be rescinded for cause as set forth in subrule 104.25(10).

ITEM 3. Rescind and reserve **567—Chapter 111**.

ITEM 4. Rescind 567—Chapter 113 and adopt the following **new** chapter in lieu thereof:

CHAPTER 113
SANITARY LANDFILLS FOR MUNICIPAL SOLID WASTE: GROUNDWATER PROTECTION SYSTEMS FOR THE DISPOSAL OF NONHAZARDOUS WASTES

567—113.1(455B) Purpose. The purpose of this chapter is to protect human health and the environment through the implementation of minimum national standards pursuant to the Resource Conservation and Recovery Act ("RCRA" or "the Act") for all municipal solid waste landfill (MSWLF) units and under the Clean Water Act for MSWLFs that are used to dispose of sewage sludge.

This chapter details the permitting, siting, design, operating, monitoring, corrective action, reporting, recordkeeping, closure, and postclosure requirements for all sanitary landfills accepting municipal solid waste (MSW).

Groundwater is a precious natural resource. The vast majority of citizens in Iowa depend on groundwater as a drinking water source. Agriculture, industry and commerce also depend heavily on groundwater. It is essential to the health, welfare, and economic prosperity of all citizens in Iowa that groundwater is protected and that the prevention of groundwater contamination is of paramount importance. Therefore, the intent of this chapter is to prevent groundwater contamination from MSWLF units to the maximum extent practical, and if necessary to restore the groundwater to a potable state, regardless of present condition, use, or characteristics.

567—113.2(455B) Applicability and compliance.

113.2(1) All sanitary landfills accepting municipal solid waste must comply with the provisions of this chapter.

113.2(2) These rules do not encompass the beneficial use of by-products as alternative cover material. For rules pertaining to the beneficial use of by-products as alternative cover material, see 567—Chapter 108.

113.2(3) These rules do not encompass the management and disposal of special wastes. For rules pertaining to the management and disposal of special wastes, see 567—Chapter 109.

113.2(4) This chapter does not apply to MSWLF units that did not receive waste after October 9, 1994. The closure permit issued or the rules in effect at the time of closure shall govern postclosure activities for such MSWLF units.

113.2(5) This chapter does not apply to MSWLF units that stop receiving waste before October 1, 2007, and are not contiguous with MSWLF units that will continue to accept waste after October 1, 2007. For the purpose of this subrule, contiguous MSWLF units are those that adjoin, abut or have a common boundary or edge with one another or that utilize the same groundwater monitoring network system. The permit issued and the rules in effect at the time waste acceptance ceased shall govern postclosure activities for such MSWLF units except as follows:

a. Financial assurance in accordance with rule 567—113.14(455B) shall be required.

b. Owners or operators of MSWLF units described in this subrule that fail to complete cover installation within one year after October 1, 2007, will be subject to all the requirements of this chapter, unless otherwise specified.

c. Surface water sampling in accordance with subrule 113.10(3) shall be required.

d. MSWLF units subject to this rule shall perform groundwater sampling for the following parameters:

(1) Routine semiannual water sampling parameters:

1. Chloride.
2. Specific conductance (field measurement).
3. pH (field measurement).
4. Ammonia nitrogen.
5. Iron, dissolved.
6. Chemical oxygen demand.
7. Any additional parameters deemed necessary by the department.

(2) Routine annual water sampling parameters:

1. Total organic halogen.
2. Phenols.
3. Any additional parameters deemed necessary by the department.

e. If the analytical results for a downgradient groundwater monitoring point do not fall within the control limits of two standard deviations above (or below for pH) the mean parameters, listed in subparagraphs 113.2(5)"d"(1) and (2), in a corresponding upgradient groundwater monitoring point and it cannot be demonstrated that a source other than an MSWLF unit caused the control limit exceedence, then the owner or operator shall comply with the groundwater assessment monitoring program requirements in subrule 113.10(6) and corrective action requirements in subrules 113.10(7), 113.10(8) and 113.10(9), if necessary.

113.2(6) MSWLF units containing sewage sludge and failing to satisfy the requirements of this chapter violate Sections 309 and 405(e) of the Clean Water Act.

113.2(7) Consideration of other laws. The issuance of an MSWLF permit by the department in no way relieves the permit holder of the responsibility of complying with all other local, state, or federal statutes, ordinances, and rules and other applicable requirements.

113.2(8) Closure of existing MSWLF units.

a. Existing MSWLF units that cannot make the demonstration specified in paragraph 113.6(2)"a," pertaining to airports, in 113.6(2)"b," pertaining to floodplains, or in 113.6(2)"f," pertaining to unstable areas, must close in accordance with rule 113.12(455B) and conduct postclosure activities in accordance with rule 113.13(455B).

b. Except as provided in paragraph 113.2(8)"c" below, existing MSWLF units that do not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance shall cease accepting waste by October 1, 2007.

c. Existing MSWLF units that have an approved leachate collection system and a basal liner beneath the unit that is either a composite liner or an alternative liner modeled at an approved point of compliance, but that is not continuous onto the sides of the unit, may continue to place waste after October 1, 2007, in those portions of the unit directly under-

laid by the basal liner. Such units shall be brought into compliance in accordance with subrule 113.2(9) by constructing a leachate collection system and liner on the sides of the unit that meet the requirements of subrule 113.7(5) and are continuous beneath and onto the sides of the unit.

113.2(9) Existing MSWLF units that continue accepting waste after October 1, 2007, shall submit an implementation plan to the department by January 31, 2008, that identifies how the MSWLF shall achieve compliance with these rules. The plan shall include a compliance schedule which shall not extend beyond January 31, 2011. This subrule shall not preclude compliance with subrule 113.2(8).

113.2(10) Compliance with amendments to these rules.

a. Owners or operators of existing MSWLF units that have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance, shall not be required to redesign or reconstruct the approved leachate collection system or liner due to subsequent amendments to these rules unless the department finds that such facilities are causing pollution. This requirement shall not preclude compliance with paragraph 113.2(8)"c."

b. Except as authorized by subrule 113.2(9) and paragraph 113.2(10)"a," if any new requirement conflicts with a provision of or an operating procedure prescribed in the engineering plans or the MSWLF permit, the facility shall conform to the new rule.

113.2(11) Equivalency review procedure.

a. In approving a permit application under this chapter, the department may authorize, in writing, alternatives to the design requirements in this chapter only if, and only to the extent that, specific rules in this chapter expressly state that alternatives may be authorized under this chapter.

b. An owner or operator requesting an alternative design under this chapter shall submit a request to the department prepared by an Iowa-licensed professional engineer. The request shall:

(1) Identify the specific rule for which an equivalency alternative is being sought.

(2) Demonstrate, through supporting technical documentation, justification and quality control procedures, that the requested alternative to the design requirements in the rules of this chapter will, for the life of operations at the facility, achieve the performance standards in that rule.

c. No equivalency alternative will be approved unless the application affirmatively demonstrates that the following conditions are met:

(1) The request is complete and accurate and the requirements of this subrule have been met.

(2) The proposed alternative will, for the life of operations at the facility, achieve the performance standards in the rule for which the alternative to the design requirements in that rule is sought.

(3) The proposed alternative will provide protection equivalent to the design requirements in this chapter for the air, water or other natural resources of the state of Iowa, and will not harm or endanger the public health, safety or welfare.

567—113.3(455B) Definitions. Unless otherwise noted, the definitions set forth in Iowa Code section 455B.301 and 567—Chapter 100, which are incorporated by reference; the definitions that appear in specific rules within this chapter; and the following definitions shall apply to this chapter:

"Active life" means the period of operation beginning with the initial receipt of solid waste and ending at completion of closure activities in accordance with rule 113.12(455B).

"Active portion" means that part of a facility or unit that has received or is receiving wastes and that has not been closed in accordance with rule 113.12(455B).

"Aquifer" has the same meaning as in 567—Chapter 100.

"Commercial solid waste" means all types of solid waste generated by stores, offices, restaurants, warehouses, and other nonmanufacturing activities, excluding residential and industrial wastes.

"Existing MSWLF unit" means any municipal solid waste landfill unit that has received solid waste as of the most recent permit renewal.

"Facility" means all contiguous land and structures, other appurtenances, and improvements on the land used for the disposal of solid waste. The facility is formally defined in the permit issued by the department. Buffer lands around a facility are not required to be included in the permitted boundary of a facility.

"High water table" has the same meaning as in 567—Chapter 100.

"Household waste" means any solid waste (including garbage, trash, and sanitary waste in septic tanks) derived from households (including single and multiple residences, hotels and motels, bunkhouses, ranger stations, crew quarters, campgrounds, picnic grounds, and day-use recreation areas).

"Industrial solid waste" means solid waste generated by manufacturing or industrial processes that is not a hazardous waste regulated under Subtitle C of RCRA. Such waste may include, but is not limited to, waste resulting from the following manufacturing processes: electric power generation; fertilizer and agricultural chemicals; food and related products and by-products; inorganic chemicals; iron and steel manufacturing; leather and leather products; nonferrous metals manufacturing and foundries; organic chemicals; plastics and resins manufacturing; pulp and paper industry; rubber and miscellaneous plastic products; stone, glass, clay, and concrete products; textile manufacturing; transportation equipment; and water treatment. "Industrial solid waste" does not include mining waste or oil and gas waste.

"Lateral expansion" means a horizontal expansion of the waste boundaries of an existing MSWLF unit.

"Liner" means a continuous layer of recompacted natural soil, synthetic materials, or both, beneath and on the sides of an MSWLF unit that restricts the downward or lateral escape of solid waste, leachate, and gas.

"Municipal solid waste landfill (MSWLF) unit" means a discrete area of land or an excavation that receives household waste, and that is not a land application site, surface impoundment, injection well, or waste pile, as those terms are defined under 40 CFR Part 257.2. An MSWLF unit also may receive other types of RCRA Subtitle D wastes, such as commercial solid waste, nonhazardous sludge, construction and demolition debris, and industrial solid waste. An MSWLF unit may be publicly or privately owned. An MSWLF unit may be a new MSWLF unit, an existing MSWLF unit, or a lateral expansion. A construction and demolition landfill that receives residential lead-based paint waste and does not receive any other household waste is not an MSWLF unit.

"New MSWLF unit" means any municipal solid waste landfill unit that has not received waste prior to the most recent permit renewal.

"Open burning" has the same meaning as in 567—Chapter 100.

"Operator" has the same meaning as in 567—Chapter 100.

"Owner" means the person(s) who owns a facility or part of a facility.

"Point of compliance" or "POC" means the point at which the MSWLF owner or operator demonstrates compliance with the liner performance standard, if applicable, and with the groundwater protection standard. The point of compliance is a vertical surface located hydraulically downgradient of the waste management area that extends down into the uppermost aquifer underlying the regulated MSWLF unit(s) and where groundwater monitoring shall be conducted.

"Residential lead-based paint waste" means waste containing lead-based paint that is generated as a result of activities such as abatement, rehabilitation, renovation and remodeling in homes and other residences. "Residential lead-based paint waste" includes, but is not limited to, lead-based paint debris, chips, dust, and sludges.

"Runoff" means any rainwater, leachate, or other liquid that drains over land from any part of a facility.

"Run-on" means any rainwater, leachate, or other liquid that drains over land onto any part of a facility.

"Saturated zone" means that part of the earth's crust in which all voids are filled with water.

"Sewage sludge" has the same meaning as in 567—Chapter 67.

"Sludge" means any solid, semisolid, or liquid waste generated from a commercial or industrial wastewater treatment plant, water supply treatment plant, or air pollution control facility, or any other such waste having similar characteristics and effects exclusive of the treated effluent from a wastewater treatment plant.

"Statistically significant increase" or "SSI" means a statistical difference large enough to account for data variability and not thought to be due to chance alone.

"Uppermost aquifer" means the geologic formation nearest the natural ground surface that is an aquifer, as well as lower aquifers that are hydraulically interconnected with this aquifer within the facility's property boundary.

"Waste management unit boundary" means a vertical surface located at the hydraulically downgradient limit of the unit. This vertical surface extends down into the uppermost aquifer.

567—113.4(455B) Permits.

113.4(1) Permit required. An MSWLF unit shall not be constructed or operated without a permit from the department.

113.4(2) Construction and operation. An MSWLF unit shall be constructed and operated according to this chapter, any plans and specifications approved by the department, and the conditions of the permit. Any approved plans and specifications shall constitute a condition of the permit.

113.4(3) Transfer of title and permit. If title to an MSWLF unit is transferred, then the department shall transfer the permit within 60 days if the department has found that the following requirements have been met:

a. The title transferee has applied in writing to the department to request a transfer of the permit within 30 days of the transfer of the title.

b. The permitted facility is in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

c. The transferee possesses the equipment and personnel to operate the project in conformance with Iowa Code chapter 455B and these rules and the terms of the permit.

113.4(4) Permit conditions. Any permit may be issued subject to conditions specified in writing by the department that are necessary to ensure that the facility is constructed and operated in a safe and effective manner, and in compliance with Iowa Code chapters 455B and 455D, this chapter and the conditions of the permit.

113.4(5) Effect of revocation. If an MSWLF permit held by any public or private agency is revoked by the department, then no new permit shall be issued to that agency for that MSWLF for a period of one year from the date of revocation. Such revocation shall not prohibit the issuance of a permit for the facility to another public or private agency.

113.4(6) Inspection of site and operation. The department shall be notified when the construction of a new facility or MSWLF unit or significant components thereof have been completed so that the department may inspect the facility to determine if the project has been constructed in accordance with the design approved by the department. The department shall inspect and approve a new facility or MSWLF unit before MSW may be accepted. The department shall inspect a facility and its operations on a regular basis to determine if the facility is in compliance with this chapter.

113.4(7) Duration and renewal of permits.

a. Operating permits. An MSWLF permit shall be issued and may be renewed for a period no longer than five years, unless the MSWLF adopts research, development and demonstration (RD&D) provisions pursuant to subrule 113.4(10). An MSWLF permit with RD&D provisions pursuant to subrule 113.4(10) shall be issued and may be renewed for a period no longer than three years.

b. Closure permits. An MSWLF closure permit shall be issued only after a facility no longer accepts solid waste. A closure permit shall initially be issued for a period of 30 years. If the department extends the postclosure period beyond 30 years, then the duration of the subsequent closure permit will be determined on a site-specific basis. An MSWLF requires a closure permit until the department determines that postclosure operations are no longer necessary.

113.4(8) Request for permit renewal.

a. Operating permits. A request for an operating permit renewal shall be in writing and filed at least 90 days before the expiration of the current permit. If the applicant is found not to be in compliance with this chapter or the permit requirements, then the applicant shall achieve compliance or be placed on a compliance schedule approved by the department before the permit may be renewed.

b. Closure permits. A request for a closure permit renewal or termination shall be filed at least 180 days before the expiration of the current permit. If the department finds that an MSWLF has completed all required postclosure activities and no longer presents a significant risk to human health or the environment, then the department shall issue written notification that a closure permit is no longer required for the facility.

113.4(9) Request for permit amendment. Requests for permit amendments must be submitted in writing to the department with supporting documentation and justification.

113.4(10) RD&D permits. The department may issue an RD&D permit that overrides the applicable portions of this chapter, as listed below, without issuing a variance. A permit amendment from the department for leachate recirculation only does not require an RD&D permit.

a. The department may issue an RD&D permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from either or both of the following criteria, provided that the MSWLF unit has a leachate collection system designed and constructed to maintain less than a 30-cm (i.e., 12-inch) depth of leachate on the liner:

(1) The run-on control systems in subrule 113.7(8); and

(2) The liquids restrictions in subparagraph 113.8(1)"b"(3).

b. The department may issue a permit for a new MSWLF unit, existing MSWLF unit, or lateral expansion, for which the owner or operator proposes to utilize innovative and new methods which vary from the final cover criteria of subrules 113.12(1) and 113.12(2), provided that the MSWLF unit owner or operator demonstrates that the infiltration of liquid through the alternative cover system will not cause contamination of groundwater or surface water, or cause leachate depth on the liner to exceed 30 cm (i.e., 12 inches).

c. Any permit issued under subrule 113.4(10) must include such terms and conditions at least as protective as the criteria for MSWLFs to ensure protection of human health and the environment. Such permits shall:

(1) Provide for the construction and operation of such facilities as necessary, for not longer than three years, unless renewed as provided in paragraph 113.4(10)"e";

(2) Provide that the MSWLF unit must receive only those types and quantities of municipal solid waste and nonhazardous wastes which the department deems appropriate for the purposes of determining the efficacy and performance capabilities of the technology or process;

(3) Include such requirements as necessary to protect human health and the environment, including such requirements as necessary for testing and providing information to the department with respect to the operation of the facility;

(4) Require the owner or operator of an MSWLF unit permitted under subrule 113.4(10) to submit an annual report to the department showing whether and to what extent the site is progressing in attaining project goals. The report shall also include a summary of all monitoring and testing results, as well as any other operating information specified by the department in the permit; and

(5) Require compliance with all criteria in this chapter, except as permitted under subrule 113.4(10).

d. The department may order an immediate termination of all operations at the facility allowed under subrule 113.4(10) or other corrective measures at any time the department determines that the overall goals of the project are not being attained, including protection of human health or the environment.

e. Any permit issued under subrule 113.4(10) shall not exceed 3 years, and each renewal of a permit may not exceed 3 years.

(1) The total term for a permit for a project including renewals may not exceed 12 years; and

(2) During permit renewal, the applicant shall provide a detailed assessment of the project showing the status with respect to achieving project goals, a list of problems and the status with respect to problem resolutions, and any other requirements that the department determines necessary for permit renewal.

113.4(11) Factors in permit issuance decisions. The department may request that additional information be submitted for review to make a permit issuance decision. The department may review and inspect the facility, its agents and operators, and compliance history. The department may consider compliance with related requirements, such as financial assurance and comprehensive planning. The department may review whether or not a good-faith effort to maintain compliance and protect human health and the environment is being made, and whether a compliance schedule is being followed.

113.4(12) Notice and public participation in the MSWLF permit issuance and postpermit actions process.

a. For the purposes of this subrule, "postpermit actions" includes permit renewals and requests for major facility modifications as defined below:

(1) Change in an MSWLF facility boundary or an MSWLF unit.

(2) Application for an RD&D permit pursuant to subrule 113.4(10).

(3) Installation of a landfill gas collection system.

(4) Application for a closure permit for an MSWLF unit.

(5) Transfer of an MSWLF permit to a new owner.

(6) Variance from this chapter under rule 567—113.15(455B).

(7) Change in the postclosure land use of the property.

(8) Other significant permit actions that are determined by the department to require public notice and participation. Such actions may include requests to change any of the requirements set forth as special provisions in the permit.

b. Prior to the issuance of approval or denial for an MSWLF permit or postpermit action, public notice shall be circulated in a manner designed to inform interested and potentially interested persons of the permit or postpermit action request. Procedures for the circulation of public notice shall include at least the following procedures:

(1) Upon receipt of the permit application or postpermit action request, the department shall make a determination of whether public notice is required in accordance with this subrule. If the determination is made that public notice is required, then the department shall prepare the public notice which shall be circulated by the owner or operator within the service area of the MSWLF by posting the public notice near the entrance to the MSWLF and by publishing the public notice in periodicals or, if appropriate, in a newspaper(s) of general circulation.

(2) The public notice shall be mailed by the department to any person upon request and posted on the department's Web site.

c. The department shall provide a period of not less than 30 days following the date of the public notice during which time interested persons may submit their written views with respect to the MWSLF permit application or postpermit action request. All written comments submitted during the 30-day comment period shall be retained by the department and considered by the department in the formulation of the department's final determinations with respect to the permit application or postpermit action request. The period for comment may be extended at the discretion of the department.

d. The contents of the public notice shall include at least the following:

(1) The name, address, and telephone number of the department.

(2) The name and address of each applicant.

(3) A brief description of each applicant's activities or operations which result in the submittal of the permit application or postpermit action request.

(4) A statement that any person may submit written and signed comments, or may request a public hearing, or both, on the proposed permit or postpermit action request. A statement of procedures to request a public hearing pursuant to paragraph 113.4(12)"e" shall be included.

(5) Locations where copies of the permit application or postpermit action request may be reviewed, including the closest department field office, and the times at which the copies shall be available for public inspection.

e. The applicant, any interested agency, person or group of persons may request or petition for a public hearing with respect to an MSWLF permit application or postpermit action request. Any such request shall clearly state issues and topics to be addressed at the hearing. Any such request or petition for public hearing must be filed with the department within the 30-day period prescribed in paragraph 113.4(12)"c" and shall indicate the interest of the party filing such request and the reasons why a hearing is warranted. The department shall hold an informal and noncontested case hearing if there is a significant public interest (including the filing of requests or petitions for such hearing) in holding such a hearing. Frivolous or insubstantial requests for hearing may be denied by the department. Instances of doubt should be resolved in favor of holding the hearing. Any hearing requested pursuant to this subrule shall be held in the service area of the MSWLF, or other appropriate area at the discretion of the department.

f. If the department determines that a public hearing is warranted, then the department shall prepare the public notice of the hearing. Public notice of any hearing held shall be circulated at least as widely as was the notice of the permit application or postpermit action request.

g. The contents of public notice of any hearing held pursuant to paragraph 113.4(12)"e" shall include at least the following:

(1) The name, address, and telephone number of the department;

(2) The name and address of each applicant whose application will be considered at the hearing;

(3) A brief reference to the public notice issued for each permit application and postpermit action request;

(4) Information regarding the time and location for the hearing;

(5) The purpose of the hearing;

(6) A concise statement of the issues raised by the person requesting the hearing;

(7) Locations where copies of the permit application or postpermit action may be reviewed, including the closest department field office, and the times at which the copies shall be available for public inspection; and

(8) A brief description of the nature of the hearing, including the rules and procedures to be followed.

h. The department shall keep a record of the commenters and of the issues raised during the public participation process and shall prepare written responses to all comments received. At the time a final decision is made, the record and copies of the department's responses shall be made available to the public.

567—113.5(455B) Permit application requirements.

113.5(1) Unless otherwise authorized by the department, an MSWLF permit applicant shall submit, at a minimum, the following permit application information to the department:

a. The name, address and telephone number of:

(1) Owner of the site where the facility will be located.

(2) Permit applicant.

(3) Official responsible for the facility.

(4) Certified operator (i.e., "operator") responsible for operation of the facility.

(5) Professional engineer(s) (P.E.) licensed in the state of Iowa and retained for the design of the facility.

(6) Agency to be served by the facility, if any.

(7) Responsible official of agency to be served, if any.

b. An organizational chart.

c. A site exploration and characterization report for the facility that complies with the requirements of subrule 113.6(4).

d. Plans and specifications for the facility, and quality control and assurance (QC&A) plans, that comply with the requirements of subrule 113.7(6).

e. A development and operations (DOPs) plan for the facility, an emergency response and remedial action plan (ERRAP), and proof of MSWLF operator certification that comply with the requirements of rule 113.8(455B).

f. An environmental monitoring plan that complies with the requirements of rules 113.9(455B) and 113.10(455B).

g. The project goals and time lines, and other documentation as necessary to comply with subrule 113.4(10) and other requirements of the department if an RD&D permit is being requested or renewed.

h. Proof of financial assurance in compliance with rule 113.14(455B).

i. A closure and postclosure plan that complies with the requirements of rules 113.12(455B) and 113.13(455B).

113.5(2) Incomplete permit applications. If the department finds the permit application information to be incomplete, the department shall notify the applicant of that fact and of the specific deficiencies. If the applicant fails to correct the noted deficiencies within 30 days, the department may reject the application and return the application materials to the applicant. The applicant may reapply without prejudice.

567—113.6(455B) Siting and location requirements for MSWLFs. This rule applies to new MSWLF units and horizontal expansions of existing MSWLF units. Except for paragraphs 113.6(2)"a," 113.6(2)"b" and 113.6(2)"f," this rule does not apply to permitted MSWLF units which have been approved prior to October 1, 2007. Information required to document compliance with the requirements of rule 113.6(455B) shall be consolidated and maintained in a site exploration and characterization report pursuant to subrule 113.6(4).

113.6(1) Local siting approval. The department will not consider a permit application for a new MSWLF unless local siting approval pursuant to Iowa Code section 455B.305A, if applicable, has been obtained.

113.6(2) Location restrictions. All MSWLFs shall comply with the following location restrictions.

a. Airports. For purposes of this chapter:

"Airport" means public-use airport open to the public without prior permission and without restrictions within the physical capacities of available facilities.

"Bird hazard" means an increase in the likelihood of bird-aircraft collisions that may cause damage to the aircraft or injury to its occupants.

(1) A prohibition on locating a new MSWLF near certain airports was enacted in Section 503 of the Wendell H. Ford Aviation Investment and Reform Act for the 21st Century (Ford Act), Pub. L. 106-181 (49 U.S.C. 44718 note). Section 503 prohibits the "construction or establishment" of new MSWLFs after April 5, 2000, within six miles of certain smaller public airports. The Federal Aviation Administration (FAA) administers the Ford Act and has issued guidance in FAA Advisory Circular 150/5200-34A, dated January 26, 2006.

(2) Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions that are located within 10,000 feet (3,048 meters) of any airport runway end used by turbojet aircraft or within 5,000 feet (1,524 meters) of any airport runway end used by piston-type aircraft only must

demonstrate to the FAA that the units are designed and operated so that the MSWLF unit does not pose a bird hazard to aircraft. The owner or operator must place the demonstration of this requirement in the operating record and submit to the department a copy of the demonstration approved by the FAA.

(3) Owners or operators proposing to site new MSWLF units and lateral expansions within a five-mile radius of any airport runway end used by turbojet or piston-type aircraft must notify the affected airport and the FAA. A copy of these notifications shall be submitted to the department.

b. Floodplains. For purposes of this chapter:

"Floodplain" means the lowland and relatively flat areas adjoining inland and coastal waters, including flood-prone areas of offshore islands that may be inundated by a 100-year flood.

"100-year flood" means a flood that has a 1 percent or greater chance of recurring in any given year or a flood of a magnitude equaled or exceeded once in 100 years on the average over a significantly long period.

"Washout" means the carrying away of solid waste by waters of the base flood.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in 100-year floodplains must demonstrate to the department that the unit will not restrict the flow of the 100-year flood, reduce the temporary water storage capacity of the floodplain, or result in washout of solid waste so as to pose a hazard to human health and the environment. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

c. Wetlands. For purposes of this chapter:

"Wetlands" means those areas that are inundated or saturated by surface water or groundwater at a frequency and duration sufficient to support, and that under normal circumstances do support, a prevalence of vegetation typically adapted for life in saturated soil conditions. Wetlands generally include swamps, marshes, bogs, and similar areas.

New MSWLF units and lateral expansions shall not be located in wetlands, unless the owner or operator can make the following demonstrations to the department:

(1) Where applicable under Section 404 of the Clean Water Act or applicable state wetlands laws, the presumption that a practicable alternative to the proposed landfill is available which does not involve wetlands is clearly rebutted;

(2) The construction and operation of the MSWLF unit will not:

1. Cause or contribute to violations of any applicable state water quality standard;

2. Violate any applicable toxic effluent standard or prohibition under Section 307 of the Clean Water Act;

3. Jeopardize the continued existence of endangered or threatened species or result in the destruction or adverse modification of a critical habitat protected under the Endangered Species Act of 1973; and

4. Violate any requirement under the Marine Protection, Research, and Sanctuaries Act of 1972 for the protection of a marine sanctuary;

(3) The MSWLF unit will not cause or contribute to significant degradation of wetlands. The owner or operator must demonstrate the integrity of the MSWLF unit and its ability to protect ecological resources by addressing the following factors:

1. Erosion, stability, and migration potential of native wetland soils, muds and deposits used to support the MSWLF unit;

2. Erosion, stability, and migration potential of dredged and fill materials used to support the MSWLF unit;

3. The volume and chemical nature of the waste managed in the MSWLF unit;

4. Impacts on fish, wildlife, and other aquatic resources and their habitats from release of the solid waste;

5. The potential effects of catastrophic release of waste to wetlands and the resulting impacts on the environment; and

6. Any additional factors, as necessary, to demonstrate that ecological resources in the wetland are sufficiently protected;

(4) To the extent required under Section 404 of the Clean Water Act or applicable state wetlands laws, steps have been taken to attempt to achieve no net loss of wetlands (as defined by acreage and function) by first avoiding impacts to wetlands to the maximum extent practicable as required by subparagraph 113.6(2)"c"(1), then minimizing unavoidable impacts to the maximum extent practicable, and finally offsetting remaining unavoidable wetland impacts through all appropriate and practicable compensatory mitigation actions (e.g., restoration of existing degraded wetlands or creation of human-made wetlands); and

(5) Sufficient information is available to make a reasonable determination with respect to these demonstrations.

d. Fault areas. For the purposes of this chapter:

"Fault" means a fracture or a zone of fractures in any material along which strata on one side have been displaced with respect to that on the other side.

"Displacement" means the relative movement of any two sides of a fault measured in any direction.

"Holocene" means the most recent epoch of the Quaternary Period, extending from the end of the Pleistocene Epoch to the present.

New MSWLF units and lateral expansions shall not be located within 200 feet (60 meters) of a fault that has had displacement in Holocene time unless the owner or operator demonstrates to the department that an alternative setback distance of less than 200 feet (60 meters) will prevent damage to the structural integrity of the MSWLF unit and will be protective of human health and the environment.

e. Seismic impact zones. For the purposes of this chapter:

"Seismic impact zone" means an area with a 10 percent or greater probability that the maximum horizontal acceleration in lithified earth material, expressed as a percentage of the earth's gravitational pull (g), will exceed 0.10g in 250 years.

"Maximum horizontal acceleration in lithified earth material" means the maximum expected horizontal acceleration depicted on a seismic hazard map, with a 90 percent or greater probability that the acceleration will not be exceeded in 250 years, or the maximum expected horizontal acceleration based on a site-specific seismic risk assessment.

"Lithified earth material" means all rock, including all naturally occurring and naturally formed aggregates or masses of minerals or small particles of older rock that formed by crystallization of magma or by induration of loose sediments. "Lithified earth material" does not include human-made materials, such as fill, concrete, and asphalt, or unconsolidated earth materials, soil, or regolith lying at or near the earth's surface.

New MSWLF units and lateral expansions shall not be located in seismic impact zones, unless the owner or operator demonstrates to the department that all containment structures, including liners, leachate collection systems, and surface water control systems, are designed to resist the maxi-

mum horizontal acceleration in lithified earth material for the site. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department.

f. Unstable areas. For purposes of this chapter:

"Unstable area" means a location that is susceptible to natural or human-induced events or forces capable of impairing the integrity of some or all of the landfill structural components responsible for preventing releases from a landfill. Unstable areas may include poor foundation conditions, areas susceptible to mass movements, and karst terranes.

"Structural components" means liners, leachate collection systems, final covers, run-on systems, runoff systems, and any other component used in the construction and operation of the MSWLF that is necessary for protection of human health and the environment.

"Poor foundation conditions" means those areas where features exist which indicate that a natural or human-induced event may result in inadequate foundation support for the structural components of an MSWLF unit.

"Areas susceptible to mass movement" means those areas of influence (i.e., areas characterized as having an active or substantial possibility of mass movement) where the movement of earth material at, beneath, or adjacent to the MSWLF unit, because of natural or human-induced events, results in the downslope transport of soil and rock material by means of gravitational influence. Areas of mass movement include, but are not limited to, landslides, avalanches, debris slides and flows, soil fluction, block sliding, and rock fall.

"Karst terranes" means areas where karst topography, with its characteristic surface and subterranean features, is developed as the result of dissolution of limestone, dolomite, or other soluble rock. Characteristic physiographic features present in karst terranes include, but are not limited to, sinkholes, sinking streams, caves, large springs, and blind valleys.

Owners or operators of new MSWLF units, existing MSWLF units, and lateral expansions located in an unstable area must demonstrate to the department that engineering measures have been incorporated into the MSWLF unit's design to ensure that the integrity of the structural components of the MSWLF unit will not be disrupted. The owner or operator must place the demonstration in the operating record and submit a copy of the demonstration to the department. The owner or operator must consider the following factors, at a minimum, when determining whether an area is unstable:

(1) On-site or local soil conditions that may result in significant differential settling;

(2) On-site or local geologic or geomorphologic features; and

(3) On-site or local human-made features or human-induced events (both surface and subsurface).

g. Threatened or endangered flora and fauna.

(1) All MSWLF owners or operators shall contact the department's Iowa Natural Areas Inventory with a request to search its records to determine the presence of, or habitat for, any threatened or endangered species or communities of flora or fauna on the proposed site. In the event that the department's Iowa Natural Areas Inventory does not contain records of threatened or endangered species or communities but their presence is suspected, then the permit applicant shall conduct a site survey.

(2) Should any threatened or endangered species be identified pursuant to subparagraph 113.6(2)"g"(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of the threatened or endangered species or communities.

h. Cultural resources.

(1) All MSWLF owners and operators shall prepare a comprehensive listing of, and assessment of the impact on, any archaeologically, historically, or architecturally significant properties on the proposed site. To assess the impact, the permit applicant shall consult with the historic preservation bureau of the state historical society of Iowa.

(2) Should any significant cultural resources be identified pursuant to subparagraph 113.6(2)"h"(1), the permit applicant shall demonstrate to the department that the MSWLF unit will not cause or contribute to significant degradation of those cultural resources.

i. Separation from groundwater. The base of an MSWLF unit shall be situated so that the base of the waste within the proposed unit is at least 5 feet above the high water table unless a greater separation is required to ensure that there will be no significant adverse effect on groundwater or surface waters or a lesser separation is unlikely to have a significant adverse effect on groundwater or surface waters. Artificial means of lowering the high water table are acceptable. The separation of the base of an MSWLF unit from the high water table shall be measured and maintained in a manner acceptable to the department.

j. Wells and community water systems. An MSWLF unit shall not be within 1,000 feet of any potable well or community water system in existence at the time of receipt of the original permit application or application to laterally expand the permitted MSWLF unit for the facility that is being used for human or livestock consumption. Groundwater monitoring wells are exempt from this requirement. The department may also exempt extraction wells utilized as part of a remediation system from this requirement. A new MSWLF unit shall not be within 1,000 feet of a downgradient agricultural drainage well.

k. Property line setback. An MSWLF unit shall be at least 50 feet from the adjacent property line.

l. Housing and sensitive populations. An MSWLF unit shall not be within 500 feet of an occupied residence, recreational area, child care facility, educational facility, or health care facility in existence at the time of receipt of the original permit application or application to laterally expand the permitted MSWLF unit, unless there is a written agreement between the MSWLF owner and such facility. The written agreement shall be filed with the county recorder for abstract of title purposes, and a copy submitted to the department.

113.6(3) Soil and hydrogeologic investigations. An MSWLF shall have a qualified groundwater scientist, as defined in paragraph 113.10(1)"d," to conduct a soil and hydrogeologic investigation in accordance with this subrule. The purpose of this investigation is to obtain data to determine potential routes of contaminant migration via groundwater. Such information is vital for completion of the site exploration and characterization report, and the hydrologic monitoring system plan and design. This subrule sets forth the minimum requirements for soil and hydrogeologic investigations. The MSWLF shall comply with this subrule unless the department issues written approval due to specific site conditions.

a. Number of borings. A sufficient number of borings shall be made to accurately identify the stratigraphic and hydrogeologic conditions at the site.

b. Depth of borings. Unless otherwise approved by the department in writing, the following requirements shall apply to the depth of borings.

(1) All borings shall be a minimum of 25 feet deep and at least 10 feet below the water table.

(2) At a minimum, half of all borings shall extend 20 feet into the uppermost aquifer, 50 feet below the water table, or 10 feet into bedrock.

(3) At a minimum, one boring shall extend 10 feet into bedrock or 100 feet below the lowest ground surface elevation.

(4) All borings shall be of sufficient depth to correlate strata between borings.

c. Boring method and soil samples.

(1) Continuous samples shall be collected for all borings, unless otherwise approved by the department in writing.

(2) Boring logs shall be as detailed as possible in describing each stratum.

(3) Samples shall be clearly marked, preserved and transported in accordance with laboratory procedures.

(4) The permit applicant shall keep and preserve samples until at least 30 days after the permit is issued.

(5) Soil samples from each stratum shall be tested for falling-head permeability and grain size distribution.

d. Conversion of or plugging borings.

(1) Borings may be converted to piezometers or monitoring wells. However, the conversion of such borings does not guarantee that more piezometers or monitoring wells will not be required in the department-approved hydrologic monitoring system plan and design.

(2) Borings not converted to piezometers or monitoring wells shall be plugged and properly sealed so as not to create pathways for subsurface or surface pollution migration. Borings converted to piezometers or monitoring wells may still need to be partially plugged depending on the depth of the boring. Plugging shall be performed pursuant to paragraph 113.10(2)"d."

e. Soil and hydrogeologic investigation description and analysis. A soil and hydrogeologic investigation description and analysis shall be completed and maintained and, at a minimum, shall contain the following:

(1) The boring logs pursuant to subparagraph 113.6(3)"c"(2).

(2) A description of the properties of each soil and bedrock stratum as appropriate, including:

1. Soil texture and classification.
2. Particle size distribution.
3. Mineral composition, cementation, and soil structure.
4. Permeability, including horizontal and vertical permeability, and porosity.
5. Geologic structure, including strike, dip, folding, faulting and jointing.
6. Previous activities and infrastructure at the site that could affect geology and hydrogeology, such as but not limited to mining, quarry operations, borrow pits, waste disposal, storage tanks, pipelines, utilities and tile lines.
7. Lenses and other discontinuous units, voids, solution openings, layering, fractures, other heterogeneity, and the scale or frequency of the heterogeneity.
8. Correlation and continuity of strata between borings.

(3) Descriptions of the hydrogeologic units within the saturated zone, including:

1. Thickness.
2. Hydraulic properties, including as appropriate, conductivity, transmissivity, storativity, and effective porosity.
3. Concentrations of chemical constituents listed in Appendix I present in the groundwater of hydrogeologic units and the source of those constituents, if known.
4. Role and effect of each hydrogeologic unit as an aquifer, aquitard, or perched saturated zone.
5. The actual or potential use of the aquifers as water supplies.

(4) Plan view maps, and a series of cross sections with two oriented perpendicular and two oriented parallel to the predominant directions of groundwater flow through the MSWLF unit, showing:

1. The extent of soil and bedrock strata.
2. The position of the water table.
3. The position of the uppermost aquifer.
4. Measured values of hydraulic head.
5. Equipotential lines and inferred groundwater streamlines of the water table, and the uppermost aquifer if different from the water table.
6. Location of soil and bedrock borings.
7. Location of piezometers and monitoring points, if any.

(5) A description and evaluation of horizontal and vertical groundwater flow which specifically addresses the following and their significance to the movement of pollutants carried by groundwater:

1. Local, intermediate and regional groundwater systems.
2. Groundwater recharge and discharge areas within and immediately surrounding the facility, including interactions with perennial and intermittent surface waters and how the facility affects recharge rates.
3. Existing and proposed groundwater and surface water withdrawals.
4. The effects of heterogeneity, fractures or directional differences in permeability on groundwater movement.
5. Directions of groundwater movement, including vertical components of flow, specific discharge rates and average linear velocities within the hydrologic strata.
6. Seasonal or other temporal fluctuations in hydraulic head.
7. The effect of existing and proposed MSWLF units.

(6) An analysis of potential impacts on groundwater and surface water quality, and water users, in the event of a theoretical release at the most downgradient portion of each MSWLF unit. The analysis shall at a minimum utilize contaminants and indicator parameters with high mobility in groundwater (e.g., chlorides, organic solvents). This analysis shall include:

1. Assumptions and approximations utilized, and why they were utilized.
2. If a model is utilized, a thorough description of models used and each model's capabilities and limitations, including the reliability and accuracy of the models in actual field tests.
3. Projected paths and rates of movement of contaminants found in leachate.

(7) Recommendations for the location of the proposed MSWLF unit and conceptual design based on hydrogeologic information.

113.6(4) Site exploration and characterization report. An MSWLF shall maintain a site exploration and characterization report. At a minimum, the site exploration and characterization report shall detail compliance with the requirements of rule 113.6(455B) and shall contain the following components.

a. A title page and index.

b. A legal description of the site.

c. Proof of the applicant's ownership of the site and legal entitlement to use the site as an MSWLF. If the applicant does not own the site, then proof of legal entitlement to the

site, such as, for example, a lease, must be submitted. Such legal entitlement must include the following:

(1) Provisions that allow continued disposal operations until closure of the facility.

(2) Provisions for the performance of facility closure operations.

(3) Provisions for postclosure care for at least a 30-year period after facility closure.

d. Proof of the applicant's local siting approval pursuant to Iowa Code section 455B.305A, if applicable.

e. Scaled maps or aerial photographs locating the boundaries of the facility and identifying:

(1) North and other principal compass points.

(2) Section lines and other legal boundaries.

(3) Zoning and land use within 0.5 miles.

(4) Haul routes to and from the facility, including load limits or other restrictions on those routes.

(5) Topography within 0.5 miles.

(6) Applicable setback distances and location requirements pursuant to rule 113.6(455B), including:

1. Airports within 6 miles of existing, new and planned MSWLF units.

2. Floodplains within or adjacent to the facility.

3. Wetlands within or adjacent to the facility.

4. Fault areas within 200 feet of existing, new and planned MSWLF units.

5. Seismic impact zones within or adjacent to the facility.

6. Unstable areas within or adjacent to the facility.

7. Location of threatened or endangered species within or adjacent to the facility.

8. Location of cultural resources within or adjacent to the facility.

9. Wells within 1,000 feet of upgradient existing, new and planned MSWLF units.

10. Community water systems within 1 mile of upgradient existing, new and planned MSWLF units.

11. Boundaries of the existing, new and planned MSWLF units and the facility property line.

12. Housing and sensitive populations within 500 feet of existing, new and planned MSWLF units.

f. The bird-aircraft hazard demonstration pursuant to paragraph 113.6(2)"a," if applicable.

g. The floodplain demonstration pursuant to paragraph 113.6(2)"b," if applicable.

h. The wetlands demonstration pursuant to paragraph 113.6(2)"c," if applicable.

i. The fault area demonstration pursuant to paragraph 113.6(2)"d," if applicable.

j. The seismic impact zone demonstration pursuant to paragraph 113.6(2)"e," if applicable.

k. The unstable area demonstration pursuant to paragraph 113.6(2)"f," if applicable.

l. The threatened or endangered flora and fauna demonstration pursuant to paragraph 113.6(2)"g," if applicable.

m. The cultural resources demonstration pursuant to paragraph 113.6(2)"h," if applicable.

n. Copies of written agreements with surrounding property owners pursuant to paragraph 113.6(2)"l," if applicable.

o. The soil and hydrogeologic investigation description and analysis pursuant to paragraph 113.6(3)"e."

567—113.7(455B) MSWLF unit design and construction standards. All MSWLF units shall be designed and constructed in accordance with this rule.

113.7(1) Predesign meeting with the department. A potential applicant for a new MSWLF unit may schedule a predesign meeting with the department's landfill permitting staff prior to beginning work on the plans and specifications of a modified or new MSWLF. The purpose of this meeting is to help minimize the need for revisions upon submittal of the official designs and specifications.

113.7(2) Plans and specifications.

a. Unless otherwise requested by the department, one copy of plans, specifications and supporting documents shall be sent to the department for review. Upon written department approval, the documents shall be submitted in triplicate to the department for proper distribution.

b. All new MSWLF units shall be constructed in compliance with the rules and regulations in effect at the time of construction. Previous department approval of plans and specifications for MSWLF units not yet constructed shall be superseded by the promulgation of new rules and regulations, after which plans and specifications shall be resubmitted to the department for approval prior to construction and operation.

113.7(3) General site design and construction requirements. An MSWLF shall have the following:

a. All-weather access roads to the facility.

b. A perimeter fence with a lockable gate(s) to help prevent unauthorized access.

c. A sign at the entrance to the facility specifying:

(1) Name and permit number of the facility.

(2) Days and hours that the facility is open to the public or a statement that the facility is not open to the public.

(3) A general list of materials that are not accepted.

(4) Telephone number of the official responsible for operation of the facility and the emergency contact person(s).

d. All-weather access roads within the facility.

e. Signs or pavement markings clearly indicating safe and proper on-site traffic patterns.

f. Adequate queuing distance for vehicles entering and exiting the property.

g. A scale certified by the Iowa department of agriculture and land stewardship.

113.7(4) MSWLF unit subgrade. The subgrade for a new MSWLF unit shall be constructed as follows:

a. All trees, stumps, roots, boulders, debris, and other material capable of deteriorating in situ material strength or of creating a preferential pathway for contaminants shall be completely removed or sealed off prior to construction of the MSWLF unit.

b. The material beneath the MSWLF unit shall have sufficient strength to support the weight of the unit during all phases of construction and operation. The loads and loading rate shall not cause or contribute to failure of the liner and leachate collection system.

c. The total settlement or swell of the MSWLF unit's subgrade shall not cause or contribute to failure of the liner and leachate collection system.

d. If the in situ material of the MSWLF unit's subgrade cannot meet the requirements of paragraphs 113.7(4)"b" and 113.7(4)"c," then such material shall be removed and replaced with material capable of compliance.

e. The subgrade of an MSWLF unit shall be constructed and graded to provide a smooth working surface on which to construct the liner.

f. The subgrade of an MSWLF unit shall not be constructed in or with frozen soil.

113.7(5) MSWLF unit liners and leachate collection systems. The liner and leachate collection system for a new MSWLF unit shall be constructed in accordance with the requirements of this subrule. All active portions must have a composite liner or an alternative liner approved by the de-

partment. An MSWLF unit must have a functioning leachate collection system during its active life.

a. Liner systems. An MSWLF unit shall have a liner system that complies with either the composite liner requirements of subparagraph 113.7(5)"a"(1) or an alternative liner system that complies with the requirements of subparagraph 113.7(5)"a"(2). Liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches after compaction.

(1) Composite liner systems.

1. A composite liner consists of two components, an upper flexible membrane liner (FML) and a lower compacted soil liner.

2. The upper component must consist of a minimum 30-mil flexible membrane liner (FML). FML components consisting of high-density polyethylene (HDPE) shall be at least 60 mil thick. The FML component must be installed in direct and uniform contact with the lower compacted soil component.

3. The lower component must consist of at least a 2-foot layer of compacted soil with a hydraulic conductivity of no more than 1×10^{-7} centimeters per second (cm/sec). The compacted soil must be placed in lifts no thicker than 8 inches after compaction.

4. The composite liner must be adequately sloped toward the leachate collection pipes to provide drainage of leachate. Unless alternative design requirements to this performance standard are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate collection system shall have a slope greater than or equal to 2 percent and not exceeding 33 percent.

(2) Alternative liner systems.

1. The design must ensure that the concentration values listed in Table I of rule 113.7(455B) will not be exceeded in the uppermost aquifer at the relevant point of compliance, as specified pursuant to numbered paragraph 113.7(5)"a"(2)"2." Alternative liners utilizing compacted soil must place the compacted soil in lifts no thicker than 8 inches.

2. The relevant point of compliance specified by the department must be within 50 feet of the planned liner or waste boundary, unless site conditions dictate otherwise, downgradient of the facility with respect to the hydrologic unit being monitored in accordance with subparagraph 113.10(2)"a"(2), and located on land owned by the owner of the MSWLF unit. The relevant point of compliance specified by the department shall be at least 50 feet from the property line of the facility.

3. When approving an alternative liner design, the department shall consider at least the following factors:

- The hydrogeologic characteristics of the facility and surrounding land.
- The climatic factors of the area.
- The volume and physical and chemical characteristics of the leachate.
- The sensitivities and limitations of the modeling demonstrating the applicable point of compliance.
- Practicable capability of the owner or operator.

4. The alternative liner must be adequately sloped toward the leachate collection pipes to provide drainage of leachate. Unless alternative design requirements to this performance standard are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate collection system shall have a slope greater than or equal to 2 percent and not exceeding 33 percent.

Table I

Chemical	MCL (mg/l)
Arsenic	0.01
Barium	1.0
Benzene	0.005
Cadmium	0.01
Carbon tetrachloride	0.005
Chromium (hexavalent)	0.05
2,4-Dichlorophenoxy acetic acid	0.1
1,4-Dichlorobenzene	0.075
1,2-Dichloroethane	0.005
1,1-Dichloroethylene	0.007
Endrin	0.0002
Fluoride	4.0
Lindane	0.004
Lead	0.05
Mercury	0.002
Methoxychlor	0.1
Nitrate	10.0
Selenium	0.01
Silver	0.05
Toxaphene	0.005
1,1,1-Trichloromethane	0.2
Trichloroethylene	0.005
2,4,5-Trichlorophenoxy acetic acid	0.01
Vinyl chloride	0.002

b. Leachate collection system. All MSWLF units shall have a leachate collection system that complies with the following requirements:

(1) The leachate collection system shall be designed and constructed to function for the entire active life of the facility and the postclosure period.

(2) The leachate collection system shall be of a structural strength capable of supporting waste and equipment loads throughout the active life of the facility and the postclosure period.

(3) The leachate collection system shall be designed and constructed to minimize leachate head over the liner at all times. An MSWLF unit shall have a leachate collection system that maintains less than a 30-centimeter (i.e., 12-inch) depth of leachate over the liner. The leachate collection system shall have a method for accurately measuring the leachate head on the liner at the system's lowest point(s) within the MSWLF unit (e.g., sumps). Furthermore, an additional measuring device shall be installed to measure leachate directly on the liner in the least conductive drainage material outside of the sump and collection trench. Leachate head measurements from cleanout lines or manholes are not acceptable for the second measurement. All such measurement devices shall be in place before waste is placed in the MSWLF unit.

(4) If the leachate collection system is not designed and constructed factoring in leachate recirculation or bioreactor operations, the department may prohibit such activities within the MSWLF unit.

(5) The collection pipes shall be of a length and cross-sectional area that allow for cleaning and inspection through the entire length of all collection pipes at least once every three years. The collection pipes shall not be designed or constructed with sharp bends that prevent cleaning or inspection along any section of the collection pipe or that may cause the collection pipe to be damaged during cleaning or inspection.

(6) Leachate collection system designs shall attempt to minimize the potential for clogging due to mass loading.

(7) Unless alternative design requirements are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the following design requirements shall apply:

1. A geotextile cushion over the flexible membrane liner (FML), if the liner utilizes an FML and granular drainage media. A geotextile cushion is not required if the granular drainage media is well rounded and less than 3/8 inch in diameter. The geotextile's mass shall be determined based on the allowable pressure on the geomembrane.

2. Collection pipe(s) at least 4 inches in diameter at the base of the liner slope(s), surrounded by the high hydraulic-conductivity material listed in numbered paragraph 113.7(5)"b"(7)"3" below. The collection pipe shall have slots or holes large enough to minimize the potential for clogging from fines conveyed by incoming leachate.

3. One of the following high hydraulic-conductivity materials:

- High hydraulic-conductivity material (e.g., gravel) of uniform size and a fines content of no more than 5 percent by weight passing a #200 sieve. The high hydraulic-conductivity material shall be at least 12 inches in depth and have a hydraulic conductivity of at least 1×10^{-2} cm/sec; or
- A geosynthetic drainage media (e.g., geonet). The transmissivity of geonets shall be tested with method ASTM D4716, or an equivalent test method, to demonstrate that the design transmissivity will be maintained for the design period of the facility. The testing for the geonet in the liner system shall be conducted using actual boundary material intended for the geonet at the maximum design normal load for the MSWLF unit, and at the design load expected from one lift of waste. At the maximum design normal load, testing shall be conducted for a minimum period of 100 hours unless data equivalent of the 100-hour period is provided, in which case the test shall be conducted for a minimum period of one hour. In the case of the design load from one lift of waste, the minimum period shall be one hour. For geonets used in final covers, only one test shall be conducted for a minimum period of one hour using the expected maximum design normal load from the cover soils and the actual boundary materials intended for the geonet. A granular layer at least 12 inches thick with a hydraulic conductivity of at least 1×10^{-3} cm/sec shall be placed above the geosynthetic drainage material that readily transmits leachate and provides separation between the waste and liner.

(8) Manholes within the MSWLF unit shall be designed to minimize the potential for stressing or penetrating the liner due to friction on the manhole exterior from waste settlement.

(9) The leachate drainage and collection system within the MSWLF unit shall not be used for the purpose of storing leachate. If leachate is to be stored, it shall be stored in designated storage structures outside of the MSWLF unit.

(10) All of the facility's leachate storage and management structures outside of the MSWLF unit (e.g., tanks, holding ponds, pipes, sumps, manholes, lift stations) and operations shall have containment structures or countermeasures adequate to prevent seepage to groundwater or surface water. The containment structures and countermeasures for leachate storage shall be at least as protective of groundwater at the liner of the MSWLF unit on a performance basis.

(11) Unless alternative design requirements are approved as part of the permit under subrule 113.2(11) (relating to equivalency review procedure), the leachate storage structures shall be able to store at least 7 days of accumulated leachate at the maximum generation rate used in designing the leachate collection system. Such minimum storage capacity may be constructed in phases over time so long as the 7-day accumulation capacity is maintained. The storage facility shall also have the ability to load tanker trucks in case sanitary sewer service is unavailable for longer than 7 days.

(12) The leachate collection system shall be equipped with valves or devices similar in effectiveness so that leachate can be controlled during maintenance.

(13) The leachate collection system shall be accessible for maintenance at all times and under all weather conditions.

(14) The permit holder shall annually submit a Leachate Control System Performance Evaluation (LCSPE) Report as a supplement to the facility Annual Water Quality Report, as defined in subrule 113.10(10). The report shall include an evaluation of the effectiveness of the system in controlling the leachate, leachate head levels and elevations, the volume of leachate collected and transported to the treatment works or discharged under any NPDES permits, records of leachate contaminants testing required by the treatment works, proposed additional leachate control measures, and an implementation schedule in the event that the constructed system is not performing effectively.

113.7(6) Quality control and assurance programs. All MSWLF units shall be constructed under the supervision of a strict quality control and assurance (QC&A) program to ensure that MSWLF units are constructed in accordance with the requirements of rule 113.7(455B) and the approved plans and specifications. At a minimum, such a QC&A program shall consist of the following.

a. The owner or operator shall designate a quality control and assurance (QC&A) officer. The QC&A officer shall be a professional engineer (P.E.) registered in Iowa. The QC&A officer shall not be an employee of the facility, the construction company or construction contractor. The owner or operator shall notify the department of the designated QC&A officer and provide the department with that person's contact information. The QC&A officer may delegate another person or persons who are not employees of the facility to supervise or implement an aspect of the QC&A program.

b. The QC&A officer shall document compliance with rule 113.7(455B), and the approved plans and specifications, for the following aspects of construction:

(1) The MSWLF unit's subgrade.

(2) The liner system, as applicable, below:

1. The flexible membrane liner (FML). Destructive testing of the FML shall be kept to side slopes when continuous seams are utilized. Patches over FML destructive testing areas shall be checked with nondestructive methods.

2. The compacted clay component of the liner system. A minimum of five field moisture density tests per 8-inch lift per acre shall be performed to verify that the correct density, as correlated to permeability by a laboratory analysis, has been achieved. Laboratory hydraulic conductivity testing of Shelby tube samples from the constructed soil liner or test pad, or field hydraulic conductivity testing of the constructed soil liner or test pad, or other methods approved by the department, shall be utilized as a QC&A test.

(3) The leachate collection, conveyance and storage systems.

(4) Any other aspect of construction as required by the department.

c. A sampling and testing program shall be implemented by the QC&A officer as part of the QC&A program. The sampling and testing program shall:

(1) Verify full compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

(2) Be approved by the department prior to construction of the MSWLF unit.

(3) Detail how each stage of construction will be verified for full compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

(4) Be based on statistically significant sampling techniques and establish criteria for the acceptance or rejection of materials and constructed components of the MSWLF unit.

(5) Detail what actions will take place to remedy and verify any material or constructed component that is not in compliance with the requirements of rule 113.7(455B), and the approved plans and specifications.

d. The QC&A officer shall document the QC&A program. Upon completion of the MSWLF unit construction, the QC&A officer shall submit a final report to the department that verifies compliance with the requirements of rule 113.7(455B), and the approved plans and specifications. A copy of the final report shall also be maintained by the facility in the operating record. At a minimum, the final report shall include the following.

(1) A title page and index.

(2) The name and permit number of the facility.

(3) Contact information for the QC&A officer and persons delegated by the QC&A officer to supervise or implement an aspect of the QC&A program.

(4) Contact information for all construction contractors.

(5) Copies of daily reports containing the following information.

1. The date.
2. Summary of weather conditions.
3. Summary of locations on the facility where construction was occurring.
4. Summary of equipment, materials and personnel utilized in construction.
5. Summary of meetings held regarding the construction of the MSWLF unit.
6. Summary of construction progress.
7. Photographs of the construction progress, with descriptions of the time, subject matter and location of each photograph.
8. Details of sampling and testing program for that day. At a minimum, this report shall include details of where sampling and testing occurred, the methods utilized, personnel involved and test results.
9. Details of how any material or constructed component that was found not to be in compliance via the sampling and testing program was remedied.

(6) A copy of detailed as-built drawings with supporting documentation and photographic evidence. This copy shall also include a narrative explanation of changes from the original department-approved plans and specifications.

(7) A signed and sealed statement by the QC&A officer that the MSWLF unit was constructed in accordance with the requirements of rule 113.7(455B), and the approved plans and specifications.

113.7(7) Vertical and horizontal expansions of MSWLF units. All vertical and horizontal expansions of disposal airspace over existing and new MSWLF units shall comply with the following requirements.

a. Horizontal expansions shall, at a minimum, comply with the following requirements:

(1) Horizontal expansions are new MSWLF units and, at a minimum, shall be designed and constructed in accordance with subrules 113.7(4), 113.7(5) and 113.7(6).

(2) The slope stability of the horizontal expansion between the existing unit and new MSWLF unit shall be analyzed. The interface between two MSWLF units shall not cause a slope failure of either of the MSWLF units.

(3) A horizontal expansion may include a vertical elevation increase of an existing MSWLF unit, pursuant to paragraph 113.7(7)"b," if approved by the department.

b. Vertical expansions shall, at a minimum, comply with the following requirements:

(1) A vertical expansion of an MSWLF unit shall not be allowed if the MSWLF unit does not have an approved leachate collection system and a composite liner or a leachate collection system and an alternative liner modeled at an approved point of compliance.

(2) An analysis of the structural impacts of the proposed vertical expansion on the liner and leachate collection system shall be completed. The vertical expansion shall not contribute to the structural failure of the liner and leachate collection system.

(3) An analysis of the impact of the proposed vertical expansion on leachate generation shall be completed. The vertical expansion shall not overload the leachate collection system or contribute to excess head on the liner.

(4) An analysis of the effect of the proposed vertical expansion on run-on, runoff and discharges into waters of the state shall be completed. The vertical expansion shall not cause a violation of subrule 113.7(8).

(5) The proposed vertical expansion shall be in compliance with the final slopes required at closure pursuant to paragraph 113.12(1)"e."

(6) An analysis of the potential impact of the proposed vertical expansion on litter generation shall be completed. Landfill management strategies may need to be amended to help prevent increased litter.

(7) An analysis of the impact of the proposed vertical expansion on lines-of-sight and any visual buffering utilized by the landfill shall be completed.

113.7(8) Run-on and runoff control systems.

a. Owners or operators of all MSWLF units must design, construct, and maintain the following:

(1) A run-on control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm;

(2) A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm.

b. Runoff from the active portion of the MSWLF unit must be handled in accordance with paragraph 113.10(1)"a."

567—113.8(455B) Operating requirements. The requirements of this rule shall be consolidated in a development and operations plan (DOPs) pursuant to subrule 113.8(4) and the emergency response and remedial action plan (ERRAP) pursuant to subrule 113.8(5), as applicable.

113.8(1) Prohibited operations and activities. For the purposes of this subrule, "regulated hazardous waste" means a solid waste that is a hazardous waste, as defined in Iowa Code section 455B.411.

a. Waste screening for prohibited materials. Owners or operators of all MSWLF units must implement a program at the facility for detecting and preventing the disposal of regulated hazardous wastes, polychlorinated biphenyls (PCB) wastes and other prohibited wastes listed in paragraph 113.8(1)"b." This program must include, at a minimum:

(1) Random inspections of incoming loads unless the owner or operator takes other steps to ensure that incoming

loads do not contain regulated hazardous wastes, PCB wastes or other prohibited wastes listed in paragraph 113.8(1)"b";

(2) Records of any inspections;

(3) Training of facility personnel to recognize regulated hazardous wastes, PCB wastes and other prohibited wastes listed in paragraph 113.8(1)"b"; and

(4) Notification of the EPA regional administrator if regulated hazardous wastes or PCB wastes are discovered at the facility.

b. Materials prohibited from disposal. The following wastes shall not be accepted for disposal by an MSWLF. Some wastes may be banned from disposal via the multiple categories listed below.

(1) Hazardous waste, whether it is a chemical compound specifically listed by EPA as a regulated hazardous waste or a characteristic hazardous waste pursuant to the characteristics below:

1. Ignitable in that the waste has a flash point (i.e., it will ignite) at a temperature of less than 140 degrees Fahrenheit.

2. Corrosive in that the waste has a pH less than 2 or greater than 12.5.

3. Reactive in that the waste is normally unstable; reacts violently with water; forms an explosive mixture with water; contains quantities of cyanide or sulfur that could be released into the air in sufficient quantity to be a danger to human health; or can easily be detonated or exploded.

4. Toxicity characteristic leaching procedure (TCLP) (EPA Method 1311) toxic, in that a TCLP listed chemical constituent exceeds the EPA assigned concentration standard in 40 CFR Part 261 or the department assigned concentration standard in Table I of rule 113.7(455B). Waste from a residential building that is contaminated by lead-based paint (i.e., the waste fails the TCLP test for lead only) may be disposed of in an MSWLF unit. The purpose of this exclusion is to help prevent the exposure of children to lead-based paint. Therefore, the meaning of "residential building" in regard to this TCLP exclusion shall be interpreted broadly and include any building which children or parents may utilize as a residence (temporarily or permanently). Such residential buildings include, but are not limited to, single-family homes, apartment buildings, townhomes, condominiums, public housing, military barracks, nursing homes, hotels, motels, bunkhouses, and campground cabins.

(2) Polychlorinated biphenyl (PCB) wastes with a concentration equal to or greater than 50 parts per million (ppm).

(3) Free liquids, liquid waste and containerized liquids. For purposes of this subparagraph, "liquid waste" means any waste material that is determined to contain "free liquids" as defined by Method 9095B (Paint Filter Liquids Test), as described in Test Methods for Evaluating Solid Wastes, Physical/Chemical Methods (EPA Pub. No. SW-846). For the purposes of this subparagraph, "gas condensate" means the liquid generated as a result of the gas recovery process(es) at the MSWLF unit. However, free liquids and containerized liquids may be placed in MSWLF units if:

1. The containerized liquid is household waste other than septic waste. The container must be a small container similar in size to that normally found in household waste;

2. The waste is leachate or gas condensate derived from the MSWLF unit, whether it is a new or existing MSWLF unit or lateral expansion, and is designed with a composite liner and leachate collection system as described in paragraph 113.7(5)"a." The owner or operator must demonstrate compliance with this subparagraph and place the demonstration in the operating record; or

3. The MSWLF unit is a research, development and demonstration (RD&D) project in which the department has authorized the addition of liquids and meets the applicable requirements of subrule 113.4(10).

(4) Septage, which is the raw material, liquids and pumpings from a septic system, unless treated pursuant to 567—Chapter 68.

(5) Appliances as defined pursuant to 567—Chapter 118, unless there is documentation that the appliance has been demanufactured pursuant to 567—Chapter 118.

(6) Radioactive waste, excluding luminous timepieces and other items using very small amounts of tritium.

(7) Infectious waste, unless managed and disposed of pursuant to 567—Chapter 109.

(8) Hot loads, meaning solid waste that is smoking, smoldering, emitting flames or hot gases, or otherwise indicating that the solid waste is in the process of combustion or close to igniting. Ash that has not been fully quenched or cooled is considered a hot load. Such wastes may be accepted at the gate, but shall be segregated and completely extinguished and cooled in a manner as safe and responsible as practical before disposal.

(9) Asbestos-containing material (ACM) waste with greater than 1 percent asbestos, unless managed and disposed of pursuant to 567—Chapter 109.

(10) Petroleum-contaminated soil, unless managed and remediated pursuant to 567—Chapter 120.

(11) Grit and bar screenings, and grease skimmings, unless managed and disposed of pursuant to 567—Chapter 109.

(12) Waste tires, unless each tire is processed into pieces no longer than 18 inches on any side. The department encourages the recycling of all waste tires, even if processed to disposal standards.

(13) Yard waste.

(14) Lead-acid batteries.

(15) Waste oil and materials containing free-flowing waste oil. Materials contaminated with waste oil may be disposed of if no free-flowing oil is retained in the material, and the material is not a hazardous waste.

(16) Baled solid waste, unless the waste is baled on site after the waste has been visually inspected for prohibited materials.

c. Open burning and fire hazards. No open burning of any type shall be allowed within the permitted boundary of an MSWLF facility. The fueling of vehicles and equipment, and any other activity that may produce sparks or flame, shall be conducted at least 50 feet away from the working face.

d. Scavenging and salvaging. Scavenging shall not be allowed at the MSWLF facility. However, salvaging by MSWLF operators may be allowed.

e. Animal feeding and grazing. Feeding animals MSW shall not be allowed at an MSWLF facility. The grazing of domestic animals on fully vegetated areas of the MSWLF facility not used for disposal, including closed MSWLF units, may be allowed by the department so long as the animals do not cause damage or interfere with operations, inspections, environmental monitoring and other required activities. Large, hoofed animals (including but not limited to buffalo, cattle, llamas, pigs, and horses) shall not be allowed on closed MSWLF units.

113.8(2) Disposal operations and activities. All MSWLFs shall comply with the following requirements.

a. Survey controls and monuments. Survey controls and monuments shall be maintained as follows.

(1) The property boundary, the permitted boundary and the boundaries of all MSWLF units shall be surveyed and marked by a professional land surveyor at least once prior to closure.

(2) Prior to waste placement, all new MSWLF unit boundaries shall be surveyed and marked by a professional engineer.

(3) Survey monuments shall be established to check vertical elevations and the progression of fill sequencing. The survey monuments shall be established and maintained by a professional land surveyor.

(4) All survey stakes and monuments shall be clearly marked.

(5) A professional engineer shall biennially inspect all survey monuments and replace missing or damaged survey monuments.

b. First lift. The first lift and initial placement of MSW over a new MSWLF unit liner and leachate collection system shall comply with the following requirements.

(1) Waste shall not be placed in the new MSWLF unit until the QC&A officer has submitted a signed and sealed final report to the department pursuant to paragraph 113.7(6)"d" and that report has been approved by the department.

(2) Construction and earth-moving equipment shall not operate directly on the liner and leachate management system. Waste disposal operations shall begin at the edge of the new MSWLF unit by pushing MSW out over the liner and leachate collection system. Compactors and other similarly heavy equipment shall not operate directly on the leachate collection system until a minimum of 4 feet of waste has been mounded over the top of the leachate collection system.

(3) Construction and demolition debris and materials clearly capable of spearing through the leachate collection system and liner shall not be placed in the first 4 feet of waste over the top of the leachate collection system. The first 4 feet of waste shall consist of select waste that is unlikely to damage the liner and performance of the leachate collection system.

(4) The owner or operator must place documentation in the operating record and submit a copy to the department that adequate cover material was placed over the top of the leachate collection system in the MSWLF unit or that freeze/thaw effects had no adverse impact on the compacted clay component of the liner.

c. Fill sequencing. The rate and phasing of disposal operations shall comply with the following requirements.

(1) The fill sequencing shall be planned and conducted in a manner and at a rate that do not cause a slope failure, lead to extreme differential settlement, or damage the liner and leachate collection system.

(2) The fill sequencing shall be planned and conducted in a manner compliant with the run-on and runoff requirements of subrule 113.7(8) and surface water requirements of rule 113.10(455B).

d. Working face. The working face shall comply with the following requirements.

(1) The working face shall be no larger than necessary to accommodate the rate of disposal in a safe and efficient manner.

(2) The working face shall not be so steep as to cause heavy equipment and solid waste collection vehicles to roll over or otherwise lose control.

(3) Litter control devices of sufficient size to help prevent blowing litter shall be utilized at the working face. The operation of the working face shall attempt to minimize blowing litter.

(4) The operation of the working face shall prevent the harborage of vectors and attempt to minimize the attraction of vectors.

(5) Employees at the working face shall be trained to visually recognize universal symbols, markings and indications of prohibited wastes pursuant to paragraph 113.8(1)"b."

e. Special wastes. Special wastes shall be managed and disposed of pursuant to 567—Chapter 109.

f. Cover material and alternative cover material. Pursuant to 567—Chapter 108, alternative cover material of an alternative thickness (e.g., tarps, spray covers) may be authorized if the owner or operator demonstrates to the approval of the department that the alternative material and thickness control vectors, fires, odors, blowing litter, and scavenging without presenting a threat to human health and the environment. Cover material or alternative cover material shall be available for use during all seasons in all types of weather. Cover material and alternative cover material shall be utilized as follows unless otherwise approved by the department pursuant to 567—Chapter 108:

(1) Daily cover. Six inches of cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion at the end of each operating day, or at more frequent intervals if necessary, to control vectors, fires, odors, blowing litter, and scavenging.

(2) Intermediate cover. At least 1 foot of compacted cover material or an approved depth or application of alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive more waste for at least 30 days. At least 2 feet of compacted cover material or alternative cover material shall be placed and maintained over waste in the active portion that has not or will not receive waste for at least 180 days. Such active portions shall be graded to manage run-on and runoff pursuant to subrule 113.7(8). Such active portions shall be seeded if they will not receive waste for a full growing season.

(3) Scarification of cover. To help prevent leachate seeps by aiding the downward flow of leachate, cover material or alternative cover material, which prevents the downward flow of leachate and is at least 5 feet from the outer edge of the MSWLF unit, shall be scarified prior to use of that area as a working face. Cover material or alternative cover material that does not impede the downward flow of leachate, as approved by the department, does not require scarification. Scarification may be as simple as the spearing or breaking up of a small area of the cover. Areas of intermediate cover may require removal of some of the cover material or alternative cover material to aid the downward flow of leachate.

(4) Final cover. Final cover over an MSWLF unit that is to be closed shall be constructed and maintained according to the closure and postclosure requirements of rules 113.12(455B) and 113.13(455B).

g. Leachate seeps. Leachate seeps shall be contained and plugged upon being identified. Leachate seeps shall not be allowed to reach waters of the state. Soils outside of the MSWLF unit that are contaminated by a leachate seep shall be excavated and then disposed of within the MSWLF unit. Such soils may be used for daily cover material.

h. Leachate recirculation. The department must approve an MSWLF unit for leachate recirculation. The primary goal of the leachate recirculation system is to help stabilize the waste in a more rapid, but controlled, manner. The leachate recirculation system shall not contaminate waters of the state, contribute to erosion, damage cover material,

harm vegetation, or spray persons at the MSWLF facility. Leachate recirculation shall be limited to MSWLF units constructed with a composite liner.

i. Differential settlement. Areas of differential settlement sufficient to interfere with runoff and run-on shall be brought back up to the contours of the surrounding active portion. Differential settlement shall not be allowed to cause ponding of water on the active portion.

113.8(3) Facility operations and activities. All MSWLFs shall comply with the following requirements.

a. Controlled access. Owners or operators of all MSWLF units must control public access and prevent unauthorized vehicular traffic and illegal dumping of wastes by using artificial barriers, natural barriers, or both, as appropriate to protect human health and the environment.

b. Scales and weights. A scale certified by the Iowa department of agriculture and land stewardship shall weigh all solid waste collection vehicles and solid waste transport vehicles. The owner or operator shall maintain a record of the weight of waste disposed of.

c. All-weather access to disposal. A disposal area shall be accessible during all weather conditions.

d. Salvaged and processed materials. Salvaged and processed materials (e.g., scrap metal, compost, mulch, aggregate, tire chips) shall be managed and stored in an orderly manner that does not create a nuisance or encourage the attraction or harborage of vectors.

e. Vector control. Owners or operators must prevent or control the on-site populations of vectors using techniques appropriate for the protection of human health and the environment.

f. Litter control. The operator shall take steps to minimize the production of litter and the release of windblown litter off site of the facility. All windblown litter off site of the facility shall be collected daily unless prevented by unsafe working conditions. On-site litter shall be collected daily unless prevented by working conditions. A dated record of unsafe conditions that prevented litter collection activities shall be maintained by the facility.

g. Dust. The operator shall take steps to minimize the production of dust so that unsafe or nuisance conditions are prevented. Leachate shall not be used for dust control purposes.

h. Mud. The operator shall take steps to minimize the tracking of mud by vehicles exiting the facility so that slick or unsafe conditions are prevented.

i. Leachate and wastewater treatment. The leachate management system shall be managed and maintained pursuant to the requirements of paragraph 113.7(5)"b." Leachate collection pipes shall be cleaned and inspected as necessary, but not less than once every three years. Leachate and wastewater shall be treated as necessary to meet the pretreatment limits, if any, imposed by an agreement between the MSWLF and a publicly owned wastewater treatment works (POTW) or by the effluent discharge limits established by an NPDES permit. Documentation of the POTW agreement or NPDES permit must be submitted to the department. All leachate and wastewater treatment systems shall conform to department wastewater design standards.

j. Financial assurance. Financial assurance shall be maintained pursuant to rule 113.14(455B).

113.8(4) Development and operations plan (DOPs). An MSWLF unit shall maintain a development and operations plan (DOPs). At a minimum, the DOPs shall detail how the facility will operate and how compliance with the requirements of rule 113.8(455B) will be maintained. The DOPs shall contain at least the following components.

a. A title page and table of contents.

b. Telephone number of the official responsible for the operation of the facility and an emergency contact person if different.

c. Service area of the facility and political jurisdictions included in that area.

d. Days and hours of operation of the facility.

e. Details of how the site will comply with the prohibited operations and activity requirements of subrule 113.8(1) and any related permit conditions.

f. Details of how the site will comply with the disposal operation and activity requirements of subrule 113.8(2) and any related permit conditions.

g. Details of how the site will comply with the facility operations and activity requirements of subrule 113.8(3), any related permit conditions, and any leachate and wastewater treatment requirements.

113.8(5) Emergency response and remedial action plan (ERRAP). All MSWLFs shall develop, submit to the department for approval, and maintain on site an ERRAP.

a. ERRAP submittal requirements. An updated ERRAP shall be submitted to the department with any permit modification or renewal request that incorporates facility changes that impact the ERRAP.

b. Content. The ERRAP is intended to be a quick reference during an emergency. The content of the ERRAP shall be concise and readily usable as a reference manual by facility managers and operators during emergency conditions. The ERRAP shall contain and address at least the following components, unless facility conditions render the specific issue as not applicable. To facilitate department review, the rationale for exclusion of any issues that are not applicable must be provided either in the body of the plan or as a supplement. Additional ERRAP requirements unique to the facility shall be addressed as applicable.

(1) Facility information.

1. Permitted agency.
2. DNR permit number.
3. Responsible official and contact information.
4. Certified operator and contact information.
5. Facility description.
6. Site and environs map.

(2) Regulatory requirements.

1. Iowa Code section 455B.306(6)"d" criteria citation.
2. Reference to provisions of the permit.

(3) Emergency conditions, response activities and remedial action.

1. Failure of utilities.
- Short-term (48 hours or less).
- Long-term (over 48 hours).

2. Evacuation procedures during emergency conditions.
3. Weather-related events.
- Tornado and wind events.
- Snow and ice.
- Intense rainstorms, mud, and erosion.
- Lightning strikes.
- Flooding.
- Event and postevent conditions.

4. Fire and explosions.
- Waste materials.
- Buildings and site.
- Equipment.
- Fuels.
- Utilities.

- Facilities.
- Working area.
- Hot loads.
- Waste gases.
- Explosive devices.

5. Regulated waste spills and releases.
- Waste materials.
- Leachate.
- Waste gases.
- Waste stockpiles and storage facilities.
- Waste transport systems.
- Litter and airborne particulate.
- Site drainage system.
- Off-site releases.

6. Hazardous material spills and releases.
- Load-check control points.
- Mixed waste deliveries.
- Fuels.
- Waste gases.
- Site drainage systems.
- Off-site releases.

7. Mass movement of land and waste.
- Earthquakes.
- Slope failure.
- Waste shifts.
- Waste subsidence.

8. Emergency and release notification and reporting.
- Federal agencies.
- State agencies.
- County and city agencies including emergency management services.
- News media.
- Public and private facilities with special populations within five miles.
- Reporting requirements and forms.

9. Emergency waste management procedures.
- Communications.
- Temporary discontinuation of services—short-term and long-term.
- Facilities access and rerouting.
- Waste acceptance.
- Wastes in process.

10. Primary emergency equipment inventory.
- Major equipment.
- Fire hydrants and water sources.
- Off-site equipment resources.

11. Emergency aid.
- Responder contacts.
- Medical services.
- Contracts and agreements.

12. ERRAP training requirements.
- Training providers.
- Employee orientation.
- Annual training updates.
- Training completion and record keeping.

13. Reference tables, figures and maps.

113.8(6) MSWLF operator certification. Sanitary landfill operators shall be trained, tested, and certified by a department-approved certification program.

a. A sanitary landfill operator shall be on duty during all hours of operation of a sanitary landfill, consistent with the respective certification.

b. To become a certified operator, an individual shall complete a basic operator training course that has been approved by the department or an alternative, equivalent training approved by the department and shall pass a departmental examination as specified by this subrule. An operator certified by another state may have reciprocity subject to approval by the department.

c. A sanitary landfill operator certification is valid until June 30 of the following even-numbered year.

d. The required basic operator training course for a certified sanitary landfill operator shall have at least 25 contact hours and shall address the following areas, at a minimum:

(1) Description of types of wastes.
(2) Interpreting and using engineering plans.
(3) Construction surveying techniques.
(4) Waste decomposition processes.
(5) Geology and hydrology.
(6) Landfill design.
(7) Landfill operation.
(8) Environmental monitoring.
(9) Applicable laws and regulations.
(10) Permitting processes.
(11) Leachate control and treatment.

e. Alternate basic operator training must be approved by the department. The applicant shall be responsible for submitting any documentation the department may require to evaluate the equivalency of alternate training.

f. Fees.

(1) The examination fee for each examination is $20.

(2) The initial certification fee is $8 for each one-half year of a two-year period from the date of issuance to June 30 of the next even-numbered year.

(3) The certification renewal is $24.

(4) The penalty fee is $12.

g. Examinations.

(1) The operator certification examinations shall be based on the basic operator training course curriculum.

(2) All individuals wishing to take the examination required to become a certified operator of a sanitary landfill shall complete the Operator Certification Examination Application, Form 542-1354. A listing of dates and locations of examinations is available from the department upon request. The application form requires the applicant to indicate the basic operator training course taken. Evidence of training course completion must be submitted with the application for certification. The completed application and the application fee shall be sent to the department and addressed to the central office in Des Moines. Application for examination must be received by the department at least 30 days prior to the date of examination.

(3) A properly completed application for examination shall be valid for one year from the date the application is approved by the department.

(4) Upon failure of the first examination, the applicant may be reexamined at the next scheduled examination. Upon failure of the second examination, the applicant shall be required to wait a period of 180 days between each subsequent examination.

(5) Upon each reexamination when a valid application is on file, the applicant shall submit to the department the examination fee at least ten days prior to the date of examination.

(6) Failure to successfully complete the examination within one year from the date of approval of the application shall invalidate the application.

(7) Completed examinations will be retained by the department for a period of one year after which they will be destroyed.

(8) Oral examinations may be given at the discretion of the department.

h. Certification.

(1) All operators who passed the operator certification examination by July 1, 1991, are exempt from taking the required operator training course. Beginning July 1, 1991, all operators are required to take the basic operator training course and pass the examination in order to become certified.

(2) Application for certification must be received by the department within 30 days of the date the applicant receives notification of successful completion of the examination. All applications for certification shall be made on a form provided by the department and shall be accompanied by the certification fee.

(3) Applications for certification by examination which are received more than 30 days but less than 60 days after notification of successful completion of the examination shall be accompanied by the certification fee and the penalty fee. Applicants who do not apply for certification within 60 days of notice of successful completion of the examination will not be certified on the basis of that examination.

(4) For applicants who have been certified under other state mandatory certification programs, the equivalency of which has been previously reviewed and accepted by the department, certification without examination will be recommended.

(5) For applicants who have been certified under voluntary certification programs in other states, certification will be considered. The applicant must have successfully completed a basic operator training course and an examination generally equivalent to the Iowa examination. The department may require the applicant to successfully complete the Iowa examination.

(6) Applicants who seek Iowa certification pursuant to subparagraphs 113.8(6)"h"(4) and (5) shall submit an application for examination accompanied by a letter requesting certification pursuant to those subparagraphs. Application for certification pursuant to those subparagraphs shall be received by the department in accordance with subparagraphs 113.8(6)"h"(2) and (3).

i. Renewals. All certificates shall expire every two years, on even-numbered years, and must be renewed every two years to maintain certification. Application and fee are due prior to expiration of certification.

(1) Late application for renewal of a certificate may be made, provided that such late application shall be received by the department or postmarked within 30 days of the expiration of the certificate. Such late application shall be on forms provided by the department and accompanied by the penalty fee and the certification renewal fee.

(2) If a certificate holder fails to apply for renewal within 30 days following expiration of the certificate, the right to renew the certificate automatically terminates. Certification may be allowed at any time following such termination, provided that the applicant successfully completes an examination. The applicant must then apply for certification in accordance with paragraph 113.8(6)"h."

(3) An operator shall not continue to operate a sanitary landfill after expiration of a certificate without renewal thereof.

(4) Continuing education must be earned during the two-year certification period. All certified operators must earn ten contact hours per certificate during each two-year period. The two-year period will begin upon issuance of certification.

(5) Only those operators fulfilling the continuing education requirements before the end of each two-year period will be allowed to renew their certificates. The certificates of operators not fulfilling the continuing education requirements shall be void upon expiration, unless an extension is granted.

(6) All activities for which continuing education credit will be granted must be related to the subject matter of the particular certificate to which the credit is being applied.

(7) The department may, in individual cases involving hardship or extenuating circumstances, grant an extension of time of up to three months within which the applicant may fulfill the minimum continuing education requirements. Hardship or extenuating circumstances include documented health-related confinement or other circumstances beyond the control of the certified operator which prevent attendance at the required activities. All requests for extensions must be made 60 days prior to expiration of certification.

(8) The certified operator is responsible for notifying the department of the continuing education credits earned during the period. The continuing education credits earned during the period shall be shown on the application for renewal.

(9) A certified operator shall be deemed to have complied with the continuing education requirements of this subrule during periods that the operator serves honorably on active duty in the military service; or for periods that the operator is a resident of another state or district having a continuing education requirement for operators and meets all the requirements of that state or district for practice there; or for periods that the person is a government employee working as an operator and is assigned to duty outside the United States; or for other periods of active practice and absence from the state approved by the department.

j. Discipline of certified operators.

(1) Disciplinary action may be taken on any of the following grounds:

1. Failure to use reasonable care or judgment or to apply knowledge or ability in performing the duties of a certified operator. Duties of certified operators include compliance with rules and permit conditions applicable to landfill operation.

2. Failure to submit required records of operation or other reports required under applicable permits or rules of the department, including failure to submit complete records or reports.

3. Knowingly making any false statement, representation, or certification on any application, record, report or document required to be maintained or submitted under any applicable permit or rule of the department.

(2) Disciplinary sanctions allowable are:

1. Revocation of a certificate.

2. Probation under specified conditions relevant to the specific grounds for disciplinary action. Additional education or training or reexamination may be required as a condition of probation.

(3) The procedure for discipline is as follows:

1. The department shall initiate disciplinary action. The commission may direct that the department investigate any alleged factual situation that may be grounds for disciplinary action under subparagraph 113.8(6)"j"(1) and report the results of the investigation to the commission.

2. A disciplinary action may be prosecuted by the department.

3. Written notice shall be given to an operator against whom disciplinary action is being considered. The notice shall state the informal and formal procedures available for determining the matter. The operator shall be given 20 days to present any relevant facts and indicate the operator's position in the matter and to indicate whether informal resolution of the matter may be reached.

4. An operator who receives notice shall communicate verbally, in writing, or in person with the department, and efforts shall be made to clarify the respective positions of the operator and department.

5. The applicant's failure to communicate facts and positions relevant to the matter by the required date may be considered when determining appropriate disciplinary action.

6. If agreement as to appropriate disciplinary sanction, if any, can be reached with the operator and the commission concurs, a written stipulation and settlement between the department and the operator shall be entered into. The stipulation and settlement shall recite the basic facts and violations alleged, any facts brought forth by the operator, and the reasons for the particular sanctions imposed.

7. If an agreement as to appropriate disciplinary action, if any, cannot be reached, the department may initiate formal hearing procedures. Notice and formal hearing shall be in accordance with 567—Chapter 7 related to contested and certain other cases pertaining to license discipline.

k. Revocation of certificates. Upon revocation of a certificate, application for certification may be allowed after two years from the date of revocation. Any such applicant must successfully complete an examination and be certified in the same manner as a new applicant.

l. Temporary certification. A temporary operator of a sanitary landfill may be designated for a period of six months when an existing certified operator is no longer available to the facility. The facility must make application to the department, explain why a temporary certification is needed, identify the temporary operator, and identify the efforts which will be made to obtain a certified operator. A temporary operator designation shall not be approved for greater than a six-month period except for extenuating circumstances. In any event, not more than one six-month extension to the temporary operator designation may be granted. Approval of a temporary operator designation may be rescinded for cause as set forth in paragraph 113.8(6)"j." All MSWLFs shall have at least one MSWLF operator trained, tested and certified by a department-approved program.

567—113.9(455B) Environmental monitoring and corrective action requirements for air quality and landfill gas. All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for air quality and landfill gas.

113.9(1) Air criteria. Owners or operators of all MSWLFs must ensure that the units do not violate any applicable requirements developed under a state implementation plan (SIP) approved or promulgated by the department pursuant to Section 110 of the Clean Air Act.

113.9(2) Landfill gas. All MSWLFs shall comply with the following requirements for landfill gas. For purposes of this subrule, "lower explosive limit" means the lowest percent by volume of a mixture of explosive gases in air that will propagate a flame at 25°C and atmospheric pressure.

a. Owners or operators of all MSWLF units must ensure that:

(1) The concentration of methane gas generated by the facility does not exceed 25 percent of the lower explosive limit for methane in facility structures (excluding gas pipeline, control or recovery system components);

(2) The concentration of methane gas does not exceed the lower explosive limit for methane at the facility property boundary; and

b. Owners or operators of all MSWLF units must implement a routine methane-monitoring program to ensure that the standards of paragraph 113.9(2)"a" are met. Such a program shall include routine subsurface methane monitoring (e.g., at select groundwater wells, at gas monitoring wells).

(1) The type and frequency of monitoring must be determined based on the following factors:

1. Soil conditions;

2. The hydrogeologic conditions surrounding the facility;

3. The hydraulic conditions surrounding the facility;

4. The location of facility structures (including potential subsurface preferential pathways such as, but not limited to, pipes, utility conduits, drain tiles and sewers) and property boundaries; and

5. The locations of structures near the outside of the facility to which or along which subsurface migration of methane gas may occur. Examples of such structures include, but are not limited to, houses, buildings, basements, crawl spaces, pipes, utility conduits, drain tiles and sewers.

(2) The minimum frequency of monitoring shall be quarterly.

c. If methane gas levels exceeding the limits specified in paragraph 113.9(2)"a" are detected, the owner or operator must:

(1) Immediately take all necessary steps to ensure protection of human health and notify the department and department field office with jurisdiction over the MSWLF;

(2) Within 7 days of detection, place in the operating record and notify the department and department field office with jurisdiction over the MSWLF of the methane gas levels detected and a description of the steps taken to protect human health; and

(3) Within 60 days of detection, implement a remediation plan for the methane gas releases, place a copy of the plan in the operating record, and notify the department and department field office with jurisdiction over the MSWLF that the plan has been implemented. The plan shall describe the nature and extent of the problem and the proposed remedy.

d. The owner or operator shall submit an annual report to the department detailing the gas monitoring sampling locations and results, any action taken, and the results of steps taken to address gas levels exceeding the limits of paragraph 113.9(2)"a" during the previous year. This report shall include a site map that delineates all structures, perimeter boundary locations, and other monitoring points where gas readings were taken. The site map shall also delineate areas of landfill gas migration outside the MSWLF units, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year at a date specified by the department in the facility's permit.

567—113.10(455B) Environmental monitoring and corrective action requirements for groundwater and surface water. All MSWLFs shall comply with the following environmental monitoring and corrective action requirements for groundwater and surface water.

113.10(1) General requirements for environmental monitoring and corrective action for groundwater and surface water. The following general requirements apply to all provisions of this rule.

a. Surface water requirements. MSWLF units shall not:

(1) Cause a discharge of pollutants into waters of the United States, including wetlands, that violates any requirements of the Clean Water Act, including, but not limited to, the National Pollutant Discharge Elimination System (NPDES) requirements, pursuant to Section 402 of the Clean Water Act.

(2) Cause the discharge of a nonpoint source of pollution into waters of the United States, including wetlands, that violates any requirement of an areawide or statewide water quality management plan that has been approved under Section 208 or 319 of the Clean Water Act.

b. A new MSWLF unit must be in compliance with the groundwater monitoring requirements specified in subrules 113.10(2), 113.10(4), 113.10(5) and 113.10(6) before waste can be placed in the unit.

c. Once established at an MSWLF unit, groundwater monitoring shall be conducted throughout the active life and postclosure care period of that MSWLF unit as specified in rule 113.13(455B).

d. For the purposes of this rule, a "qualified groundwater scientist" means a scientist or an engineer who has received a baccalaureate or postgraduate degree in the natural sciences or engineering and has sufficient training and experience in groundwater hydrology and related fields demonstrated by state registration, professional certifications, or completion of accredited university programs that enable that individual to make sound professional judgments regarding groundwater monitoring, contaminant fate and transport, and corrective action.

e. The department may establish alternative schedules for demonstrating compliance with:

(1) Subparagraph 113.10(2)"e"(3), pertaining to notification of placement of certification in operating record;

(2) Subparagraph 113.10(5)"c"(1), pertaining to notification that statistically significant increase (SSI) notice is in operating record;

(3) Subparagraphs 113.10(5)"c"(2) and (3), pertaining to an assessment monitoring program;

(4) Paragraph 113.10(6)"b," pertaining to sampling and analyzing Appendix II constituents;

(5) Subparagraph 113.10(6)"d"(1), pertaining to placement of notice (Appendix II constituents detected) in record and notification of placement of notice in record;

(6) Subparagraph 113.10(6)"d"(2), pertaining to sampling for Appendices I and II;

(7) Paragraph 113.10(6)"g," pertaining to notification (and placement of notice in record) of SSI above groundwater protection standard;

(8) Numbered paragraph 113.10(6)"g"(1)"4" and paragraph 113.10(7)"a," pertaining to assessment of corrective measures;

(9) Paragraph 113.10(8)"a," pertaining to selection of remedy and notification of placement in record;

(10) Paragraph 113.10(9)"f," pertaining to notification of placement in record (certification of remedy completed).

113.10(2) Groundwater monitoring systems. All MSWLFs shall have a groundwater monitoring system that complies with the following requirements:

a. A groundwater monitoring system must be installed that meets the following objectives:

(1) Yields groundwater samples from the uppermost aquifer that represent the quality of background groundwater that has not been affected by leakage from a unit. A determination of background quality may include sampling of wells that are not hydraulically upgradient of the waste management area where either:

1. Hydrogeologic conditions do not allow the owner or operator to determine which wells are hydraulically upgradient; or

2. Sampling at other wells will provide an indication of background groundwater quality that is as representative as or more representative than that provided by the upgradient wells.

(2) Yields groundwater samples from the uppermost aquifer that represent the quality of groundwater passing the relevant point of compliance specified by the department under numbered paragraph 113.7(5)"a"(2)"2." The downgradient monitoring system must be installed at the relevant point of compliance specified by the department under numbered paragraph 113.7(5)"a"(2)"2" that ensures detection of groundwater contamination in the uppermost aquifer. When physical obstacles preclude installation of groundwater monitoring wells at the relevant point of compliance at existing units, the downgradient monitoring system may be installed at the closest practicable distance, hydraulically downgradient from the relevant point of compliance specified by the department under numbered paragraph 113.7(5)"a"(2)"2," that ensures detection of groundwater contamination in the uppermost aquifer.

(3) Provides a high level of certainty that releases of contaminants from the site can be promptly detected. Downgradient monitoring wells shall be placed along the site perimeter, within 50 feet of the planned liner or waste boundary unless site conditions dictate otherwise, downgradient of the facility with respect to the hydrologic unit being monitored. Each groundwater underdrain system shall be included in the groundwater detection monitoring program under subrule 113.10(5). The maximum drainage area routed through each outfall shall not exceed 10 acres unless it can be demonstrated that site-specific factors such as drain flow capacity or site development sequencing require an alternative drainage area. If contamination is identified in the groundwater underdrain system pursuant to subrule 113.10(5), the owner or operator shall manage the underdrain discharge as leachate in lieu of assessment monitoring and corrective action.

(4) Be designed and constructed with the theoretical release evaluation pursuant to subparagraph 113.6(3)"e"(6) taken into consideration.

b. For those facilities which are long-term, multiphase operations, the department may establish temporary waste boundaries in order to define locations for monitoring wells. The convergence of groundwater paths to minimize the overall length of the downgradient dimension may be taken into consideration in the placement of downgradient monitoring wells provided that the multiphase unit groundwater monitoring system meets the requirements of paragraphs 113.10(2)"a," 113.10(2)"c," 113.10(2)"d" and 113.10(2)"e" and will be as protective of human health and the environment as the individual monitoring systems for each MSWLF unit, based on the following factors:

(1) Number, spacing, and orientation of the MSWLF units;

(2) Hydrogeologic setting;

(3) Site history;

(4) Engineering design of the MSWLF units; and

(5) Type of waste accepted at the MSWLF units.

c. Monitoring wells must be constructed and cased by a well contractor certified pursuant to 567—Chapter 82 in a manner that maintains the integrity of the monitoring well borehole. This casing must be screened or perforated and packed with gravel or sand, where necessary, to enable collection of groundwater samples. The annular space (i.e., the space between the borehole and well casing) above the sampling depth must be sealed to prevent contamination of samples and the groundwater. Monitoring wells constructed in accordance with the rules in effect at the time of construction shall not be required to be abandoned and reconstructed

as a result of subsequent amendments to these rules unless the department finds that the well is no longer providing representative groundwater samples. See Figure 1 for a general diagram of a properly constructed monitoring well.

(1) The owner or operator must notify the department that the design, installation, development, and decommission of any monitoring wells, piezometers and other measurement, sampling, and analytical devices documentation has been placed in the operating record.

(2) The monitoring wells, piezometers, and other measurement, sampling, and analytical devices must be operated and maintained so that they perform to design specifications throughout the life of the monitoring program.

(3) Each groundwater monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. The types of groundwater monitoring points shall be identified as follows:

1. Monitoring wells by "MW# (Insert unique and permanent number)".
2. Piezometers by "PZ# (Insert unique and permanent number)".
3. Groundwater underdrain systems by "GU# (Insert unique and permanent number)".

(4) Monitoring well construction shall be performed by a certified well contractor (pursuant to 567—Chapter 82) and shall comply with the following requirements:

1. In all phases of drilling, well installation and completion, the methods and materials used shall not introduce substances or contaminants that may alter the results of water quality analyses.
2. Drilling equipment that comes into contact with contaminants in the borehole or aboveground shall be thoroughly cleaned to avoid spreading contamination to other depths or locations. Contaminated materials or leachate from wells must not be discharged onto the ground surface or into waters of the state so as to cause harm in the process of drilling or well development.
3. The owner or operator must ensure that, at a minimum, the well design and construction log information is maintained in the facility's permanent record using DNR Form 542-1277 and that a copy is sent to the department.

(5) Monitoring well casings shall comply with the following requirements:

1. The diameter of the inner well casing (see Figure 1) of a monitoring well shall be at least 2 inches.
2. Plastic-cased wells shall be constructed of materials with threaded and nonglued joints that do not allow water infiltration under the local subsurface pressure conditions and when the well is evacuated for sampling.
3. Well casing shall provide sufficient structural stability so that a borehole or well collapse does not occur. Flush joint casing is required for small diameter wells installed through hollow stem augers.

(6) Monitoring well screens shall comply with the following requirements:

1. Slot size shall be based on sieve analysis of the sand and gravel stratum or filter pack. The slot size must keep out at least 90 percent of the filter pack.
2. Slot configuration and open area must permit effective development of the well.
3. The screen shall be no longer than 10 feet in length, except for water table wells, in which case the screen shall be of sufficient length to accommodate normal seasonal fluctuations of the water table. The screen shall be placed 5 feet above and below the observed water table, unless local conditions are known to produce greater fluctuations. Screen length for piezometers shall be 2 feet or less. Multiple-screened, single-cased wells are prohibited.

(7) Monitoring well filter packs shall comply with the following requirements:

1. The filter pack shall extend at least 18 inches above and 12 inches below the well screen.
2. The size of the filter pack material shall be based on sieve analysis when sand and gravel are screened. The filter pack material must be 2.5 to 3 times larger than the 50 percent grain size of the zone being monitored.
3. In stratum that is neither sand nor gravel, the size of the filter pack material shall be selected based on the particle size of the zone being monitored.

(8) Monitoring well annular space shall comply with the following requirements:

1. Grouting materials must be installed from the top of the filter pack up in one continuous operation with a tremie tube.
2. The annular space between the filter pack and the frostline must be backfilled with bentonite grout.
3. The remaining annular space between the protective casing and the monitoring well casing must be sealed with bentonite grout from the frostline to the ground surface.

(9) Monitoring well heads shall be protected as follows:

1. Monitoring wells shall have a protective metal casing installed around the upper portion of the monitoring well casing as follows:

- The inside diameter of the protective metal casing shall be at least 2 inches larger than the outer diameter of the monitoring well casing.
- The protective metal casing shall extend from a minimum of 1 foot below the frostline to slightly above the well casing top; however, the protective casing shall be shortened if such a depth would cover a portion of the well screen.
- The protective casing shall be sealed and immobilized with a concrete plug around the outside. The bottom of the concrete plug must extend at least 1 foot below the frostline; however, the concrete plug shall be shortened if such a depth would cover a portion of the well screen. The top of the concrete plug shall extend at least 3 inches above the ground surface and slope away from the well. Soil may be placed above the plug and shall be at least 6 inches below the cap to improve runoff.
- The inside of the protective casing shall be sealed with bentonite grout from the frostline to the ground surface.
- A vented cap shall be placed on the monitoring well casing.
- A vented, locking cap shall be placed on the protective metal casing. The cap must be kept locked when the well is not being sampled.

2. All monitoring wells shall have a ring of brightly colored protective posts or other protective barriers to help prevent accidental damage.
3. All monitoring wells shall have a sign or permanent marking clearly identifying the permanent monitoring well number (MW#).
4. Run-on shall be directed away from all monitoring wells.

(10) Well development is required prior to the use of the monitoring well for water quality monitoring purposes. Well development must loosen and remove fines from the well screen and gravel pack. Any water utilized to stimulate well development must be of sufficient quality that future samples are not contaminated. Any gases utilized in well development must be inert gases that will not contaminate future samples. Following development, the well shall be pumped

until the water does not contain significant amounts of suspended solids.

d. Groundwater monitoring points that are no longer functional must be sealed. Groundwater monitoring points that are to be sealed and are in a future waste disposal area shall be reviewed to determine if the method utilized to seal the monitoring point needs to be more protective than the following requirements. All abandoned groundwater-monitoring points (e.g., boreholes, monitoring wells, and piezometers) shall be sealed by a well contractor certified pursuant to 567—Chapter 82 and in accordance with the following requirements.

(1) The following information shall be placed in the operating record and a copy sent to the department:

1. The unique, permanent monitoring point number.
2. The reasons for abandoning the monitoring point.
3. The date and time the monitoring point was sealed.
4. The method utilized to remove monitoring point materials.
5. The method utilized to seal the monitoring point.
6. Department Form 542-1226 for Water Well Abandonment Plugging Record.

(2) The monitoring point materials (e.g., protective casing, casing, screen) shall be removed. If drilling is utilized to remove the materials, then the drilling shall be to the maximum depth of the previously drilled monitoring point. All drilling debris shall be cleaned from the interior of the borehole.

(3) The cleared borehole shall be sealed with impermeable bentonite grout via a tremie tube. The end of the tremie tube shall be submerged in the grout while filling from the bottom of the borehole to the top of the ground surface. Uncontaminated water shall be added from the surface as needed to aid grout expansion.

(4) After 24 hours, the bentonite grout shall be retopped if it has settled below the ground surface.

e. Hydrologic monitoring system plan (HMSP). Unless otherwise approved by the department in writing, the number, spacing, and depth of groundwater monitoring points shall be:

(1) Determined based upon site-specific technical information, including but not limited to the soil and hydrogeologic investigation pursuant to subrule 113.6(3) and the site exploration and characterization report pursuant to subrule 113.6(4), that must include thorough characterization of:

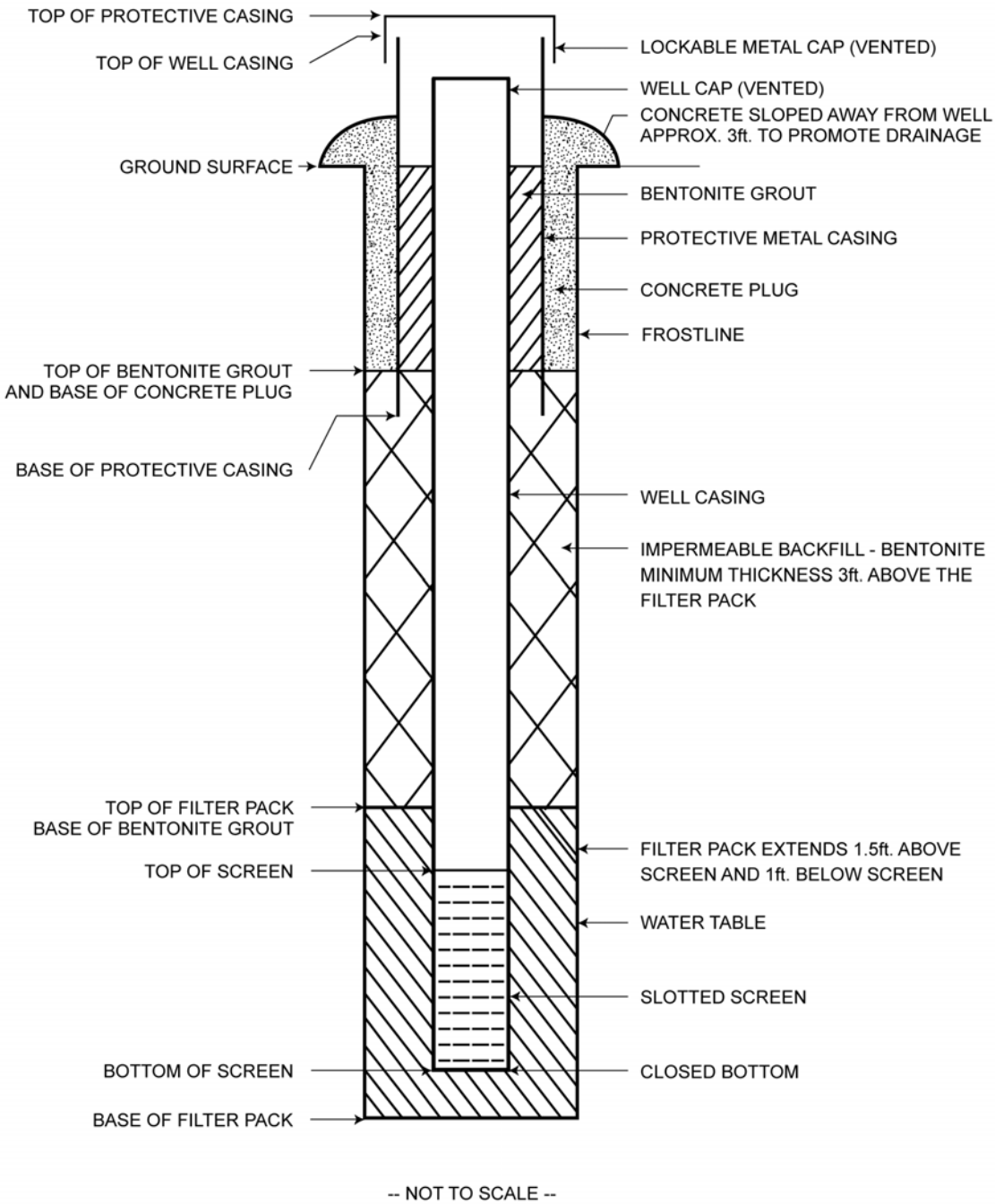
1. Aquifer thickness, groundwater flow rate, and groundwater flow direction including seasonal and temporal fluctuations in groundwater flow; and
2. Saturated and unsaturated geologic units and fill materials overlying the uppermost aquifer, materials comprising the uppermost aquifer, and materials comprising the confining unit defining the lower boundary of the uppermost aquifer, including, but not limited to: thicknesses, stratigraphy, lithology, hydraulic conductivities, porosities and effective porosities; and
3. Projected paths and rates of movement of contaminants found in leachate pursuant to subparagraph 113.6(3)"e"(6).

(2) Designed and constructed with a maximum of 300 feet between downgradient groundwater monitoring wells, unless it is demonstrated by site-specific analysis or modeling that an alternative well spacing is justified. The convergence of groundwater paths to minimize the overall length of the downgradient dimension may be taken into consideration in the placement of downgradient monitoring wells provided that the groundwater monitoring system meets the requirements of paragraphs 113.10(2)"a," 113.10(2)"c," 113.10(2)"d," and 113.10(2)"e."

(3) Certified by a qualified groundwater scientist, as defined in paragraph 113.10(1)"d," and approved by the department. Within 14 days of this certification and approval by the department, the owner or operator must notify the department that the certification has been placed in the operating record.

Figure 1

Typical Monitoring Well Cross Section



-- NOT TO SCALE --

f. Monitoring well maintenance and performance reevaluation plan. A monitoring well maintenance and performance reevaluation plan shall be included as part of the hydrologic monitoring system plan. The plan shall ensure that all monitoring points remain reliable. The plan shall provide for the following:

(1) A biennial examination of high and low water levels accompanied by a discussion of the acceptability of well location (vertically and horizontally) and exposure of the screened interval to the atmosphere.

(2) A biennial evaluation of water level conditions in the monitoring wells to ensure that the effects of waste disposal or well operation have not resulted in changes in the hydrologic setting and resultant flow paths.

(3) Measurements of well depths to ensure that wells are physically intact and not filling with sediment. Measurements shall be taken annually in wells which do not contain dedicated sampling pumps and every five years in wells containing dedicated sampling pumps.

(4) A biennial evaluation of well recharge rates and chemistry to determine if well deterioration is occurring.

113.10(3) Surface water monitoring systems. The department may require an MSWLF facility to implement a surface water monitoring program if there is reason to believe that a surface water of the state has been impacted as a result of facility operations (i.e., leachate seeps, sediment pond discharge) or a groundwater SSI over background has occurred.

a. A surface water monitoring program must be developed that consists of a sufficient number of monitoring points, designated at appropriate locations, to yield surface water samples that:

(1) Provide a representative sample of the upstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

(2) Provide a representative sample of the downstream quality of a surface water of the state if the surface water being monitored is a flowing body of water.

b. Surface water levels must be measured at a frequency specified in the facility's permit, within 1/10 of a foot at each surface water monitoring point immediately prior to sampling, each time surface water is sampled. The owner or operator must determine the rate and direction of surface water flow, if any, each time surface water is sampled. Surface water level and flow measurements for the same surface water of the state must be measured on the same day to avoid temporal variations that could preclude accurate determination of surface water flow and direction.

c. The owner or operator must notify and receive approval from the department for the designation or decommission of any surface water monitoring point, and must place that approval in the operating record.

d. The surface water monitoring points shall be designated to maintain sampling at that monitoring point throughout the life of the surface water monitoring program.

e. Each surface water monitoring point must have a unique and permanent number, and that number must never change or be used again at the MSWLF. Surface water monitoring points shall be identified by "SW# (Insert unique and permanent number)".

f. The number, spacing, and location of the surface water monitoring points shall be determined based upon site-specific technical information, including:

(1) Water level, including seasonal and temporal fluctuations in water level; and

(2) Flow rate and flow direction, including seasonal and temporal fluctuations in flow.

g. The MSWLF may discontinue the surface water monitoring program if monitoring data indicates that facility operations are not impacting surface water.

113.10(4) Groundwater sampling and analysis requirements.

a. The groundwater monitoring program must include consistent sampling and analysis procedures that are designed to ensure monitoring results that provide an accurate representation of groundwater quality at the background and downgradient wells installed in compliance with subrule 113.10(2). The groundwater monitoring program shall utilize a laboratory certified by the department. The owner or operator must notify the department that the sampling and analysis program documentation has been placed in the operating record, and the program must include procedures and techniques for:

(1) Sample collection;

(2) Sample preservation and shipment;

(3) Analytical procedures;

(4) Chain of custody control; and

(5) Quality assurance and quality control.

b. The groundwater monitoring programs must include sampling and analytical methods that are appropriate for groundwater sampling and that accurately measure hazardous constituents and other monitoring parameters in groundwater samples. Groundwater samples shall not be field-filtered prior to laboratory analysis.

c. The sampling procedures and frequency must be protective of human health and the environment, and consistent with subrule 113.10(5).

d. Groundwater elevations must be measured at a frequency specified in the facility's permit, within 1/100 of a foot in each well immediately prior to purging, each time groundwater is sampled. The owner or operator must determine the rate and direction of groundwater flow each time groundwater is sampled. Groundwater elevations in wells which monitor the same waste management area must be measured within a period of time short enough to avoid temporal variations in groundwater flow which could preclude accurate determination of groundwater flow rate and direction.

e. The owner or operator must establish background groundwater quality in a hydraulically upgradient or background well(s) for each of the monitoring parameters or constituents required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5)"a" or 113.10(6)"a." Background groundwater quality may be established at wells that are not located hydraulically upgradient from the MSWLF unit if the wells meet the requirements of subparagraph 113.10(2)"a"(1).

f. The number of samples collected to establish groundwater quality data must be consistent with the appropriate statistical procedures determined pursuant to paragraph 113.10(4)"g." The sampling procedures shall be those specified under paragraphs 113.10(5)"b" for detection monitoring, 113.10(6)"b" and 113.10(6)"d" for assessment monitoring, and 113.10(7)"b" for corrective action.

g. The owner or operator must specify in the operating record which of the following statistical methods will be used in evaluating groundwater monitoring data for each hazardous constituent. The statistical test chosen shall be conducted separately for each hazardous constituent in each well.

(1) A parametric analysis of variance (ANOVA) followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's mean and the background mean levels for each constituent.

(2) An analysis of variance (ANOVA) based on ranks followed by multiple comparisons procedures to identify statistically significant evidence of contamination. The method must include estimation and testing of the contrasts between each compliance well's median and the background median levels for each constituent.

(3) A tolerance or prediction interval procedure in which an interval for each constituent is established from the distribution of the background data, and the level of each constituent in each compliance well is compared to the upper tolerance or prediction limit.

(4) A control chart approach that gives control limits for each constituent.

(5) Another statistical test method that meets the performance standards of paragraph 113.10(4)"h." The owner or operator must place a justification for this alternative in the operating record and notify the department of the use of this

alternative test. The justification must demonstrate that the alternative method meets the performance standards of paragraph 113.10(4)"h."

h. The statistical method required pursuant to paragraph 113.10(4)"g" shall comply with the following performance standards:

(1) The statistical method used to evaluate groundwater monitoring data shall be appropriate for the distribution of chemical parameters or hazardous constituents. If the distribution of the chemical parameters or hazardous constituents is shown by the owner or operator to be inappropriate for a normal theory test, then the data shall be transformed or a distribution-free theory test shall be used. If the distributions for the constituents differ, more than one statistical method may be needed.

(2) If an individual well comparison procedure is used to compare an individual compliance well constituent concentration with background constituent concentrations or a groundwater protection standard, the test shall be done at a Type I error level not less than 0.01 for each testing period. If a multiple comparisons procedure is used, the Type I experimentwise error rate for each testing period shall be not less than 0.05; however, the Type I error level of not less than 0.01 for individual well comparisons must be maintained.

(3) If a control chart approach is used to evaluate groundwater monitoring data, the specific type of control chart and its associated parameter values shall be protective of human health and the environment. The parameters shall be determined after the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern have been considered.

(4) If a tolerance interval or a predictional interval is used to evaluate groundwater monitoring data, the levels of confidence and, for tolerance intervals, the percentage of the population that the interval must contain, shall be protective of human health and the environment. These parameters shall be determined after the number of samples in the background data base, the data distribution, and the range of the concentration values for each constituent of concern have been considered.

(5) The statistical method shall account for data below the limit of detection (LD) by recording such data at one-half the limit of detection (i.e., LD/2) or as prescribed by the statistical method. Any practical quantitation limit (pql) that is used in the statistical method shall be the lowest concentration level that can be reliably achieved within specified limits of precision and accuracy during routine laboratory operating conditions that are available to the facility.

(6) If necessary, the statistical method shall include procedures to control or correct for seasonal and spatial variability as well as temporal correlation in the data.

i. The owner or operator must determine whether or not there is an SSI over background values for each parameter or constituent required in the particular groundwater monitoring program that applies to the MSWLF unit, as determined under paragraph 113.10(5)"a" or 113.10(6)"a."

(1) In determining whether an SSI has occurred, the owner or operator must compare the groundwater quality of each parameter or constituent at each monitoring well designated pursuant to subrule 113.10(2) to the background value of that constituent, according to the statistical procedures and performance standards specified under paragraphs 113.10(4)"g" and 113.10(4)"h."

(2) Within 45 days after completing sampling and analysis, the owner or operator must determine whether there has been an SSI over background at each monitoring well.

113.10(5) Detection monitoring program.

a. Detection monitoring is required at MSWLF units at all groundwater monitoring wells defined under subrule 113.10(2). At a minimum, a detection monitoring program must include the monitoring for the constituents listed in Appendix I and any additional parameters required by the department on a site-specific basis. An alternative list of constituents may be used if it can be demonstrated that the constituents removed are not reasonably expected to be in or derived from the waste contained in the unit and if the alternative list of constituents is expected to provide a reliable indication of leachate leakage or gas impact from the MSWLF unit.

(1) The department may establish an alternative list of inorganic indicator parameters for an MSWLF unit within Appendix I, in lieu of some or all of the heavy metals (constituents 1 to 15 in Appendix I), if the alternative parameters provide a reliable indication of inorganic releases from the MSWLF unit to the groundwater. In determining alternative parameters, the department shall consider the following factors:

1. The types, quantities and concentrations of constituents in wastes managed at the MSWLF unit;

2. The mobility, stability and persistence of waste constituents or their reaction products in the unsaturated zone beneath the MSWLF unit;

3. The detectability of indicator parameters, waste constituents and reaction products in the groundwater; and

4. The concentration or values and coefficients of variation of monitoring parameters or constituents in the groundwater background.

(2) Reserved.

b. The monitoring frequency for all constituents listed in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)"a"(1) shall be at least semiannual (i.e., every six months) during the active life of the facility (including closure) and the postclosure period. Where insufficient background data exist, a minimum of five independent samples from each well, collected at intervals to account for seasonal and temporal variation, must be analyzed for the constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)"a"(1) during the first year. At least one sample from each well must be collected and analyzed during subsequent semiannual sampling events. The department may specify an appropriate alternative frequency for repeated sampling and analysis for constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)"a"(1) during the active life (including closure) and the postclosure care period. The alternative frequency during the active life (including closure) shall be not less than annually. The alternative frequency shall be based on consideration of the following factors:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Groundwater flow rates;

(4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel); and

(5) Resource value of the aquifer.

c. If the owner or operator determines, pursuant to paragraph 113.10(4)"i," that there is an SSI over background for one or more of the constituents listed in Appendix I or in the alternative list approved in accordance with subparagraph

113.10(5)"a"(1) at any monitoring well specified under subrule 113.10(2), then the owner or operator:

(1) Must, within 14 days of this finding, place a notice in the operating record indicating which constituents have shown statistically significant changes from background levels, and notify the department that this notice was placed in the operating record.

(2) Must establish within 90 days an assessment monitoring program meeting the requirements of subrule 113.10(6) except as provided in subparagraph 113.10(5)"c"(3).

(3) The owner or operator may demonstrate that a source other than an MSWLF unit caused the contamination or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If resampling is a part of the demonstration, resampling procedures shall be specified prior to initial sampling. If a successful demonstration to the department is made and documented, the owner or operator may continue detection monitoring as specified in subrule 113.10(5). If, after 90 days, a successful demonstration is not made, the owner or operator must initiate an assessment monitoring program as required in subrule 113.10(6).

113.10(6) Assessment monitoring program.

a. Assessment monitoring is required whenever an SSI over background has been confirmed pursuant to paragraph 113.10(5)"c" to be the result of a release from the facility.

b. Within 90 days of triggering an assessment monitoring program, and annually thereafter, the owner or operator must sample and analyze the groundwater for all constituents identified in Appendix II. A minimum of one sample from each downgradient well shall be collected and analyzed during each sampling event. For any constituent detected in the downgradient wells as a result of the complete Appendix II analysis, a minimum of four independent samples from each well must be collected and analyzed to establish background for the constituents. The department may specify an appropriate subset of wells to be sampled and analyzed for Appendix II constituents during assessment monitoring. The department may delete any of the Appendix II monitoring parameters for an MSWLF unit if it can be shown that the removed constituents are not reasonably expected to be in or derived from the waste contained in the unit.

c. The department may specify an appropriate alternate frequency for repeated sampling and analysis for the full set of Appendix II constituents required by paragraph 113.10(6)"b" during the active life (including closure) and postclosure care period of the unit. The following factors shall be considered:

(1) Lithology of the aquifer and unsaturated zone;

(2) Hydraulic conductivity of the aquifer and unsaturated zone;

(3) Groundwater flow rates;

(4) Minimum distance between upgradient edge of the MSWLF unit and downgradient monitoring well screen (minimum distance of travel);

(5) Resource value of the aquifer; and

(6) Nature (fate and transport) of any constituents detected in response to this paragraph.

d. After obtaining the results from the initial or subsequent sampling events required in paragraph 113.10(6)"b," the owner or operator must:

(1) Within 14 days, place a notice in the operating record identifying the Appendix II constituents that have been detected and notify the department that this notice has been placed in the operating record;

(2) Within 90 days, and on at least a semiannual basis thereafter, resample all wells specified by subrule 113.10(2) and conduct analyses for all constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)"a"(1), and for those constituents in Appendix II that are detected in response to the requirements of paragraph 113.10(6)"b." Concentrations shall be recorded in the facility operating record. At least one sample from each well must be collected and analyzed during these sampling events. The department may specify an alternative monitoring frequency during the active life (including closure) and the postclosure period for the constituents referred to in this subparagraph. The alternative frequency for constituents in Appendix I or in the alternative list approved in accordance with subparagraph 113.10(5)"a"(1) during the active life (including closure) shall be no less than annual. The alternative frequency shall be based on consideration of the factors specified in paragraph 113.10(6)"c";

(3) Establish background concentrations for any constituents detected pursuant to paragraph 113.10(6)"b" or subparagraph 113.10(6)"d"(2); and

(4) Establish groundwater protection standards for all constituents detected pursuant to paragraph 113.10(6)"b" or 113.10(6)"d." The groundwater protection standards shall be established in accordance with paragraph 113.10(6)"h" or 113.10(6)"i."

e. If the concentrations of all Appendix II constituents are shown to be at or below background values, using the statistical procedures in paragraph 113.10(4)"g" for two consecutive sampling events, the owner or operator must notify the department of this finding and may return to detection monitoring.

f. If the concentrations of any Appendix II constituents are above background values, but all concentrations are below the groundwater protection standard established under paragraph 113.10(6)"h" or 113.10(6)"i," using the statistical procedures in paragraph 113.10(4)"g," the owner or operator must continue assessment monitoring in accordance with this subrule.

g. If one or more Appendix II constituents are detected at statistically significant levels above the groundwater protection standard established under paragraph 113.10(6)"h" or 113.10(6)"i" in any sampling event, the owner or operator must, within 14 days of this finding, place a notice in the operating record identifying the Appendix II constituents that have exceeded the groundwater protection standard and notify the department and all other appropriate local government officials that the notice has been placed in the operating record. The owner or operator also:

(1) Must, within 90 days of this finding, comply with the following requirements or the requirements in subparagraph 113.10(6)"g"(2):

1. Characterize the nature and extent of the release by installing additional monitoring wells as necessary until the horizontal and vertical dimensions of the plume have been defined to background concentrations;

2. Install at least one additional monitoring well at the facility boundary in the direction of contaminant migration and sample this well in accordance with subparagraph 113.10(6)"g"(2);

3. Notify all persons who own the land or reside on the land that directly overlies any part of the plume of contamination if contaminants have migrated off site when indicated

by sampling of wells in accordance with subparagraph 113.10(6)"g"(1); and

4. Initiate an assessment of corrective measures as required by subrule 113.10(7).

(2) May demonstrate that a source other than an MSWLF unit caused the contamination, or that the SSI resulted from error in sampling, analysis, statistical evaluation, or natural variation in groundwater quality. A report documenting this demonstration must be certified by a qualified groundwater scientist, approved by the department, and placed in the operating record. If a successful demonstration is made, the owner or operator must continue monitoring in accordance with the assessment monitoring program pursuant to subrule 113.10(6), and may return to detection monitoring if the Appendix II constituents are at or below background as specified in paragraph 113.10(6)"e." Until a successful demonstration is made, the owner or operator must comply with paragraph 113.10(6)"g" including initiating an assessment of corrective measures.

h. The owner or operator must establish a groundwater protection standard for each Appendix II constituent detected in the groundwater. The groundwater protection standard shall be:

(1) For constituents for which a maximum contaminant level (MCL) has been promulgated under Section 1412 of the Safe Drinking Water Act (codified) under 40 CFR Part 141, the MCL for that constituent;

(2) For constituents for which MCLs have not been promulgated, the background concentration for the constituent established from wells in accordance with subrule 113.10(2); or

(3) For constituents for which the background concentration is higher than the MCL identified under subparagraph 113.10(6)"h"(1) or health-based concentrations identified under paragraph 113.10(6)"i," the background concentration.

i. The department may establish an alternative groundwater protection standard for constituents for which MCLs have not been established. These groundwater protection standards shall be appropriate health-based concentrations that comply with the statewide standards for groundwater established pursuant to 567—Chapter 137.

j. In establishing alternative groundwater protection standards under paragraph 113.10(6)"i," the department may consider the following:

(1) The policies set forth by the Groundwater Protection Act;

(2) Multiple contaminants in the groundwater with the assumption that the effects are additive regarding detrimental effects to human health and the environment;

(3) Exposure threats to sensitive environmental receptors; and

(4) Other site-specific exposure or potential exposure to groundwater.

113.10(7) Assessment of corrective measures.

a. Within 90 days of finding that any of the constituents listed in Appendix II have been detected at a statistically significant level exceeding the groundwater protection standards defined under paragraph 113.10(6)"h" or 113.10(6)"i," the owner or operator must initiate an assessment of corrective measures. Such an assessment must be completed and submitted to the department for review and approval within 180 days of the initial finding unless otherwise authorized or required by the department.

b. The owner or operator must continue to monitor in accordance with the assessment monitoring program as specified in subrule 113.10(6).

c. The assessment shall include an analysis of the effectiveness of potential corrective measures in meeting all of the requirements and objectives of the remedy as described under subrule 113.10(8), addressing at least the following:

(1) The performance, reliability, ease of implementation, and potential impacts of appropriate potential remedies, including safety impacts, cross-media impacts, and control of exposure to any residual contamination;

(2) The time required to begin and complete the remedy;

(3) The costs of remedy implementation; and

(4) The institutional requirements such as state or local permit requirements or other environmental or public health requirements that may substantially affect implementation of the remedy(ies).

d. Within 60 days of approval from the department of the assessment of corrective measures, the owner or operator must discuss the results of the corrective measures assessment, prior to the selection of a remedy, in a public meeting with interested and affected parties. The department may establish an alternative schedule for completing the public meeting requirement. Notice of public meeting shall be sent to all owners and occupiers of property adjacent to the permitted boundary of the facility, the department, and the department field office with jurisdiction over the facility. A copy of the minutes of this public meeting and the list of community concerns must be placed in the operating record and submitted to the department.

113.10(8) Selection of remedy.

a. Based on the results of the corrective measures assessment conducted under subrule 113.10(7), the owner or operator must select a remedy within 60 days of holding the public meeting that, at a minimum, meets the standards listed in paragraph 113.10(8)"b." The department may establish an alternative schedule for selecting a remedy after holding the public meeting. The owner or operator must submit a report to the department, within 14 days of selecting a remedy, describing the selected remedy, stating that the report has been placed in the operating record, and explaining how the selected remedy meets the standards in paragraph 113.10(8)"b."

b. Remedies must:

(1) Be protective of human health and the environment;

(2) Attain the groundwater protection standards specified pursuant to paragraph 113.10(6)"h" or 113.10(6)"i";

(3) Control the source(s) of releases so as to reduce or eliminate, to the maximum extent practicable, further releases of Appendix II constituents into the environment that may pose a threat to human health or the environment; and

(4) Comply with standards for management of wastes as specified in paragraph 113.10(9)"d."

c. In selecting a remedy that meets the standards of paragraph 113.10(8)"b," the owner or operator shall consider the following evaluation factors:

(1) The long-term and short-term effectiveness and protectiveness of the potential remedy(ies), along with the degree of certainty that the remedy will prove successful based on consideration of the following:

1. Magnitude of reduction of existing risks;

2. Magnitude of residual risks in terms of likelihood of further releases due to waste remaining following implementation of a remedy;

3. The type and degree of long-term management required, including monitoring, operation, and maintenance;

4. Short-term risks that might be posed to the community, workers, or the environment during implementation of such a remedy, including potential threats to human health and the environment associated with excavation, transportation, redisposal, or containment;

5. Time period until full protection is achieved;

6. Potential for exposure of humans and environmental receptors to remaining wastes, considering the potential threat to human health and the environment associated with excavation, transportation, redisposal, or containment;

7. Long-term reliability of the engineering and institutional controls; and

8. Potential need for replacement of the remedy.

(2) The effectiveness of the remedy in controlling the source to reduce further releases based on consideration of the following factors:

1. The extent to which containment practices will reduce further releases; and

2. The extent to which treatment technologies may be used.

(3) The ease or difficulty of implementing a potential remedy(ies) based on consideration of the following factors:

1. Degree of difficulty associated with constructing the technology;

2. Expected operational reliability of the technology;

3. Need to coordinate with and obtain necessary approvals and permits from other agencies;

4. Availability of necessary equipment and specialists; and

5. Available capacity and location of needed treatment, storage, and disposal services.

(4) Practicable capability of the owner or operator, including a consideration of technical and economic capabilities.

(5) The degree to which community concerns, including but not limited to the concerns identified at the public meeting required pursuant to paragraph 113.10(7)"d," are addressed by a potential remedy(ies).

d. The owner or operator shall specify as part of the selected remedy a schedule(s) for initiating and completing remedial activities. Such a schedule must require the initiation of remedial activities within a reasonable period of time taking into consideration the factors set forth in subparagraphs 113.10(8)"d"(1) to (8). The owner or operator must consider the following factors in determining the schedule of remedial activities:

(1) Extent and nature of contamination;

(2) Practical capabilities of remedial technologies in achieving compliance with groundwater protection standards established under paragraph 113.10(6)"h" or 113.10(6)"i" and other objectives of the remedy;

(3) Availability of treatment or disposal capacity for wastes managed during implementation of the remedy;

(4) Desirability of utilizing alternative or experimental technologies that are not widely available, but which may offer significant advantages over already available technologies in terms of effectiveness, reliability, safety, or ability to achieve remedial objectives;

(5) Potential risks to human health and the environment from exposure to contamination prior to completion of the remedy;

(6) Resource value of the aquifer including:

1. Current and future uses;

2. Proximity and withdrawal rate of users;

3. Groundwater quantity and quality;

4. The potential damage to wildlife, crops, vegetation, and physical structures caused by exposure to waste constituents;

5. The hydrogeologic characteristics of the facility and surrounding land;

6. Groundwater removal and treatment costs; and

7. The cost and availability of alternative water supplies;

(7) Practicable capability of the owner or operator; and

(8) Other relevant factors.

113.10(9) Implementation of the corrective action plan.

a. Based on the schedule established under paragraph 113.10(8)"d" for initiation and completion of remedial activities, the owner or operator must:

(1) Establish and implement a corrective action groundwater monitoring program that:

1. At a minimum, meets the requirements of an assessment monitoring program under subrule 113.10(6);

2. Indicates the effectiveness of the corrective action remedy; and

3. Demonstrates compliance with groundwater protection standards pursuant to paragraph 113.10(9)"e";

(2) Implement the corrective action remedy selected under subrule 113.10(8); and

(3) Take any interim measures necessary to ensure the protection of human health and the environment. Interim measures should, to the greatest extent practicable, be consistent with the objectives of and contribute to the performance of any remedy that may be required pursuant to subrule 113.10(8). The following factors must be considered by an owner or operator in determining whether interim measures are necessary:

1. Time period required to develop and implement a final remedy;

2. Actual or potential exposure of nearby populations or environmental receptors to hazardous constituents;

3. Actual or potential contamination of drinking water supplies or sensitive ecosystems;

4. Further degradation of the groundwater that may occur if remedial action is not initiated expeditiously;

5. Weather conditions that may cause hazardous constituents to migrate or be released;

6. Risk of fire or explosion, or potential for exposure to hazardous constituents as a result of an accident or the failure of a container or handling system; and

7. Other factors that may pose threats to human health and the environment.

b. An owner or operator may determine, based on information developed after implementation of the remedy has begun or other information, that compliance with the requirements of paragraph 113.10(8)"b" is not being achieved through the remedy selected. In such cases, the owner or operator must notify the department and implement other methods or techniques that could practicably achieve compliance with the requirements, unless the owner or operator makes the determination under paragraph 113.10(9)"c." The notification shall explain how the proposed alternative methods or techniques will meet the standards in paragraph 113.10(8)"b," or the notification shall indicate that the determination was made pursuant to paragraph 113.10(9)"c." The notification shall also specify a schedule(s) for implementing and completing the remedial activities to comply with paragraph 113.10(8)"b" or the alternative measures to comply with paragraph 113.10(9)"c." Within 90 days of approval by the department for the proposed alternative methods or techniques or the determination of impracticability, the owner or operator shall implement the proposed alternative methods

or techniques meeting the standards of paragraph 113.10(8)"b" or implement alternative measures meeting the requirements of subparagraphs 113.10(9)"c"(2) and (3).

c. If the owner or operator determines that compliance with requirements under paragraph 113.10(8)"b" cannot be practicably achieved with any currently available methods, the owner or operator must:

(1) Obtain certification of a qualified groundwater scientist and approval by the department that compliance with requirements under paragraph 113.10(8)"b" cannot be practicably achieved with any currently available methods;

(2) Implement alternate measures to control exposure of humans or the environment to residual contamination, as necessary to protect human health and the environment;

(3) Implement alternate measures for control of the sources of contamination, or for removal or decontamination of equipment, units, devices, or structures that are:

1. Technically practicable; and

2. Consistent with the overall objective of the remedy; and

(4) Notify the department within 14 days that a report justifying the alternate measures prior to implementation has been placed in the operating record.

d. All solid wastes that are managed pursuant to a remedy required under subrule 113.10(8), or an interim measure required under subparagraph 113.10(9)"a"(3), shall be managed in a manner:

(1) That is protective of human health and the environment; and

(2) That complies with applicable RCRA, state and local requirements.

e. Remedies selected pursuant to subrule 113.10(8) shall be considered complete when:

(1) The owner or operator complies with the groundwater protection standards established under paragraph 113.10(6)"h" or 113.10(6)"i" at all points within the plume of contamination that lie beyond the groundwater monitoring well system established under subrule 113.10(2).

(2) Compliance with the groundwater protection standards established under paragraph 113.10(6)"h" or 113.10(6)"i" has been achieved by demonstrating that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s) for a period of three consecutive years using the statistical procedures and performance standards in paragraphs 113.10(4)"g" and 113.10(4)"h." The department may specify an alternative length of time during which the owner or operator must demonstrate that concentrations of Appendix II constituents have not exceeded the groundwater protection standard(s), taking into consideration:

1. The extent and concentration of the release(s);

2. The behavior characteristics of the hazardous constituents in the groundwater;

3. The accuracy of monitoring or modeling techniques, including any seasonal, meteorological, or other environmental variables that may affect accuracy; and

4. The characteristics of the groundwater.

(3) All actions required by the department to complete the remedy have been satisfied.

f. Upon completion of the remedy, the owner or operator must notify the department within 14 days that a certification has been placed in the operating record verifying that the remedy has been completed in compliance with the requirements of paragraph 113.10(9)"e." The certification must be signed by the owner or operator and by a qualified groundwater scientist and approved by the department.

g. When, upon completion of the certification, the owner or operator determines that the corrective action remedy has been completed in accordance with the requirements under paragraph 113.10(9)"e," the owner or operator shall be released from the requirements for financial assurance for corrective action pursuant to subrule 113.14(5).

113.10(10) Annual water quality reports. The owner or operator shall submit an annual report to the department detailing the water quality monitoring sampling locations and results, assessments, selection of remedies, implementation of corrective action, and the results of corrective action remedies to address SSIs, if any, during the previous year. This report shall include a site map that delineates all monitoring points where water quality samples were taken, and plumes of contamination, if any. The report shall contain a narrative explaining and interpreting all of the data collected during the previous year. The report shall be due each year on a date set by the department in the facility's permit.

567—113.11(455B,455D) Record-keeping and reporting requirements. The primary purpose of the record-keeping and reporting activities is to verify compliance with this chapter and to document the construction and operations of the facility. The department can set alternative schedules for record-keeping and notification requirements as specified in subrules 113.11(1) and 113.11(2), except for the notification requirements in paragraph 113.6(2)"a" and numbered paragraph 113.10(6)"g"(1)"3." All MSWLFs shall comply with the following record-keeping and reporting requirements.

113.11(1) Record keeping. The owner or operator of an MSWLF unit must record and retain near the facility in an operating record or in an alternative location approved by the department the following information as it becomes available:

a. Permit application, permit renewal and permit modification application materials pursuant to rule 113.5(455B);

b. The site exploration and characterization reports pursuant to subrule 113.6(4);

c. Design and construction plans and specifications, and related analyses and documents, pursuant to rule 113.7(455B). The QC&A final reports, and related analyses and documents, pursuant to paragraph 113.7(6)"d";

d. Inspection records, training procedures, and notification procedures required in rule 113.8(455B);

e. Any MSWLF unit design documentation for placement of leachate or gas condensate in an MSWLF unit as required under numbered paragraphs 113.8(1)"b"(3)"2" and "3";

f. Gas monitoring results from monitoring and any remediation plans required by rule 113.9(455B);

g. Any demonstration, certification, finding, monitoring, testing, or analytical data required by rule 113.10(455B);

h. Closure and postclosure care plans and any monitoring, testing, or analytical data as required by rules 113.12(455B) and 113.13(455B); and

i. Any cost estimates and financial assurance documentation required by this chapter.

113.11(2) Reporting requirements. The owner or operator must notify the department when the documents required in subrule 113.11(1) have been placed in the operating record. All information contained in the operating record must be furnished upon request to the department and be made available at all reasonable times for inspection by the department.

567—113.12(455B) Closure criteria. All MSWLFs shall comply with the following closure requirements.

113.12(1) Owners or operators of all MSWLF units must install a final cover system that is designed to minimize infiltration and erosion. The final cover system must be designed and constructed to:

a. Have a permeability less than or equal to the permeability of any bottom liner system (for MSWLFs with some type of liner) or have a permeability no greater than 1×10^{-7} cm/sec, whichever is less;

b. Minimize infiltration through the closed MSWLF by the use of an infiltration layer that contains a minimum of 18 inches of compacted earthen material;

c. Minimize erosion of the final cover by the use of an erosion layer that contains a minimum of 24 inches of earthen material that is capable of sustaining native plant growth;

d. Have an infiltration layer and erosion layer that are a combined minimum of 42 inches of earthen material at all locations over the closed MSWLF unit; and

e. Have a slope between 5 percent and 25 percent. Steeper slopes may be used if it is demonstrated that a steeper slope is unlikely to adversely affect final cover system integrity.

113.12(2) The department may approve an alternative final cover design that includes:

a. An infiltration layer that achieves reduction in infiltration equivalent to the infiltration layer specified in paragraphs 113.12(1)"a" and 113.12(1)"b"; and

b. An erosion layer that provides protection from wind and water erosion equivalent to the erosion layer specified in paragraphs 113.12(1)"c" and 113.12(1)"d."

113.12(3) The owner or operator must prepare a written closure plan that describes the steps necessary to close all MSWLF units at any point during the active life in accordance with the cover design requirements in subrule 113.12(1) or 113.12(2), as applicable. The closure plan, at a minimum, must include the following information:

a. A description of the final cover including source, volume, and characteristics of cover material, designed in accordance with subrule 113.12(1) or 113.12(2) and the methods and procedures to be used to install the cover;

b. An estimate of the largest area of the MSWLF unit requiring a final cover, as required under subrule 113.12(1) or 113.12(2), at any time during the active life;

c. An estimate of the maximum inventory of wastes on site over the active life of the landfill facility; and

d. A schedule for completing all activities necessary to satisfy the closure criteria in rule 113.12(455B).

113.12(4) The owner or operator must notify the department that the closure plan has been placed in the operating record no later than the initial receipt of waste in a new MSWLF unit.

113.12(5) At least 180 days prior to beginning closure of each MSWLF unit as specified in subrule 113.12(6), an owner or operator must notify the department of the intent to close the MSWLF unit, and that a notice of the intent to close the unit has been placed in the operating record. If the MSWLF facility will no longer be accepting MSW for disposal, then the owner or operator must also notify all local governments utilizing the facility and post a public notice of the intent to close and no longer to accept MSW.

113.12(6) The owner or operator must begin closure activities of each MSWLF unit:

a. No later than 30 days after the date on which the MSWLF unit receives the known final receipt of wastes; or

b. If the MSWLF unit has remaining capacity and there is a reasonable likelihood that the MSWLF unit will receive additional wastes, no later than one year after the most recent receipt of wastes. Extensions beyond the one-year deadline for beginning closure may be granted by the department if the owner or operator demonstrates that the MSWLF unit has the capacity to receive additional wastes and the owner or operator has taken and will continue to take all steps necessary to prevent threats to human health and the environment from the unclosed MSWLF unit.

113.12(7) The owner or operator of all MSWLF units must complete closure activities of each MSWLF unit in accordance with the closure plan within 180 days following the beginning of closure as specified in subrule 113.12(6). Extensions of the closure period may be granted by the department if the owner or operator demonstrates that closure will, of necessity, take longer than 180 days and that the owner or operator has taken and will continue to take all steps to prevent threats to human health and the environment from the unclosed MSWLF unit.

113.12(8) Following closure of each MSWLF unit, the owner or operator must submit to the department certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that closure has been completed in accordance with the closure plan. Upon approval by the department, the certification shall be placed in the operating record.

113.12(9) Following closure of all MSWLF units, the owner or operator must record a notation on the deed to the landfill facility property, or some other instrument that is normally examined during title search in lieu of a deed notification, and notify the department that the notation has been recorded and a copy has been placed in the operating record. The notation on the deed must in perpetuity notify any potential purchaser of the property that:

a. The land has been used as a landfill facility; and

b. Its use is restricted under paragraph 113.13(3)"c."

113.12(10) The owner or operator may request permission from the department to remove the notation from the deed if all wastes are removed from the facility.

567—113.13(455B) Postclosure care requirements. All MSWLFs shall comply with the following postclosure care requirements.

113.13(1) Following closure of each MSWLF unit, the owner or operator must conduct postclosure care. Postclosure care must be conducted for 30 years, except as provided under subrule 113.13(2), and consist of at least the following:

a. Maintaining the integrity and effectiveness of any final cover, including making repairs to the cover as necessary to correct the effects of settlement, subsidence, erosion, or other events, and preventing run-on and runoff from eroding or otherwise damaging the final cover;

b. Maintaining and operating the leachate collection system in accordance with the requirements in paragraphs 113.7(5)"b" and 113.8(3)"i," if applicable. The department may allow the owner or operator to stop managing leachate if the owner or operator demonstrates that leachate no longer poses a threat to human health and the environment;

c. Monitoring the groundwater in accordance with the requirements of rule 113.10(455B) and maintaining the groundwater monitoring system; and

d. Maintaining and operating the gas monitoring system in accordance with the requirements of rule 113.9(455B).

113.13(2) The length of the postclosure care period may be:

a. Decreased by the department if the owner or operator demonstrates that the reduced period is sufficient to protect human health and the environment and this demonstration is approved by the department; or

b. Increased by the department if the department determines that the lengthened period is necessary to protect human health and the environment.

113.13(3) The owner or operator of all MSWLF units must prepare a written postclosure plan that includes, at a minimum, the following information:

a. A description of the monitoring and maintenance activities required in subrule 113.13(1) for each MSWLF unit, and the frequency at which these activities will be performed;

b. Name, address, and telephone number of the person or office to contact about the facility during the postclosure period; and

c. A description of the planned uses of the property during the postclosure period. Postclosure use of the property shall not disturb the integrity of the final cover, liner(s), or any other components of the containment system, or the function of the monitoring systems unless necessary to comply with the requirements in this chapter. The department may approve any other disturbance if the owner or operator demonstrates that disturbance of the final cover, liner or other component of the containment system, including any removal of waste, will not increase the potential threat to human health or the environment.

113.13(4) The owner or operator must notify the department that a postclosure plan has been prepared and placed in the operating record by the date of initial receipt of waste.

113.13(5) Following completion of the postclosure care period for each MSWLF unit, the owner or operator must submit to the department a certification, signed by an independent professional engineer (P.E.) registered in Iowa, verifying that postclosure care has been completed in accordance with the postclosure plan. Upon department approval, the certification shall be placed in the operating record.

567—113.14(455B) Municipal solid waste landfill financial assurance.

113.14(1) Purpose. The purpose of this rule is to implement Iowa Code sections 455B.304(8) and 455B.306(8) by providing the criteria for establishing financial assurance for closure, postclosure care and corrective action at MSWLFs.

113.14(2) Applicability. The requirements of this rule apply to all owners and operators of MSWLFs except owners or operators that are state or federal government entities whose debts and liabilities are the debts and liabilities of a state or the United States.

113.14(3) Financial assurance for closure. The owner or operator of an MSWLF must establish financial assurance for closure in accordance with the criteria in this rule. The owner or operator must provide continuous coverage for closure until released from this requirement by demonstrating compliance with rule 113.12(455B). Proof of compliance pursuant to paragraphs 113.14(3)"a" through 113.14(3)"e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8)"e" and 455B.306(6)"c," and the current balances of the closure and postclosure accounts at the time of submittal as required by Iowa Code section 455B.306(8)"b."

b. The owner or operator shall submit a copy of the financial assurance instruments or the documents establishing the financial assurance instruments in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6)"a" to 113.14(6)"i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to close the MSWLF in accordance with the closure plan as required by paragraph 103.5(1)"i" and rule 113.12(455B). Such estimate must be available at any time during the active life of the landfill.

(1) The cost estimate must equal the cost of closing the MSWLF at any time during the permitted life of the facility when the extent and manner of its operation would make closure the most expensive.

(2) The costs contained in the third-party estimate for closure must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF, the owner or operator must annually adjust the closure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases closure costs, whichever occurs first, increase the closure cost estimate and the amount of financial assurance provided if changes to the closure plan or MSWLF conditions increase the maximum cost of closure at any time during the remaining active life of the facility.

(5) The owner or operator may reduce the amount of financial assurance for closure if the most recent estimate of the maximum cost of closure at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the closure cost estimate and the updated documentation required by paragraphs 113.14(3)"a" through 113.14(3)"e" and receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to closure and account for at least the following factors determined by the department to be minimal necessary costs for closure:

1. Closure and postclosure plan document revisions;
2. Site preparation, earthwork and final grading;
3. Drainage control culverts, piping and structures;
4. Erosion control structures, sediment ponds and terraces;
5. Final cap construction;
6. Cap vegetation soil placement;
7. Cap seeding, mulching and fertilizing;
8. Monitoring well, piezometer and gas control modifications;
9. Leachate system cleanout and extraction well modifications;
10. Monitoring well installations and abandonments;
11. Facility modifications to effect closed status;
12. Engineering and technical services;
13. Legal, financial and administrative services; and
14. Closure compliance certifications and documentation.

d. For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

113.14(4) Financial assurance for postclosure care. The owner or operator of an MSWLF must establish financial assurance for the costs of postclosure care in accordance with the criteria in this chapter. The owner or operator must provide continuous coverage for postclosure care until released from this requirement by demonstrating compliance with the postclosure plan and the closure permit. Proof of compliance pursuant to paragraphs 113.14(4)"a" through 113.14(4)"e" must be submitted by the owner or operator yearly by April 1 and approved by the department.

a. The owner or operator shall submit the current version of department Form 542-8090, Municipal Solid Waste Sanitary Landfill Financial Assurance Report Form, which contains, but is not limited to, the amount of the financial assurance, the annual financial statement required by Iowa Code sections 455B.306(8)"e" and 455B.306(6)"c," and the current balances of the closure and postclosure accounts required by Iowa Code section 455B.306(8)"b."

b. The owner or operator shall submit a copy of the documents establishing a financial assurance instrument in an amount equal to or greater than the amount specified in subrule 113.14(9). Documentation for the mechanism(s) used to demonstrate financial assurance shall contain, at a minimum, the items required to be submitted as specified in paragraphs 113.14(6)"a" to 113.14(6)"i."

c. The owner or operator shall submit a detailed written estimate, in current dollars, certified by an Iowa-licensed professional engineer, of the cost of hiring a third party to conduct postclosure care for the MSWLF in compliance with the postclosure plan developed pursuant to paragraph 113.5(1)"i" and rule 113.13(455B). The cost estimate must account for the total cost of conducting postclosure care, as described in the plan, for the entire postclosure care period.

(1) The cost estimate for postclosure care must be based on the most expensive costs of that care during the entire postclosure care period.

(2) The costs contained in the third-party estimate for postclosure care must be accurate and reasonable when compared to the cost estimates used by other similarly situated landfills in Iowa.

(3) During the active life of the MSWLF and during the postclosure care period, the owner or operator must annually adjust the postclosure cost estimate for inflation.

(4) The owner or operator must, annually or at the time of application for a permit amendment that increases postclosure costs, whichever occurs first, increase the estimate and the amount of financial assurance provided if changes in the postclosure plan or MSWLF conditions increase the maximum cost of postclosure care.

(5) The owner or operator may reduce the amount of financial assurance for postclosure care if the most recent estimate of the maximum cost of postclosure care beginning at any time during the active life of the facility is less than the amount of financial assurance currently provided. Prior to the reduction, the owner or operator must submit to the department the justification for the reduction of the postclosure cost estimate and the updated documentation required by paragraphs 113.14(4)"a" through 113.14(4)"e" and must receive department approval for the reduction. Approval or denial shall be issued within 30 days of receipt of the reduction request.

(6) The third-party estimate submitted to the department must include the site area subject to postclosure care and account for at least the following factors determined by the department to be minimal necessary costs for postclosure care:

1. General site facilities, access roads and fencing maintenance;
2. Cap and vegetative cover maintenance;
3. Drainage and erosion control systems maintenance;
4. Groundwater to waste separation systems maintenance;
5. Gas control systems maintenance;
6. Gas control systems monitoring and reports;
7. Groundwater and surface water monitoring systems maintenance;
8. Groundwater and surface water quality monitoring and reports;
9. Groundwater monitoring systems performance evaluations and reports;
10. Leachate control systems maintenance;
11. Leachate management, transportation and disposal;
12. Leachate control systems performance evaluations and reports;
13. Engineering and technical services;
14. Legal, financial and administrative services; and
15. Financial assurance, accounting, audits and reports.

d. For publicly owned MSWLFs, the owner or operator shall submit to the department a copy of the owner's or operator's most recent annual audit report in the form prescribed by the office of the auditor of the state of Iowa.

e. Privately held MSWLFs shall submit an affidavit from the owner or operator indicating that a yearly review has been performed by a certified public accountant to determine whether the privately owned landfill is in compliance with this chapter. The affidavit shall state the name of the certified public accountant, the dates and conclusions of the review, and the steps taken to rectify any deficiencies identified by the accountant.

113.14(5) Financial assurance for corrective action.

a. An owner or operator required to undertake corrective action pursuant to rules 113.9(455B) and 113.10(455B) must have a detailed written estimate, in current dollars, prepared by an Iowa licensed professional engineer of the cost of hiring a third party to perform the required corrective action. The estimate must account for the total costs of the activities described in the approved corrective action plan for the entire corrective action period. The owner or operator must submit to the department the estimate and financial assurance documentation within 30 days of department approval of the corrective action plan.

(1) The owner or operator must annually adjust the estimate for inflation until the corrective action plan is completed.

(2) The owner or operator must increase the cost estimate and the amount of financial assurance provided if changes in the corrective action plan or MSWLF conditions increase the maximum cost of corrective action.

(3) The owner or operator may reduce the amount of the cost estimate and the amount of financial assurance provided if the estimate exceeds the maximum remaining costs of the remaining corrective action. The owner or operator must submit to the department the justification for the reduction of the cost estimate and documentation of financial assurance.

b. The owner or operator of an MSWLF required to undertake a corrective action plan must establish financial assurance for the most recent corrective action plan by one of the mechanisms prescribed in subrule 113.14(6). The owner or operator must provide continuous coverage for corrective action until released from financial assurance requirements by demonstrating compliance with the following:

(1) Upon completion of the remedy, the owner or operator must submit to the department a certification of compliance with the approved corrective action plan. The certification must be signed by the owner or operator and by a qualified groundwater scientist and approved by the department.

(2) Upon department approval of completion of the corrective action remedy, the owner or operator shall be released from the requirements for financial assurance for corrective action.

113.14(6) Allowable financial assurance mechanisms. The mechanisms used to demonstrate financial assurance as required by Iowa Code section 455B.306(8)"a" must ensure that the funds necessary to meet the costs of closure, postclosure care, and corrective action for known releases will be available whenever the funds are needed. Owners or operators must choose from options in paragraphs 113.14(6)"a" to 113.14(6)"i."

a. Trust fund.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure, and corrective action, whichever is applicable, by establishing a trust fund which conforms to the requirements of this subrule. The trustee must be an entity which has the authority to act as a trustee and whose trust operations are regulated and examined by a federal or state agency. A copy of the trust agreement must be submitted pursuant to subrules 113.14(3) and 113.14(4) and placed in the facility's official files.

(2) Payments into the trust fund must be made annually by the owner or operator over ten years or over the remaining life of the MSWLF, whichever is shorter, in the case of a trust fund for closure or postclosure care; or over one-half of the estimated length of the corrective action plan in the case of response to a known release. This period is referred to as the pay-in period.

(3) For a trust fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the fund must be at least equal to the amount specified in subrule 113.14(9) for closure or postclosure care divided by the number of years in the pay-in period as defined in subparagraph 113.14(6)"a"(2).

The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CB}{Y}$$

where CE is the amount specified in 113.14(9) for closure or postclosure care (updated for inflation or other changes), CB is the current balance of the trust fund, and Y is the number of years remaining in the pay-in period.

(4) For a trust fund used to demonstrate financial assurance for corrective action, the first payment into the trust fund must be at least equal to one-half of the current cost estimate for corrective action divided by the number of years in the corrective action pay-in period as defined in subparagraph 113.14(6)"a"(2). The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{RB - CV}{Y}$$

where RB is the most recent estimate of the required trust fund balance for corrective action, which is the total cost that will be incurred during the second half of the corrective action period, CV is the current value of the trust fund, and Y is the number of years remaining in the pay-in period.

(5) The initial payment into the trust fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(6) The owner or operator, or other person authorized to conduct closure, postclosure care, or corrective action activities may request reimbursement from the trustee for these expenditures, including partial closure, as they are incurred. Requests for reimbursement will be granted by the trustee only if sufficient funds are remaining in the trust fund to cover the remaining costs of closure, postclosure care, or corrective action and if justification and documentation of the costs are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that reimbursement has been received.

(7) The trust fund may be terminated by the owner or operator only if the owner or operator substitutes alternative financial assurance as specified in this rule or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

(8) After the pay-in period has been completed, the trust fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

b. Surety bond guaranteeing payment or performance.

(1) An owner or operator may demonstrate financial assurance for closure or postclosure care by obtaining a payment or performance surety bond which conforms to the requirements of this subrule. An owner or operator may demonstrate financial assurance for corrective action by obtaining a performance bond which conforms to the requirements of this subrule. The bond must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department. The owner or operator must submit a copy of the bond to the department and keep a copy in the facility's official files. The surety company issuing the bond must, at a minimum, be among those listed as acceptable sureties on federal bonds in Circular 570 of the U.S. Department of the Treasury. The state shall not be considered a party to the surety bond.

(2) The penal sum of the bond must be in an amount at least equal to the amount specified in subrule 113.14(9) for closure and postclosure or corrective action, whichever is applicable.

(3) Under the terms of the bond, the surety will become liable on the bond obligation when the owner or operator fails to perform as guaranteed by the bond and also upon notice from the department pursuant to subparagraph 113.14(6)"b"(6).

(4) The owner or operator must establish a standby trust fund. The standby trust fund must meet the requirements of paragraph 113.14(6)"a" except the requirements for initial payment and subsequent annual payments specified in subparagraphs 113.14(6)"a"(2) through (5).

(5) Payments made under the terms of the bond will be deposited by the surety directly into the standby trust fund. Payments from the trust fund must be approved by the trustee and the department.

(6) Under the terms of the bond, the surety may cancel the bond by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the surety of withdrawal of the cancellation, or proof of a deposit into the standby trust of a sum equal to the amount of the bond. If the owner or operator has not complied with this subparagraph within the 60-day time period, this shall constitute a failure to perform and the department shall notify the surety, prior to the expiration of the 120-day notice period, that such a failure has occurred.

(7) The bond must be conditioned upon faithful performance by the owner or operator of all closure, postclosure, or corrective action requirements of the Code of Iowa and this chapter. A failure to comply with subparagraph 113.14(6)"b"(6) shall also constitute a failure to perform under the terms of the bond.

(8) Liability under the bond shall be for the duration of the operation, closure, and postclosure periods.

(9) The owner or operator may cancel the bond only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

c. Letter of credit.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by obtaining an irrevocable standby letter of credit which conforms to the requirements of this subrule. The letter of credit must be effective before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The owner or operator must submit to the department a copy of the letter of credit and place a copy in the facility's official files. The issuing institution must be an entity which has the authority to issue letters of credit and whose letter-of-credit operations are regulated and examined by a federal or state agency.

(2) A letter from the owner or operator referring to the letter of credit by number, issuing institution, and date, and providing the name and address of the facility, and the amount of funds assured, must be included with the letter of credit submitted to the department and placed in the facility's files.

(3) The letter of credit must be irrevocable and issued for a period of at least one year in an amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care or corrective action, whichever is applicable. The letter of credit must provide that the expiration date will be automatically extended for a period of at least one year unless the issuing institution has canceled the letter of credit by sending notice of cancellation by certified mail to the owner or operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the letter of credit into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8)"b." If the owner or operator has not complied with this subrule within the 60-day time period, the issuer of the letter of credit shall deposit a sum equal to the amount of the letter of credit into the closure and postclosure accounts established by the owner or operator pursuant to Iowa Code section 455B.306(8)"b." The provision of funds by the issuer of the letter of credit shall be considered an issuance of a loan to the owner or operator, and the terms of that loan shall be governed by the letter of credit or subsequent agreement between those parties. The state shall not be considered a party to this credit transaction.

(4) The owner or operator may cancel the letter of credit only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

d. Insurance.

(1) An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining insurance which conforms to the requirements of this subrule. The insurance must be effective before the initial receipt of waste or prior to cancellation of an alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department. At a minimum, the insurer must be licensed to transact the business of insurance, or be eligible to provide insurance as an excess or surplus lines insurer, in one or more states. The owner or operator must submit to the department a copy of the insurance policy and retain a copy in the facility's official files.

(2) The closure or postclosure care insurance policy must guarantee that funds will be available to close the MSWLF unit whenever final closure occurs or to provide postclosure care for the MSWLF unit whenever the postclosure care period begins, whichever is applicable. The policy must also guarantee that once closure or postclosure care begins, the insurer will be responsible for the paying out of funds to the owner or operator or other person authorized to conduct closure or postclosure care, up to an amount equal to the face amount of the policy.

(3) The insurance policy must be issued for a face amount at least equal to the amount specified in subrule 113.14(9) for closure, postclosure care, or corrective action, whichever is applicable. The term "face amount" means the total amount the insurer is obligated to pay under the policy. Actual payments by the insurer will not change the face amount, although the insurer's future liability will be lowered by the amount of the payments.

(4) An owner or operator, or any other person authorized to conduct closure or postclosure care, may receive reimbursements for closure or postclosure expenditures, including partial closure, whichever is applicable. Requests for reimbursement will be granted by the insurer only if the remaining value of the policy is sufficient to cover the remaining costs of closure or postclosure care, and if justification and documentation of the cost are placed in the operating record. The owner or operator must submit to the department documentation of the justification for reimbursement and verification that the reimbursement has been received.

(5) Each policy must contain a provision allowing assignment of the policy to a successor owner or operator. Such assignment may be conditional upon consent of the insurer, provided that such consent is not unreasonably refused.

(6) The insurance policy must provide that the insurer may not cancel, terminate or fail to renew the policy except for failure to pay the premium. The automatic renewal of the

policy must, at a minimum, provide the insured with the option of renewal at the face amount of the expiring policy. If there is a failure to pay the premium, the insurer may cancel the policy by sending notice of cancellation by certified mail to the owner and operator and to the department 120 days in advance of cancellation. When such notice is provided, the owner or operator shall, within 60 days, provide to the department adequate proof of alternative financial assurance, notice from the insurer of withdrawal of cancellation, or proof of a deposit of a sum equal to the amount of the insurance coverage into the closure and postclosure accounts established pursuant to Iowa Code section 455B.306(8)"b." If the owner or operator has not complied with this subrule within the 60-day time period, this shall constitute a failure to perform and shall be a covered event pursuant to the terms of the insurance policy. A failure by the owner or operator to comply with this subrule within the 60-day period shall make the insurer liable for the closure and postclosure care of the covered facility up to the amount of the policy limits, which shall be equal to the most recently submitted cost estimates.

(7) For insurance policies providing coverage for postclosure care, commencing on the date that liability to make payments pursuant to the policy accrues, the insurer will thereafter annually increase the face amount of the policy. Such increase must be equivalent to the face amount of the policy, less any payments made, multiplied by an amount equivalent to 85 percent of the most recent investment rate or of the equivalent coupon-issue yield announced by the U.S. Treasury for 26-week treasury securities.

(8) The owner or operator may cancel the insurance only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

e. Corporate financial test. An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component. The owner or operator must satisfy the requirements of numbered paragraphs 113.14(6)"e"(1)"1" to "3" to meet the financial component of the corporate financial test.

1. The owner or operator must satisfy one of the following three conditions:

- A current rating for its senior unsubordinated debt of AAA, AA, A, or BBB as issued by Standard & Poor's or Aaa, Aa, A or Baa as issued by Moody's; or
- A ratio of less than 1.5 comparing total liabilities to net worth (net worth calculations may not include future permitted capacity of the subject landfill as an asset); or
- A ratio of greater than 0.10 comparing the sum of net income plus depreciation, depletion and amortization, minus $10 million, to total liabilities;

2. The tangible net worth, excluding future permitted capacity of the subject landfill, of the owner or operator must be greater than:

- The sum of the current closure, postclosure care, and corrective action cost estimates and any other environmental obligations, including guarantees, covered by this financial test plus $10 million except as provided in the second bulleted paragraph of numbered paragraph 113.14(6)"e"(1)"2"; or
- Net worth of $10 million, excluding future permitted capacity of the subject landfill, plus the amount of any guarantees that have not been recognized as liabilities on the financial statements, provided that all of the current closure, postclosure care, and corrective action costs and any other environmental obligations covered by a financial test are recognized as liabilities on the owner's or operator's audited financial statements, and are subject to the approval of the department; and

3. The owner or operator must have, located in the United States, assets, excluding future permitted capacity of the subject landfill, amounting to at least the sum of current closure, postclosure care, and corrective action cost estimates and any other environmental obligations covered by a financial test as described in subparagraph 113.14(6)"e"(5).

(2) Record-keeping and reporting requirements. The owner or operator must submit the following records to the department and place a copy in the facility's official files prior to the initial receipt of solid waste or cancellation of an alternative financial assurance instrument, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department:

1. A letter signed by a certified public accountant and based upon a certified audit that:

- Lists all the current cost estimates covered by a financial test including, but not limited to, cost estimates required by subrules 113.14(3) to 113.14(5); cost estimates required for municipal solid waste management facilities pursuant to 40 CFR Part 258; cost estimates required for UIC facilities under 40 CFR Part 144, if applicable; cost estimates required for petroleum underground storage tank facilities under 40 CFR Part 280, if applicable; cost estimates required for PCB storage facilities under 40 CFR Part 761, if applicable; and cost estimates required for hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, if applicable; and
- Provides evidence demonstrating that the owner or operator meets the conditions of subparagraph 113.14(6)"e"(1).

2. A copy of the independent certified public accountant's unqualified opinion of the owner's or operator's financial statements for the latest completed fiscal year. To be eligible to use the financial test, the owner's or operator's financial statements must receive an unqualified opinion from the independent certified public accountant. An adverse opinion or disclaimer of opinion shall be cause for disallowance of this mechanism. A qualified opinion related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance. If the department does not allow use of the corporate financial test, the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

3. If the certified public accountant's letter providing evidence of financial assurance includes financial data showing that the owner or operator satisfies subparagraph 113.14(6)"e"(1) that differs from data in the audited financial statements referred to in numbered paragraph 113.14(6)"e"(2)"2," then a special report from the owner's or operator's independent certified public accountant to the owner or operator is required. The special report shall be based upon an agreed-upon procedures engagement in accordance with professional auditing standards and shall describe the procedures performed in comparing the data in the certified public accountant's letter derived from the independently audited, year-end financial statements for the latest fiscal year with the amounts in such financial statements, the findings of that comparison, and the reasons for any differences.

4. If the certified public accountant's letter provides a demonstration that the owner or operator has assured for environmental obligations as provided in the second bulleted paragraph of numbered paragraph 113.14(6)"e"(1)"2," then

the letter shall include a report from the independent certified public accountant that verifies that all of the environmental obligations covered by a financial test have been recognized as liabilities on the audited financial statements and that documents how these obligations have been measured and reported, and verifies that the tangible net worth of the owner or operator is at least $10 million plus the amount of any guarantees provided.

(3) The owner or operator may cease the submission of the information required by paragraph 113.14(6)"e" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

(4) The department may, based on a reasonable belief that the owner or operator may no longer meet the requirements of subparagraph 113.14(6)"e"(1), require the owner or operator to provide reports of its financial condition in addition to or including current financial test documentation as specified in subparagraph 113.14(6)"e"(2). If the department finds that the owner or operator no longer meets the requirements of subparagraph 113.14(6)"e"(1), the owner or operator must provide alternative financial assurance that meets the requirements of this rule.

(5) Calculation of costs to be assured. When calculating the current cost estimates for closure, postclosure care, corrective action, or the sum of the combination of such costs to be covered, and any other environmental obligations assured by a financial test referred to in paragraph 113.14(6)"e," the owner or operator must include cost estimates required for subrules 113.14(3) to 113.14(5); cost estimates for municipal solid waste management facilities pursuant to 40 CFR Section 258.74; and cost estimates required for the following environmental obligations, if the owner or operator assures those environmental obligations through a financial test: obligations associated with UIC facilities under 40 CFR Part 144, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265.

f. Local government financial test. An owner or operator that satisfies the requirements of this subrule may demonstrate financial assurance up to the amount specified below:

(1) Financial component.

1. The owner or operator must satisfy one of the following requirements:

- If the owner or operator has outstanding, rated, general obligation bonds that are not secured by insurance, a letter of credit, or other collateral or guarantee, the owner or operator must have a current rating of Aaa, Aa, A, or Baa, as issued by Moody's, or AAA, AA, A, or BBB, as issued by Standard & Poor's on all such general obligation bonds; or
- The owner or operator must satisfy both of the following financial ratios based on the owner's or operator's most recent audited annual financial statement: a ratio of cash plus marketable securities to total expenditures greater than or equal to 0.05, and a ratio of annual debt service to total expenditures less than or equal to 0.20.

2. The owner or operator must prepare its financial statements in conformity with Generally Accepted Accounting Principles or Other Comprehensive Bases of Accounting and have its financial statements audited by an independent certified public accountant or the office of the auditor of the state of Iowa. The financial statement shall be in the form prescribed by the office of the auditor of the state of Iowa.

3. A local government is not eligible to assure its obligations in paragraph 113.14(6)"f" if it:

- Is currently in default on any outstanding general obligation bonds; or
- Has any outstanding general obligation bonds rated lower than Baa as issued by Moody's or BBB as issued by Standard & Poor's; or
- Operated at a deficit equal to 5 percent or more of total annual revenue in each of the past two fiscal years; or
- Receives an adverse opinion or disclaimer of opinion from the independent certified public accountant or office of the auditor of the state of Iowa auditing its financial statement as required under numbered paragraph 113.14(6)"f"(1)"2." A qualified opinion that is related to the demonstration of financial assurance may, at the discretion of the department, be cause for disallowance of this mechanism.

4. The following terms used in this paragraph are defined as follows:

- "Cash plus marketable securities" means all the cash plus marketable securities held by the local government on the last day of a fiscal year, excluding cash and marketable securities designated to satisfy past obligations such as pensions.
- "Debt service" means the amount of principal and interest due on a loan in a given time period, typically the current year.
- "Deficit" means total annual revenues minus total annual expenditures.
- "Total expenditures" means all expenditures, excluding capital outlays and debt repayment.
- "Total revenues" means revenues from all taxes and fees, excluding revenue from funds managed by local government on behalf of a specific third party, and does not include the proceeds from borrowing or asset sales.

(2) Public notice component. The local government owner or operator must include disclosure of the closure and postclosure care costs assured through the financial test in its next annual audit report prior to the initial receipt of waste at the facility or prior to cancellation of an alternative financial assurance mechanism, whichever is later. A reference to corrective action costs must be placed in the next annual audit report after the corrective action plan is approved by the department. For the first year the financial test is used to assure costs at a particular facility, the reference may instead be placed in the facility's official files until issuance of the next available annual audit report if timing does not permit the reference to be incorporated into the most recently issued annual audit report or budget. For closure and postclosure costs, conformance with Governmental Accounting Standards Board Statement 18 ensures compliance with this public notice component.

(3) Record-keeping and reporting requirements.

1. The local government owner or operator must submit to the department the following items:

- A letter signed by the local government's chief financial officer that lists all the current cost estimates covered by a financial test, as described in subparagraph 113.14(6)"f"(4); provides evidence and certifies that the local government meets the conditions of numbered paragraphs 113.14(6)"f"(1)"1," "2," and "3"; and certifies that the local government meets the conditions of subparagraphs 113.14(6)"f"(2) and (4); and
- The local government's annual financial report indicating compliance with the financial ratios required by numbered paragraph 113.14(6)"f"(1)"1," second bulleted paragraph, if applicable; and the requirements of numbered para-

graph 113.14(6)"f"(1)"2" and the third and fourth bulleted paragraphs of numbered paragraph 113.14(6)"f"(1)"3"; and also indicating that the requirements of Governmental Accounting Standards Board Statement 18 have been met.

2. The items required in numbered paragraph 113.14(6)"f"(3)"1" must be submitted to the department and placed in the facility's official files prior to the receipt of waste or prior to the cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, not later than 120 days after the corrective action plan is approved by the department.

3. After the initial submission of the required items and their placement in the facility's official files, the local government owner or operator must update the information and place the updated information in the facility's official files within 180 days following the close of the owner's or operator's fiscal year.

4. The owner or operator may cease the submission of the information required by paragraph 113.14(6)"f" only if alternative financial assurance is substituted prior to cancellation or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this rule.

5. A local government must satisfy the requirements of the financial test at the close of each fiscal year. If the local government owner or operator no longer meets the requirements of the local government financial test, the local government must, within 180 days following the close of the owner's or operator's fiscal year, obtain alternative financial assurance that meets the requirements of this rule, place the required submissions for that assurance in the operating record, and notify the department that the owner or operator no longer meets the criteria of the financial test and that alternative financial assurance has been obtained.

6. The department, based on a reasonable belief that the local government owner or operator may no longer meet the requirements of the local government financial test, may require additional reports of financial conditions from the local government at any time. If the department finds, on the basis of such reports or other information, that the owner or operator no longer meets the requirements of the local government financial test, the local government must provide alternative financial assurance in accordance with this rule.

(4) Calculation of costs to be assured. The portion of the closure, postclosure care, and corrective action costs which an owner or operator may assure under this subrule is determined as follows:

1. If the local government owner or operator does not assure other environmental obligations through a financial test, the owner or operator may assure closure, postclosure care, and corrective action costs that equal up to 43 percent of the local government's total annual revenue.

2. If the local government assures other environmental obligations through a financial test, including those associated with UIC facilities under 40 CFR Section 144.62, petroleum underground storage tank facilities under 40 CFR Part 280, PCB storage facilities under 40 CFR Part 761, and hazardous waste treatment, storage, and disposal facilities under 40 CFR Parts 264 and 265, the owner or operator must add those costs to the closure, postclosure care, and corrective action costs it seeks to assure under this subparagraph. The total that may be assured must not exceed 43 percent of the local government's total annual revenue.

3. The owner or operator must obtain an alternative financial assurance instrument for those costs that exceed the limits set in numbered paragraphs 113.14(6)"f"(4)"1" and "2."

g. Corporate guarantee.

(1) An owner or operator may meet the requirements of this paragraph by obtaining a written guarantee. The guarantor must be the direct or higher-tier parent corporation of the owner or operator, an owner or operator whose parent corporation is also the parent corporation of the owner or operator, or an owner or operator with a "substantial business relationship'' with the owner or operator. The guarantor must meet the requirements for owners or operators in paragraph 113.14(6)"g" and must comply with the terms of the guarantee. A certified copy of the guarantee must be placed in the facility's operating record along with copies of the letter from a certified public accountant and the accountant's opinions. If the guarantor's parent corporation is also the parent corporation of the owner or operator, the letter from the certified public accountant must describe the value received in consideration of the guarantee. If the guarantor is an owner or operator with a ''substantial business relationship'' with the owner or operator, this letter must describe this ''substantial business relationship'' and the value received in consideration of the guarantee.

(2) The guarantee must be effective and all required submissions made to the department prior to the initial receipt of waste or before cancellation of an alternative financial mechanism, in the case of closure and postclosure care; or, in the case of corrective action, no later than 120 days after the corrective action plan has been approved by the department.

(3) The terms of the guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee, or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6)"g"(3)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required (performance guarantee);
- Establish a fully funded trust fund as specified in paragraph 113.14(6)"a" in the name of the owner or operator (payment guarantee); or
- Obtain alternative financial assurance as required by numbered paragraph 113.14(6)"g"(3)"3."

2. The guarantee will remain in force for as long as the owner or operator must comply with the applicable financial assurance requirements of this rule unless the guarantor sends prior notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department, as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6)"a." If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the corporate guarantee.

(4) If a corporate guarantor no longer meets the requirements of paragraph 113.14(6)"e," the owner or operator

must, within 90 days, obtain alternative financial assurance and submit proof of alternative financial assurance to the department. If the owner or operator fails to provide alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

(5) The owner or operator is no longer required to meet the requirements of paragraph 113.14(6)"g" upon the submission to the department of proof of the substitution of alternative financial assurance or if the owner or operator is no longer required to demonstrate financial responsibility in accordance with this chapter.

h. Local government guarantee. An owner or operator may demonstrate financial assurance for closure, postclosure care, or corrective action by obtaining a written guarantee provided by a local government or jointly provided by the members of an agency established pursuant to Iowa Code chapter 28E. The guarantor must meet the requirements of the local government financial test in paragraph 113.14(6)"f" and must comply with the terms of a written guarantee.

(1) Terms of the written guarantee. The guarantee must be effective before the initial receipt of waste or before the cancellation of alternative financial assurance, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan is approved by the department. The guarantee must provide that:

1. If the owner or operator fails to perform closure, postclosure care, or corrective action of a facility covered by the guarantee or fails to obtain alternative financial assurance within 90 days of notice of intent to cancel pursuant to numbered paragraphs 113.14(6)"h"(1)"2" and "3," the guarantor will:

- Perform, or pay a third party to perform, closure, postclosure care, or corrective action as required; or
- Establish a fully funded trust fund as specified in paragraph 113.14(6)"a" in the name of the owner or operator; or
- Obtain alternative financial assurance as required by numbered paragraph 113.14(6)"h"(1)"3."

2. The guarantee will remain in force unless the guarantor sends notice of cancellation by certified mail to the owner or operator and to the department. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by both the owner or operator and the department as evidenced by the return receipts.

3. If notice of cancellation is given, the owner or operator must, within 90 days following receipt of the cancellation notice by the owner or operator and the department, provide to the department adequate proof of alternative financial assurance, notice from the guarantor of withdrawal of the cancellation, or proof of the establishment of a fully funded trust fund pursuant to paragraph 113.14(6)"a." If the owner or operator fails to comply with the provisions of this paragraph within the 90-day period, the guarantor must provide that alternative financial assurance prior to cancellation of the guarantee.

(2) Record-keeping and reporting requirements.

1. The owner or operator must submit to the department a certified copy of the guarantee along with the items required under subparagraph 113.14(6)"f"(3) and place a copy in the facility's official files before the initial receipt of waste or before cancellation of alternative financial assurance, whichever is later, in the case of closure and postclosure care; or no later than 120 days after the corrective action plan has been approved by the department.

2. The owner or operator shall no longer be required to submit the items specified in numbered paragraph 113.14(6)"h"(2)"1" when proof of alternative financial assurance has been submitted to the department or the owner or operator is no longer required to provide financial assurance pursuant to this rule.

3. If a local government guarantor no longer meets the requirements of paragraph 113.14(6)"f," the owner or operator must, within 90 days, submit to the department proof of alternative financial assurance. If the owner or operator fails to obtain alternative financial assurance within the 90-day period, the guarantor must provide that alternative financial assurance within the next 30 days.

i. Local government dedicated fund. The owner or operator of a publicly owned MSWLF or local government serving as a guarantor may demonstrate financial assurance for closure, postclosure care, or corrective action, whichever is applicable, by establishing a dedicated fund or account that conforms to the requirements of this subrule. A dedicated fund will be considered eligible if it complies with subparagraph 113.14(6)"i"(1) or (2) below, and all other provisions of this paragraph, and documentation of this compliance has been submitted to the department.

(1) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order to pay for closure, postclosure care, or corrective action costs, whichever is applicable, arising from the operation of the MSWLF and shall be funded for the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(2) The fund shall be dedicated by state constitutional provision or local government statute, charter, ordinance, or order as a reserve fund and shall be funded for no less than the full amount of coverage or funded for part of the required amount of coverage and used in combination with another mechanism(s) that provides the remaining coverage.

(3) Payments into the dedicated fund must be made annually by the owner or operator for ten years or over the permitted life of the MSWLF, whichever is shorter, in the case of a dedicated fund for closure or postclosure care; or over one-half of the estimated length of an approved corrective action plan in the case of a response to a known release. This is referred to as the "pay-in period." The initial payment into the dedicated fund must be made before the initial receipt of waste in the case of closure and postclosure care or no later than 120 days after the corrective action plan has been approved by the department.

(4) For a dedicated fund used to demonstrate financial assurance for closure and postclosure care, the first payment into the dedicated fund must be at least equal to the amount specified in subrule 113.14(9), divided by the number of years in the pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

$$\text{Next Payment} = \frac{CE - CB}{Y}$$

where CE is the total required financial assurance for the owner or operator, CB is the current balance of the fund, and Y is the number of years remaining in the pay-in period.

(5) For a dedicated fund used to demonstrate financial assurance for corrective action, the first payment into the dedicated fund must be at least one-half of the current cost estimate, divided by the number of years in the corrective action pay-in period as defined in this subrule. The amount of subsequent payments must be determined by the following formula:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

$$\text{Payment} = \frac{RB - CF}{Y}$$

where RB is the most recent estimate of the required dedicated fund balance, which is the total cost that will be incurred during the second half of the corrective action period, CF is the current amount in the dedicated fund, and Y is the number of years remaining in the pay-in period.

(6) The initial payment into the dedicated fund must be made before the initial receipt of waste or before the cancellation of an alternative financial assurance mechanism, in the case of closure and postclosure care; or no later than 120 days after the corrective action remedy has been approved by the department.

(7) After the pay-in period has been completed, the dedicated fund shall be adjusted annually to correct any deficiency of the fund with respect to the adjusted cost estimates and may be adjusted annually should the balance in the fund exceed the adjusted cost estimate.

113.14(7) General requirements.

a. Use of multiple financial mechanisms. An owner or operator may satisfy the requirements of this subrule by establishing more than one financial mechanism per facility. The mechanisms must be a combination of those mechanisms outlined in this rule and must provide financial assurance for an amount at least equal to the current cost estimate for closure, postclosure care, or corrective action, whichever is applicable. The financial test and a guarantee provided by a corporate parent, sibling or grandparent may not be combined if the financial statements of the two entities are consolidated.

b. Use of one mechanism for multiple facilities. An owner or operator may satisfy the requirements of this subrule for multiple MSWLFs by the use of one mechanism if the owner or operator ensures that the mechanism provides financial assurance for an amount at least equal to the current cost estimates for closure, postclosure care, or corrective action, whichever is applicable, for all MSWLFs covered.

c. Criteria. The language of the financial assurance mechanisms listed in this rule must ensure that the instruments satisfy the following criteria:

(1) The financial assurance mechanisms must ensure that the amount of funds assured is sufficient to cover the costs of closure, postclosure care, or corrective action for known releases, whichever is applicable;

(2) The financial assurance mechanisms must ensure that funds will be available in a timely fashion when needed;

(3) The financial assurance mechanisms must be obtained by the owner or operator prior to the initial receipt of solid waste and no later than 120 days after the corrective action plan has been approved by the department until the owner or operator is released from the financial assurance requirements; and

(4) The financial assurance mechanisms must be legally valid, binding, and enforceable under Iowa law.

d. No permit shall be issued by the department pursuant to Iowa Code section 455B.305 unless the applicant has demonstrated compliance with rule 113.14(455B).

113.14(8) Closure and postclosure accounts. The holder of a permit for an MSWLF shall maintain a separate account for closure and postclosure care as required by Iowa Code section 455B.306(8)"b." The account shall be specific to a particular facility.

a. Definitions. For the purpose of this subrule, the following definitions shall apply:

"Account" means a formal, separate set of records.

"Current balance" means cash in an account established pursuant to this rule plus the current value of investments of moneys collected pursuant to subrule 113.14(8) and used to purchase one or more of the investments listed in Iowa Code section 12B.10(5).

"Current cost estimate" means the closure cost estimate prepared and submitted to the department pursuant to subrule 113.14(3) and the postclosure cost estimate prepared and submitted pursuant to subrule 113.14(4).

b. Moneys in the accounts shall not be assigned for the benefit of creditors except the state of Iowa.

c. Moneys in the accounts shall not be used to pay any final judgment against a permit holder arising out of the ownership or operation of the site during its active life or after closure.

d. Withdrawal of funds. Except as provided in paragraph 113.14(8)"e," moneys in the accounts may be withdrawn without departmental approval only for the purpose of funding closure, including partial closure, or postclosure activities that are in conformance with a closure/postclosure plan which has been submitted pursuant to paragraph 113.5(1)"i." Withdrawals for activities not in conformance with a closure/postclosure plan must receive prior written approval from the department. Permit holders using a trust fund established pursuant to paragraph 113.14(6)"a" to satisfy the requirements of this subrule must comply with the requirements of subparagraph 113.14(6)"a"(6) prior to withdrawal.

e. Excess funds. If the balance of a closure or postclosure account exceeds the current cost estimate for closure or postclosure at any time, the permit holder may withdraw the excess funds so long as the withdrawal does not cause the balance to be reduced below the amount of the current cost estimate.

f. Initial proof of establishment of account. A permit holder shall submit a statement of account, signed by the permit holder, to the department by April 1, 2003, that indicates that accounts have been established pursuant to this subrule. Permit holders for new MSWLFs permitted after April 1, 2003, shall submit to the department prior to the MSWLF's initial receipt of waste a statement of account, signed by the permit holder.

g. An account established pursuant to paragraph 113.14(6)"a" for trust funds or paragraph 113.14(6)"i" for local government dedicated funds also satisfies the requirements of this subrule, and the permit holder shall not be required to establish closure and postclosure accounts in addition to said financial assurance accounts. Accounts established pursuant to paragraph 113.14(6)"a" or 113.14(6)"i," which are intended to satisfy the requirements of this subrule, must comply with Iowa Code section 455B.306(8)"b."

h. Yearly deposits. Deposits into the closure and postclosure accounts shall be made at least yearly in the amounts specified in this subrule beginning with the close of the facility's first fiscal year that begins after June 30, 2002. The deposits shall be made within 30 days of the close of each fiscal year. The minimum yearly deposit to the closure and postclosure accounts shall be determined using the following formula:

$$\frac{CE - CB}{RPC} \times TR = \text{yearly deposit to account}$$

Where:

"CE" means the current cost estimate of closure and postclosure costs.

"CB" means the current balance of the closure or postclosure accounts.

"RPC" means the remaining permitted capacity, in tons, of the MSWLF as of the start of the permit holder's fiscal year.

"TR" is the number of tons of solid waste disposed of at the facility in the prior year.

i. Closure and postclosure accounts may be commingled with other accounts so long as the amounts credited to each account balance are reported separately pursuant to paragraphs 113.14(3)"a" and 113.14(4)"a."

j. The department shall have full rights of access to all funds existing in a facility's closure or postclosure account, at the sole discretion of the department, if the permit holder fails to undertake closure or postclosure activities after being directed to do so by a final agency action of the department. These funds shall be used only for the purposes of funding closure and postclosure activities at the site.

113.14(9) Amount of required financial assurance. A financial assurance mechanism established pursuant to subrule 113.14(6) shall be in the amount of the third-party cost estimates required by subrules 113.14(3), 113.14(4), and 113.14(5) except that the amount of the financial assurance may be reduced by the sum of the cash balance in a trust fund or local government dedicated fund established to comply with subrule 113.14(8) plus the current value of investments held by said trust fund or local government dedicated fund if invested in one or more of the investments listed in Iowa Code section 12B.10(5).

567—113.15(455B,455D) Variances. A request for a variance to this chapter shall be submitted in writing pursuant to 561—Chapter 10. Some provisions of this chapter are minimum standards required by federal law (see 40 CFR 258), and variances to such provisions shall not be granted unless they are as protective as the applicable minimum federal standards.

Appendix I
Constituents for Detection Monitoring[1]

Inorganic Constituents:	
(1) Antimony	(Total)
(2) Arsenic	(Total)
(3) Barium	(Total)
(4) Beryllium	(Total)
(5) Cadmium	(Total)
(6) Chromium	(Total)
(7) Cobalt	(Total)
(8) Copper	(Total)
(9) Lead	(Total)
(10) Nickel	(Total)
(11) Selenium	(Total)
(12) Silver	(Total)
(13) Thallium	(Total)
(14) Vanadium	(Total)
(15) Zinc	(Total)

Organic Constituents:	
(16) Acetone	67-64-1
(17) Acrylonitrile	107-13-1
(18) Benzene	71-43-2
(19) Bromochloromethane	74-97-5
(20) Bromodichloromethane	75-27-4
(21) Bromoform; Tribromomethane	75-25-2
(22) Carbon disulfide	75-15-0
(23) Carbon tetrachloride	56-23-5
(24) Chlorobenzene	108-90-7
(25) Chloroethane; Ethyl chloride	75-00-3
(26) Chloroform; Trichloromethane	67-66-3
(27) Dibromochloromethane; Chlorodibromomethane	124-48-1
(28) 1,2-Dibromo-3-chloropropane; DBCP	96-12-8
(29) 1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4
(30) o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1
(31) p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7
(32) trans-1,4-Dichloro-2-butene	110-57-6
(33) 1,1-Dichloroethane; Ethylidene chloride	75-34-3
(34) 1,2-Dichloroethane; Ethylene dichloride	107-06-2
(35) 1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4

Organic Constituents:	
(36) cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2
(37) trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5
(38) 1,2-Dichloropropane; Propylene dichloride	78-87-5
(39) cis-1,3-Dichloropropene	10061-01-5
(40) trans-1,3-Dichloropropene	10061-02-6
(41) Ethylbenzene	100-41-4
(42) 2-Hexanone; Methyl butyl ketone	591-78-6
(43) Methyl bromide; Bromomethane	74-83-9
(44) Methyl chloride; Chloromethane	74-87-3
(45) Methylene bromide; Dibromomethane	74-95-3
(46) Methylene chloride; Dichloromethane	75-09-2
(47) Methyl ethyl ketone; MEK; 2-Butanone	78-93-3
(48) Methyl iodide; Iodomethane	74-88-4
(49) 4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1
(50) Styrene	100-42-5
(51) 1,1,1,2-Tetrachloroethane	630-20-6
(52) 1,1,2,2-Tetrachloroethane	79-34-5
(53) Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4
(54) Toluene	108-88-3
(55) 1,1,1-Trichloroethane; Methylchloroform	71-55-6
(56) 1,1,2-Trichloroethane	79-00-5
(57) Trichloroethylene; Trichloroethene	79-01-6
(58) Trichlorofluoromethane; CFC-11	75-69-4
(59) 1,2,3-Trichloropropane	96-18-4
(60) Vinyl acetate	108-05-4
(61) Vinyl chloride	75-01-4
(62) Xylenes	1330-20-7

Notes:

[1]This list contains 47 volatile organics for which possible analytical procedures provided in EPA Report SW-846 ''Test Methods for Evaluating Solid Waste,'' third edition, November 1986, as revised December 1987, includes Method 8260; and 15 metals for which SW-846 provides either Method 6010 or a method from the 7000 series of methods.

[2]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3]Chemical Abstracts Service registry number. Where ''Total'' is entered, all species in the groundwater that contain this element are included.

Appendix II

List of Hazardous Inorganic and Organic Constituents[1]

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Acenaphthene	83-32-9	Acenaphthylene, 1,2-dihydro-	8100 8270	200 10
Acenaphthylene	208-96-8	Acenaphthylene	8100 8270	200 10
Acetone	67-64-1	2-Propanone	8260	100
Acetonitrile; Methyl cyanide	75-05-8	Acetonitrile	8015	100
Acetophenone	98-86-2	Ethanone, 1-phenyl-	8270	10
2-Acetylaminofluorene; 2-AAF	53-96-3	Acetamide, N-9H-fluoren-2-yl-	8270	20

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Acrolein	107-02-8	2-Propenal	8030 8260	5 100
Acrylonitrile	107-13-1	2-Propenenitrile	8030 8260	5 200
Aldrin	309-00-2	1,4:5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5α,8α,8aβ)-	8080 8270	0.05 10
Allyl chloride	107-05-1	1-Propene, 3-chloro-	8010 8260	5 10
4-Aminobiphenyl	92-67-1	[1,1[1]-Biphenyl]-4-amine	8270	20
Anthracene	120-12-7	Anthracene	8100 8270	200 10
Antimony	(Total)	Antimony	6010 7040 7041	300 2000 30
Arsenic	(Total)	Arsenic	6010 7060 7061	500 10 20
Barium	(Total)	Barium	6010 7080	20 1000
Benzene	71-43-2	Benzene	8020 8021 8260	2 0.1 5
Benzo[a]anthracene; Benzanthracene	56-55-3	Benz[a]anthracene	8100 8270	200 10
Benzo[b]fluoranthene	205-99-2	Benz[e]acephenanthrylene	8100 8270	200 10
Benzo[k]fluoranthene	207-08-9	Benzo[k]fluoranthene	8100 8270	200 10
Benzo[ghi]perylene	191-24-2	Benzo[ghi]perylene	8100 8270	200 10
Benzo[a]pyrene	50-32-8	Benzo[a]pyrene	8100 8270	200 10
Benzyl alcohol	100-51-6	Benzenemethanol	8270	20
Beryllium	(Total)	Beryllium	6010 7090 7091	3 50 2
alpha-BHC	319-84-6	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5β,6β)-	8080 8270	0.05 10
beta-BHC	319-85-7	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2β,3α,4β,5α,6β)-	8080 8270	0.05 20

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
delta-BHC	319-86-8	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3α,4β,5α,6β)-	8080 8270	0.1 20
gamma-BHC; Lindane	58-89-9	Cyclohexane, 1,2,3,4,5,6-hexachloro-, (1α,2α,3β,4α,5α,6β)-	8080 8270	0.05 20
Bis(2-chloroethoxy)methane	111-91-1	Ethane, 1,1[1]-[methylene bis(oxy)] bis[2-chloro-	8110 8270	5 10
Bis(2-chloroethyl) ether; Dichloroethyl ether	111-44-4	Ethane, 1,1[1]-oxybis[2-chloro-	8110 8270	3 10
Bis-(2-chloro-1-methylethyl) ether; 2,2[1]-Dichlorodiisopropyl ether; DCIP, See Note 7	108-60-1	Propane, 2,2[1]-oxybis[1-chloro-	8110 8270	10 10
Bis(2-ethylhexyl) phthalate	117-81-7	1,2-Benzenedicarboxylic acid, bis(2-ethylhexyl) ester	8060	20
Bromochloromethane; Chlorobromomethane	74-97-5	Methane, bromochloro-	8021 8260	0.1 5
Bromodichloromethane; Dibromochloromethane	75-27-4	Methane, bromodichloro-	8010 8021 8260	1 0.2 5
Bromoform; Tribromomethane	75-25-2	Methane, tribromo-	8010 8021 8260	2 15 5
4-Bromophenyl phenyl ether	101-55-3	Benzene, 1-bromo-4-phenoxy-	8110 8270	25 10
Butyl benzyl phthalate; Benzyl butyl phthalate	85-68-7	1,2-Benzenedicarboxylic acid, butyl phenylmethyl ester	8060 8270	5 10
Cadmium	(Total)	Cadmium	6010 7130 7131	40 50 1
Carbon disulfide	75-15-0	Carbon disulfide	8260	100
Carbon tetrachloride	56-23-5	Methane, tetrachloro-	8010 8021 8260	1 0.1 10
Chlordane	See Note 8	4,7-Methano-1H-indene,1,2,4,5,6,7,8, 8-octachloro-2,3,3a,4,7,7a-hexahydro-	8080 8270	0.1 50
p-Chloroaniline	106-47-8	Benzenamine, 4-chloro-	8270	20
Chlorobenzene	108-90-7	Benzene, chloro-	8010 8020 8021 8260	2 2 0.1 5
Chlorobenzilate	510-15-6	Benzeneacetic acid, 4-chlor-α-(4- chlorophenyl)-α-hydroxy-, ethyl ester	8270	10

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
p-Chloro-m-cresol; 4-Chloro-3-methylphenol	59-50-7	Phenol, 4-chloro-3-methyl-	8040 8270	5 20
Chloroethane; Ethyl chloride	75-00-3	Ethane, chloro-	8010 8021 8260	5 1 10
Chloroform; Trichloromethane	67-66-3	Methane, trichloro-	8010 8021 8260	0.5 0.2 5
2-Chloronaphthalene	91-58-7	Naphthalene, 2-chloro-	8120 8270	10 10
2-Chlorophenol	95-57-8	Phenol, 2-chloro-	8040 8270	5 10
4-Chlorophenyl phenyl ether	7005-72-3	Benzene, 1-chloro-4-phenoxy-	8110 8270	40 10
Chloroprene	126-99-8	1,3-Butadiene, 2-chloro-	8010 8260	50 20
Chromium	(Total)	Chromium	6010 7190 7191	70 500 10
Chrysene	218-01-9	Chrysene	8100 8270	200 10
Cobalt	(Total)	Cobalt	6010 7200 7201	70 500 10
Copper	(Total)	Copper	6010 7210 7211	60 200 10
m-Cresol; 3-methylphenol	108-39-4	Phenol, 3-methyl-	8270	10
o-Cresol; 2-methylphenol	95-48-7	Phenol, 2-methyl-	8270	10
p-Cresol; 4-methylphenol	106-44-5	Phenol, 4-methyl-	8270	10
Cyanide	57-12-5	Cyanide	9010	200
2,4-D; 2,4-Dichlorophenoxyacetic acid	94-75-7	Acetic acid, (2,4-dichlorophenoxy)-	8150	10
4,4[1]-DDD	72-54-8	Benzene 1,1[1]-(2,2-dichloroethylidene) bis[4-chloro-	8080 8270	0.1 10
4,4[1]-DDE	72-55-9	Benzene, 1,1[1]-(dichloroethyenylidene) bis[4-chloro-	8080 8270	0.05 10
4,4[1]-DDT	50-29-3	Benzene, 1,1[1]-(2,2,2-trichloroethylidene)bis[4-chloro-	8080 8270	0.1 10

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Diallate	2303-16-4	Carbamothioic acid, bis(1-methyl-ethyl)-, S-(2,3-dichloro-2-propenyl) ester	8270	10
Dibenz[a,h]anthracene	53-70-3	Dibenz[a,h]anthracene	8100 8270	200 10
Dibenzofuran	132-64-9	Dibenzofuran	8270	10
Dibromochloromethane; Chlorodibromomethane	124-48-1	Methane, dibromochloro-	8010 8021 8260	1 0.3 5
1,2-Dibromo-3-chloropropane; DBCP	96-12-8	Propane, 1,2-dibrome-3-chloro-	8011 8021 8260	0.1 30 25
1,2-Dibromoethane; Ethylene dibromide; EDB	106-93-4	Ethane, 1,2-dibromo-	8011 8021 8260	0.1 10 5
Di-n-butyl phthalate	84-74-2	1,2-Benzenedicarboxylic acid, dibutyl ester	8060 8270	5 10
o-Dichlorobenzene; 1,2-Dichlorobenzene	95-50-1	Benzene, 1,2-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.5 10 5 10
m-Dichlorobenzene; 1,3-Dichlorobenzene	541-73-1	Benzene, 1,3-dichloro-	8010 8020 8021 8120 8260 8270	5 5 0.2 10 5 10
p-Dichlorobenzene; 1,4-Dichlorobenzene	106-46-7	Benzene, 1,4-dichloro-	8010 8020 8021 8120 8260 8270	2 5 0.1 15 5 10
3,3[1]-Dichlorobenzidine	91-94-1	[1,1[1]-Biphenyl]-4,4[1]-diamine, 3,3[1]-dichloro-	8270	20
trans-1,4-Dichloro-2-butene	110-57-6	2-Butene, 1,4-dichloro-, (E)-	8260	100
Dichlorodifluoromethane; CFC 12	75-71-8	Methane, dichlorodifluoro-	8021 8260	0.5 5
1,1-Dichloroethane; Ethyldidene chloride	75-34-3	Ethane, 1,1-dichloro-	8010 8021 8260	1 0.5 5
1,2-Dichloroethane; Ethylene dichloride	107-06-2	Ethane, 1,1-dichloro-	8010 8021 8260	0.5 0.3 5

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
1,1-Dichloroethylene; 1,1-Dichloroethene; Vinylidene chloride	75-35-4	Ethene, 1,1-dichloro-	8010 8021 8260	1 0.5 5
cis-1,2-Dichloroethylene; cis-1,2-Dichloroethene	156-59-2	Ethene, 1,2-dichloro-, (Z)-	8021 8260	0.2 5
trans-1,2-Dichloroethylene; trans-1,2-Dichloroethene	156-60-5	Ethene, 1,2-dichloro-, (E)-	8010 8021 8260	1 0.5 5
2,4-Dichlorophenol	120-83-2	Phenol, 2,4-dichloro-	8040 8270	5 10
2,6-Dichlorophenol	87-65-0	Phenol, 2,6-dichloro-	8270	10
1,2-Dichloropropane; Propylene dichloride	78-87-5	Propane, 1,2-dichloro-	8010 8021 8260	0.5 0.05 5
1,3-Dichloropropane; Trimethylene dichloride	142-28-9	Propane, 1,3-dichloro-	8021 8260	0.3 5
2,2-Dichloropropane; Isopropylidene chloride	594-20-7	Propane, 2,2-dichloro-	8021 8260	0.5 15
1,1-Dichloropropene	563-58-6	1-Propene, 1,1-dichloro-	8021 8260	0.2 5
cis-1,3-Dichloropropene	10061-01-5	1-Propene, 1,3-dichloro-, (Z)-	8010 8260	20 10
trans-1,3-Dichloropropene	10061-02-6	1-Propene, 1,3-dichloro-, (E)-	8010 8260	5 10
Dieldrin	60-57-1	2,7:3,6-Dimethanonaphth[2,3-b] oxirene, 3,4,5,6,9,9-hexa,chloro-1a, 2,2a,3,6,6a,7, 7a-octahydro-,(1aα, 2β,2aα,3β,6β,6aα,7β, 7aα)-	8080 8270	0.05 10
Diethyl phthalate	84-66-2	1,2-Benzenedicarboxylic acid, diethyl ester	8060 8270	5 10
0,0-Diethyl 0-2-pyrazinyl phosphorothioate; Thionazin	297-97-2	Phosphorothioic acid, 0,0-diethyl 0-pyrazinyl ester	8141 8270	5 20
Dimethoate	60-51-5	Phosphorodithioic acid, 0,0-dimethyl S- [2-(methylamino)-2-oxoethyl] ester	8141 8270	3 20
p-(Dimethylamino)azobenzene	60-11-7	Benzenamine, N,N-dimethyl-4-(phenylazo)-	8270	10
7,12-Dimethylbenz[a]anthracene	57-97-6	Benz[a]anthracene, 7,12-dimethyl-	8270	10
3,3[1]-Dimethylbenzidine	119-93-7	[1,1[1]-Biphenyl]-4,4[1]-diamine, 3,3[1]-dimethyl-	8270	10

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
2,4-Dimethylphenol; m-Xylenol	105-67-9	Phenol, 2,4-dimethyl-	8040 8270	5 10
Dimethyl phthalate	131-11-3	1,2-Benzenedicarboxylic acid, dimethyl ester	8060 8270	5 10
m-Dinitrobenzene	99-65-0	Benzene, 1,3-dinitro-	8270	20
4,6-Dinitro-o-cresol 4,6-Dinitro-2-methylphenol	534-52-1	Phenol, 2-methyl-4,6-dinitro-	8040 8270	150 50
2,4-Dinitrophenol	51-28-5	Phenol, 2,4-dinitro-	8040 8270	150 50
2,4-Dinitrotoluene	121-14-2	Benzene, 1-methyl-2,4-dinitro-	8090 8270	0.2 10
2,6-Dinitrotoluene	606-20-2	Benzene, 2-methyl-1,3-dinitro-	8090 8270	0.1 10
Dinoseb; DNBP; 2-sec-Butyl-4,6-dinitrophenol	88-85-7	Phenol, 2-(1-methylpropyl)-4,6-dinitro-	8150 8270	1 20
Di-n-octyl phthalate	117-84-0	1,2-Benzenedicarboxylic acid, dioctyl ester	8060 8270	30 10
Diphenylamine	122-39-4	Benzenamine, N-phenyl-	8270	10
Disulfoton	298-04-4	Phosphorodithioic acid, 0,0-diethyl S-[2-(ethylthio)ethyl] ester	8140 8141 8270	2 0.5 10
Endosulfan I	959-98-8	6,9-Methano-2,4,3-benzodioxa-thiepin, 6,7,8,9,10,10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide	8080 8270	0.1 20
Endosulfan II	33213-65-9	6,9-Methano-2,4,3-benzodioxa-thiepin, 6,7,8,9,10,10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-, 3-oxide,(3α,5aα,6β,9β,9aα)-	8080 8270	0.05 20
Endosulfan sulfate	1031-07-8	6,9-Methano-2,4,3-benzodioxa-thiepin, 6,7,8,9,10,10-hexa- chloro-1,5,5a,6,9,9a-hexahydro-, 3-3-dioxide	8080 8270	0.5 10
Endrin	72-20-8	2,7:3,6-Dimethanonaphth[2,3-b] oxirene, 3,4,5,6,9,9-hexachloro-1a,2,2a,3,6,6a,7,7a-octahydro-, (1aα, 2β,2aβ,3α,6α,6aβ,7β,7aα)-	8080 8270	0.1 20
Endrin aldehyde	7421-93-4	1,2,4-Methenocyclopenta[cd]penta-lene- 5-carboxaldehyde,2,2a,3,3,4,7-hexachlorodecahydro-,(1α,2β,2aβ,4β, 4aβ,5β,6aβ,6bβ,7R*)-	8080 8270	0.2 10
Ethylbenzene	100-41-4	Benzene, ethyl-	8020 8221 8260	2 0.05 5

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Ethyl methacrylate	97-63-2	2-Propenoic acid, 2-methyl-, ethyl ester	8015 8260 8270	5 10 10
Ethyl methanesulfonate	62-50-0	Methanesulfonic acid, ethyl ester	8270	20
Famphur	52-85-7	Phosphorothioic acid, 0-[4-[(dimethyl-amino) sulfonyl]phenyl] 0, 0-dimethyl ester	8270	20
Fluoranthene	206-44-0	Fluoranthene	8100 8270	200 10
Fluorene	86-73-7	9H-Fluorene	8100 8270	200 10
Heptachlor	76-44-8	4,7-Methano-1H-indene, 1,4,5,6,7, 8,8-heptachloro-3a,4,7, 7a-tetrahydro-	8080 8270	0.05 10
Heptachlor epoxide	1024-57-3	2,5-Methano-2H-indeno[1,2-b] oxirene, 2,3,4,5,6,7,7-heptachloro-1a,1b,5,5a,6,6a-hexahydro-, (1aα,1bβ, 2α, 5α,5aβ, 6β, 6aα)	8080 8270	1 10
Hexachlorobenzene	118-74-1	Benzene, hexachloro-	8120 8270	0.5 10
Hexachlorobutadiene	87-68-3	1,3-Butadiene, 1,1,2,3,4, 4-hexachloro-	8021 8120 8260 8270	0.5 5 10 10
Hexachlorocyclopentadiene	77-47-4	1,3-Cyclopentadiene, 1,2,3,4,5,5-hexachloro-	8120 8270	5 10
Hexachloroethane	67-72-1	Ethane, hexachloro-	8120 8260 8270	0.5 10 10
Hexachloropropene	1888-71-7	1-Propene, 1,1,2,3,3,3-hexachloro-	8270	10
2-Hexanone; Methyl butyl ketone	591-78-6	2-Hexanone	8260	50
Indeno(1,2,3-cd)pyrene	193-39-5	Indeno(1,2,3-cd)pyrene	8100 8270	200 10
Isobutyl alcohol	78-83-1	1-Propanol, 2-methyl-	8015 8240	50 100
Isodrin	465-73-6	1,4,5,8-Dimethanonaphthalene,1,2, 3,4, 10,10- hexachloro-1,4,4a,5,8,8a-hexahydro-(1α,4α,4aβ,5β,8β,8aβ)-	8270 8260	20 10
Isophorone	78-59-1	2-Cyclohexen-1-one, 3,5,5-trimethyl-	8090 8270	60 10
Isosafrole	120-58-1	1,3-Benzodioxole, 5-(1-propenyl)-	8270	10

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Kepone	143-50-0	1,3,4-Metheno-2H-cyclobuta[cd] pentalen-2-one,1,1a,3,3a,4,5,5, 5a,5b,6-decachlorooctahydro-	8270	20
Lead	(Total)	Lead	6010 7420 7421	400 1000 10
Mercury	(Total)	Mercury	7470	2
Methacrylonitrile	126-98-7	2-Propenenitrile, 2-methyl-	8015 8260	5 100
Methapyrilene	91-80-5	1,2-Ethanediamine, N.N-dimethyl-N[1]-2-pyridinyl-N1/2-thienylmethyl)-	8270	100
Methoxychlor	72-43-5	Benzene,1,1[1]-(2,2,2, trichloroethylidene)bis[4-methoxy-	8080 8270	2 10
Methyl bromide; Bromomethane	74-83-9	Methane, bromo-	8010 8021	20 10
Methyl chloride; Chloromethane	74-87-3	Methane, chloro-	8010 8021	1 0.3
3-Methylcholanthrene	56-49-5	Benz[j]aceanthrylene, 1,2-dihydro-3-methyl-	8270	10
Methyl ethyl ketone; MEK; 2-Butanone	78-93-3	2-Butanone	8015 8260	10 100
Methyl iodide; Iodomethane	74-88-4	Methane, iodo-	8010 8260	40 10
Methyl methacrylate	80-62-6	2-Propenoic acid, 2-methyl-, methyl ester	8015 8260	2 30
Methyl methanesulfonate	66-27-3	Methanesulfonic acid, methyl ester	8270	10
2-Methylnaphthalene	91-57-6	Naphthalene, 2-methyl-	8270	10
Methyl parathion; Parathion methyl	298-00-0	Phosphorothioic acid, 0,0-dimethyl	8140 8141 8270	0.5 1 10
4-Methyl-2-pentanone; Methyl isobutyl ketone	108-10-1	2-Pentanone, 4-methyl-	8015 8260	5 100
Methylene bromide; Dibromomethane	74-95-3	Methane, dibromo-	8010 8021 8260	15 20 10
Methylene chloride; Dichloromethane	75-09-2	Methane, dichloro-	8010 8021 8260	5 0.2 10
Naphthalene	91-20-3	Naphthalene	8021 8100 8260 8270	0.5 200 5 10

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
1,4-Naphthoquinone	130-15-4	1,4-Naphthalenedione	8270	10
1-Naphthylamine	134-32-7	1-Naphthalenamine	8270	10
2-Naphthylamine	91-59-8	2-Naphthalenamine	8270	10
Nickel	(Total)	Nickel	6010 7520	150 400
o-Nitroaniline; 2-Nitroaniline	88-74-4	Benzenamine, 2-nitro-	8270	50
m-Nitroaniline; 3-Nitroanile	99-09-2	Benzenamine, 3-nitro-	8270	50
p-Nitroaniline; 4-Nitroaniline	100-01-6	Benzenamine, 4-nitro-	8270	20
Nitrobenzene	98-95-3	Benzene, nitro-	8090 8270	40 10
o-Nitrophenol; 2-Nitrophenol	88-75-5	Phenol, 2-nitro-	8040 8270	5 10
p-Nitrophenol; 4-Nitrophenol	100-02-7	Phenol, 4-nitro-	8040 8270	10 50
N-Nitrosodi-n-butylamine	924-16-3	1-Butanamine, N-butyl-N-nitroso-	8270	10
N-Nitrosodiethylamine	55-18-5	Ethanamine, N-ethyl-N-nitroso-	8270	20
N-Nitrosodimethylamine	62-75-9	Methanamine, N-methyl-N-nitroso-	8070	2
N-Nitrosodiphenylamine	86-30-6	Benzenamine, N-nitroso-N-phenyl-	8070	5
N-Nitrosodipropylamine; N-Nitroso-N-dipropylamine; Di-n-propylnitrosamine propyl-	621-64-7	1-Propanamine, N-nitroso-N-	8070	10
N-Nitrosomethylethalamine	10595-95-6	Ethanamine, N-methyl-N-nitroso-	8270	10
N-Nitrosopiperidine	100-75-4	Piperidine, 1-nitroso-	8270	20
N-Nitrosopyrrolidine	930-55-2	Pyrrolidine, 1-nitroso-	8270	40
5-Nitro-o-toluidine	99-55-8	Benzenamine, 2-methyl-5-nitro-	8270	10
Parathion	56-38-2	Phosphorothioic acid, 0,0-diethyl 0-(4-nitrophenyl) ester	8141 8270	0.5 10
Pentachlorobenzene	608-93-5	Benzene, pentachloro-	8270	10
Pentachloronitrobenzene	82-68-8	Benzene, pentachloronitro-	8270	20
Pentachlorophenol	87-86-5	Phenol, pentachloro-	8040 8270	5 50
Phenacetin	62-44-2	Acetamide, N-(4-ethoxyphenl)	8270	20
Phenanthrene	85-01-8	Phenanthrene	8100 8270	200 10
Phenol	108-95-2	Phenol	8040	1

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
p-Phenylenediamine	106-50-3	1,4-Benzenediamine	8270	10
Phorate	298-02-2	Phosphorodithioic acid, 0,0-diethyl S-[(ethylthio)methyl]ester	8140 8141 8270	2 0.5 10
Polychlorinated biphenyls; PCBs; Aroclors	See Note 9	1,1[prime]-Biphenyl, chloroderivatives	8080 8270	50 200
Pronamide	23950-58-5	Benzamide, 3,5-dichloro-N-(1,1-dimethyl-2-propynyl)-	8270	10
Propionitrile; Ethyl cyanide	107-12-0	Propanenitrile	8015 8260	60 150
Pyrene	129-00-0	Pyrene	8100 8270	200 10
Safrole	94-59-7	1,3-Benzodioxole, 5-(2-propenyl)-	8270	10
Selenium	(Total)	Selenium	6010 7740 7741	750 20 20
Silver	(Total)	Silver	6010 7760 7761	70 100 10
Silvex; 2,4,5-TP	93-72-1	Propanoic acid, 2-(2,4,5-trichlorophenoxy)-	8150	2
Styrene	100-42-5	Benzene, ethenyl-	8020 8021 8260	1 0.1 10
Sulfide	18496-25-8	Sulfide	9030	4000
2,4,5-T; 2,4,5-Trichlorophenoxyacetic acid	93-76-5	Acetic acid, (2,4,5-trichlorophenoxy)-	8150	2
1,2,4,5-Tetrachlorobenzene	95-94-3	Benzene, 1,2,4,5-tetrachloro-	8270	10
1,1,1,2-Tetrachloroethane	630-20-6	Ethane, 1,1,1,2-tetrachloro-	8010 8021 8260	5 0.05 5
1,1,2,2-Tetrachloroethane	79-34-5	Ethane, 1,1,2,2-tetrachloro-	8010 8021 8260	0.5 0.1 5
Tetrachloroethylene; Tetrachloroethene; Perchloroethylene	127-18-4	Ethene, tetrachloro-	8010 8021 8260	0.5 0.5 5
2,3,4,6-Tetrachlorophenol	58-90-2	Phenol, 2,3,4,6-tetrachloro-	8270	10
Thallium	(Total)	Thallium	6010 7840 7841	400 1000 10
Tin	(Total)	Tin	6010	40

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Common Name[2]	CAS RN[3]	Chemical abstracts index name[4]	Suggested Method[5]	PQL (µg/L)[6]
Toluene	108-88-3	Benzene, methyl-	8020 8021 8260	2 0.1 5
o-Toluidine	95-53-4	Benzenamine, 2-methyl-	8270	10
Toxaphene	See Note 10	Toxaphene	8080	2
1,2,4-Trichlorobenzene	120-82-1	Benzene, 1,2,4-trichloro-	8021 8120 8260 8270	0.3 0.5 10 10
1,1,1-Trichloroethane; Methylchloroform	71-55-6	Ethane, 1,1,1-trichloro-	8010 8021 8260	0.3 0.3 5
1,1,2-Trichloroethane	79-00-5	Ethane, 1,1,2-trichloro-	8010 8260	0.2 5
Trichloroethylene; Trichloroethene	79-01-6	Ethene, trichloro-	8010 8021 8260	1 0.2 5
Trichlorofluoromethane; CFC-11	75-69-4	Methane, trichlorofluoro-	8010 8021 8260	10 0.3 5
2,4,5-Trichlorophenol	95-95-4	Phenol, 2,4,5-trichloro-	8270	10
2,4,6-Trichlorophenol	88-06-2	Phenol, 2,4,6-trichloro-	8040 8270	5 10
1,2,3-Trichloropropane	96-18-4	Propane, 1,2,3-trichloro-	8010 8021 8260	10 5 15
0,0,0-Triethyl phosphorothioate	126-68-1	Phosphorothioic acid, 0,0,0-triethyl ester	8270	10
sym-Trinitrobenzene	99-35-4	Benzene, 1,3,5-trinitro-	8270	10
Vanadium	(Total)	Vanadium	6010 7910 7911	80 2000 40
Vinyl acetate	108-05-4	Acetic acid, ethenyl ester	8260	50
Vinyl chloride; Chloroethene	75-01-4	Ethene, chloro-	8010 8021 8260	2 0.4 10
Xylene (total)	See Note 11	Benzene, dimethyl-	8020 8021 8260	5 0.2 5
Zinc	(Total)	Zinc	6010 7950 7951	20 50 0.5

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

Notes:

[1]The regulatory requirements pertain only to the list of substances; the right-hand columns (Methods and PQL) are given for informational purposes only. See also footnotes 5 and 6.

[2]Common names are those widely used in government regulations, scientific publications, and commerce; synonyms exist for many chemicals.

[3]Chemical Abstracts Service registry number. Where "Total" is entered, all species in the groundwater that contain this element are included.

[4]CAS index names are those used in the 9th Collective Index.

[5]Suggested Methods refer to analytical procedure numbers used in EPA Report SW-846 "Test Methods for Evaluating Solid Waste," third edition, November 1986, as revised, December 1987. Analytical details can be found in SW-846 and in documentation on file at the agency. CAUTION: The methods listed are representative SW-846 procedures and may not always be the most suitable method(s) for monitoring an analyte under the regulations.

[6]Practical Quantitation Limits (PQLs) are the lowest concentrations of analytes in groundwaters that can be reliably determined within specified limits of precision and accuracy by the indicated methods under routine laboratory operating conditions. The PQLs listed are generally stated to one significant figure. PQLs are based on 5 mL samples for volatile organics and 1 L samples for semivolatile organics. CAUTION: The PQL values in many cases are based only on a general estimate for the method and not on a determination for individual compounds; PQLs are not a part of the regulation.

[7]This substance is often called Bis(2-chloroisopropyl) ether, the name Chemical Abstracts Service applies to its noncommercial isomer, Propane, 2,2[sec]-oxybis[2-chloro- (CAS RN 39638-32-9).

[8]Chlordane: This entry includes alpha-chlordane (CAS RN 5103-71-9), beta-chlordane (CAS RN 5103-74-2), gamma-chlordane (CAS RN 5566-34-7), and constituents of chlordane (CAS RN 57-74-9 and CAS RN 12789-03-6). PQL shown is for technical chlordane. PQLs of specific isomers are about 20 µg/L by method 8270.

[9]Polychlorinated biphenyls (CAS RN 1336-36-3); this category contains congener chemicals, including constituents of Aroclor 1016 (CAS RN 12674-11-2), Aroclor 1221 (CAS RN 11104-28-2), Aroclor 1232 (CAS RN 11141-16-5), Aroclor 1242 (CAS RN 53469-21-9), Aroclor 1248 (CAS RN 12672-29-6), Aroclor 1254 (CAS RN 11097-69-1), and Aroclor 1260 (CAS RN 11096-82-5). The PQL shown is an average value for PCB congeners.

[10]Toxaphene: This entry includes congener chemicals contained in technical toxaphene (CAS RN 8001-35-2), i.e., chlorinated camphene.

[11]Xylene (total): This entry includes o-xylene (CAS RN 96-47-6), m-xylene (CAS RN 108-38-3), p-xylene (CAS RN 106-42-3), and unspecified xylenes (dimethylbenzenes) (CAS RN 1330-20-7). PQLs for method 8021 are 0.2 µg/L for o-xylene and 0.1 for m- or p-xylene. The PQL for m-xylene is 2.0 µg/L by method 8020 or 8260.

These rules are intended to implement Iowa Code section 455B.304.

[Filed 6/14/07, effective 10/1/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 5994B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services amends Chapter 170, "Child Care Services," Iowa Administrative Code.

The amendment clarifies the citizenship requirements for receipt of Child Care Assistance. Public Law 104-193 restricts the use of funds in federally assisted programs to persons who are citizens or nationals of the United States or who are "qualified aliens" as defined in federal law. The term "qualified aliens" includes children who are lawfully admitted for permanent residence; who are granted asylum, conditional entry, or refugee status; who are paroled into the United States for at least one year; or who are Cuban or Haitian entrants, as well as children who have been battered or subjected to extreme cruelty in the United States by a parent or family member or whose deportation is being withheld under federal law.

Qualified aliens are not eligible for federally funded assistance for the first five years after their entry into the United States. Federal law grants exceptions to this five-year bar to assistance to children who are refugees or asylees, Cuban and Haitian entrants, certain Amerasian immigrants, dependents of persons who are veterans of the United States armed services or who are on active duty in the armed services, children who entered the United States before August 22, 1996, and children whose deportation is being withheld.

These requirements are similar to those in effect for the Family Investment Program. Applicants must attest to the citizenship or alien status of the children for whom assistance is being requested and provide documentation of the alien status of any children claimed as qualified aliens.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on April 11, 2007, as **ARC 5838B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

This amendment does not provide for waivers in specified situations. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217). A waiver of this rule would require the provision of 100 percent of state moneys for the funding of Child Care Assistance.

The Council on Human Services adopted this amendment on June 13, 2007.

This amendment is intended to implement Iowa Code section 237A.13.

This amendment shall become effective September 1, 2007.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this amendment [170.2(2)"d"] is being omitted. This amend-

ment is identical to that published under Notice as **ARC 5838B**, IAB 4/11/07.

[Filed 6/13/07, effective 9/1/07]
[Published 7/4/07]

[For replacement pages for IAC, see IAC Supplement 7/4/07.]

ARC 6034B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 88.5, the Labor Commissioner hereby rescinds Chapter 27, "Protective Clothing and Equipment Standards for Firefighters," Iowa Administrative Code.

Pursuant to 2007 Iowa Acts, Senate File 116, Iowa Code section 88.5 was amended by striking subsection 11 effective July 1, 2007. Therefore, the Labor Commissioner rescinds 875—Chapter 27, "Protective Clothing and Equipment Standards for Firefighters," which is intended to implement Iowa Code subsection 88.5(11). Previously, the Labor Commissioner adopted by reference the U.S. Department of Labor's standards for personal protective equipment, and those standards provide adequate protection for firefighters.

The principal reasons for adoption of this amendment are to implement 2007 Iowa Acts, Senate File 116, and to make Iowa's rules more consistent with federal regulations.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5860B**. A public hearing was held on May 30, 2007. No comments were received on the proposed amendment. The adopted amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement 2007 Iowa Acts, Senate File 116.

This amendment will become effective on August 8, 2007.

The following amendment is adopted.

Rescind and reserve **875—Chapter 27**.

[Filed 6/15/07, effective 8/8/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6003B

LOTTERY AUTHORITY, IOWA[531]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99G.9(3), the Iowa Lottery Authority hereby amends Chapter 19, "Pull-Tab General Rules," Iowa Administrative Code.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5855B**. No comments were received, and no one attended the public hearing on May 31, 2007. Since there were no comments, this amendment is identical to the one published under Notice of Intended Action.

The Iowa Lottery Authority Board adopted this amendment on June 13, 2007.

This amendment rescinds rule 531—19.8(99G) and adopts a new rule in lieu thereof to remove the requirement that a player must claim a prize prior to a retailer's first close of business following the player's purchase of a winning ticket. The new rule provides that game prizes must be claimed within 90 days of the announcement of the end of a game. Additionally, this rule differentiates between prizes claimed at the retailer and those claimed at a lottery office and addresses special event and game rules. This amendment ensures that the pull-tab prize claim rule is consistent with the prize claim rule for scratch tickets.

This amendment is intended to implement Iowa Code sections 99G.9(3), 99G.21, and 99G.31.

This amendment will become effective on August 8, 2007.

The following amendment is adopted.

Rescind rule 531—19.8(99G) and adopt the following **new** rule in lieu thereof:

531—19.8(99G) Claiming prizes.

19.8(1) Claim period. Prizes must be claimed within 90 days of the announced end of the pull-tab game.

19.8(2) Prizes claimed at retailer. The specific game rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the specific game rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery. If the claim is validated by the lottery, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

19.8(3) Prizes claimed at lottery. The specific game rules shall specify prizes that may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority, 2323 Grand Avenue, Des Moines, Iowa 50312-4999. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

19.8(4) Prizes in special events. The specific game rules shall set forth the manner in which prizes won in special events or drawings may be claimed.

19.8(5) Variation by specific game rules. The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any pull-tab game or special event.

This rule is intended to implement Iowa Code sections 99G.9(3), 99G.21, and 99G.31.

[Filed 6/14/07, effective 8/8/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6002B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455A.5, the Natural Resource Commission hereby amends Chapter 106, "Deer Hunting by Residents," Iowa Administrative Code.

The amendments list tentative county quotas for antlerless-deer-only licenses and the counties that will be open during the November and January antlerless season. The amendments simplify the language that describes who can obtain antlerless deer licenses and when the licenses may be issued. The dates for the youth and special disabled hunter deer season were made consistent with Chapter 94. The amendments remove the six-shot-clip restriction on centerfire rifles for the January antlerless season. The amendments add a requirement that hunters in ground blinds during the shotgun seasons display solid blaze orange on the exterior of the blind. The amendments clarify the procedures used by the depredation program when depredation biologists write depredation plans and issue depredation licenses or shooting permits.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 28, 2007, as **ARC 5803B**. A public hearing was held on April 19, 2007. About 100 comments were received. The vast majority of commenters asked that the antlerless quotas not be reduced and that the January antlerless season be available in the same counties. Several asked that the depredation program remain available to eligible landowners. The changes from the Notice that affect the deer season are as follows:

1. Add 13,050 antlerless licenses to the paid county antlerless quotas;
2. Keep the same counties open for the January antlerless season as in 2006; and
3. Extend the January season by a week so the season ends on the third Sunday that follows January 11.

The changes from the Notice that affect the depredation program are as follows:

1. Remove wording about damage to trees on Conservation Reserve Program (CRP) land or in natural woodlands; and
2. Rewrite the rule to allow producers facing substantial damage before a season opens to enter into a depredation plan and be issued out-of-season shooting permits. Deer killed by persons issued out-of-season shooting permits must be recovered and processed for consumption.

Additionally, in Item 8 a change to Iowa Code section 483A.8 enacted during the 2007 legislative session (SF 435) allows youth hunters who were unsuccessful in the youth season to use that license in other seasons that are open for deer of either sex.

These amendments are intended to implement Iowa Code sections 481A.38, 481A.39, 481A.48, 483A.7, and 483A.8.

These amendments shall become effective August 8, 2007.

The following amendments are adopted.

ITEM 1. Amend subrule 106.2(5) as follows:

106.2(5) January antlerless-deer-only season. Antlerless deer may be taken from January 11 through the ~~second~~ *third* following Sunday.

ITEM 2. Amend subrule 106.6(2) as follows:

106.6(2) Paid antlerless-deer-only licenses. Paid antlerless-deer-only licenses have quotas for each county and will be sold for each county until quotas are reached. ~~The season that may be hunted with paid antlerless-deer-only licenses and the number that may be purchased depend on the season for which any-deer licenses have been purchased.~~

~~a. Bow season. A person who purchases a paid any-deer bow license may purchase antlerless-deer-only licenses, but the type and number that may be purchased depend on the season for which the paid any-deer firearm license is purchased (see paragraphs "b" through "f"). Prior to October 1, if no paid any-deer firearm license is purchased, the following paid antlerless-deer-only licenses may be purchased in any combination: up to three paid antlerless-deer-only licenses for the youth/disabled hunter season (if eligible), bow season, first regular gun season or second regular gun season, and late muzzleloader season. Up to three licenses may also be purchased for the January antlerless-deer-only season. Beginning October 1, an unlimited number of antlerless-deer-only licenses may be purchased for these seasons. A person may not obtain paid licenses of any type for both regular gun seasons.~~

~~b. First regular gun season. Prior to October 1, a person who purchases a paid any-deer license for the first regular gun season may purchase the following paid antlerless-deer-only licenses in any combination: up to three licenses for the youth/disabled hunter season (if eligible), bow season, first regular gun season, and late muzzleloader season. Up to three antlerless-deer-only licenses may also be purchased for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons. A person obtaining a paid license for the first regular gun season may not obtain a paid license of any type for the second regular gun season.~~

~~c. Second regular gun season. Prior to October 1, a person who purchases a paid any-deer license for the second regular gun season may purchase the following paid antlerless-deer-only licenses in any combination: up to three licenses for the youth/disabled hunter season (if eligible), bow season, second regular gun season and late muzzleloader season. Up to three licenses may also be purchased for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons. A person obtaining a paid license for the second regular gun season may not obtain a paid license of any type for the first regular gun season.~~

~~d. Early muzzleloader season. Prior to October 1, a person who purchases an any-deer license for the early muzzleloader season may purchase the following paid antlerless-deer-only licenses in any combination: up to three licenses for the youth/disabled hunter season (if eligible), bow season, early muzzleloader season, first regular gun season or second regular gun season, and late muzzleloader season. Up to three licenses may also be purchased for the January antlerless-deer-only season. Beginning October 1, an unlimited number of paid antlerless-deer-only licenses may be purchased for these seasons. A person may not obtain paid licenses of any type for both regular gun seasons.~~

~~e. Late muzzleloader season. Prior to October 1, a person who purchases a paid any-deer late muzzleloader season license may purchase the following paid antlerless-deer-only licenses in any combination: up to three licenses for the youth/disabled hunter season (if eligible), bow season, first regular gun season or second regular gun season, and late muzzleloader season. Up to three licenses may also be purchased for the January antlerless-deer-only season. Begin-~~

~~ning October 1, an unlimited number of licenses may be purchased for these seasons. A person may not obtain paid licenses of any type for both regular gun seasons.~~

~~f. Paid any-deer license not purchased. Prior to October 1, a person who has not purchased a paid any-deer license for any season may purchase the following antlerless-deer-only licenses in any combination: up to three licenses for the youth/disabled hunter season (if eligible), bow season, first regular gun season or second regular gun season, and late muzzleloader season. Up to three licenses may also be purchased for the January antlerless-deer-only season. Beginning October 1, an unlimited number of these licenses may be purchased. A person may not obtain paid licenses of any type for both regular gun seasons.~~

a. Paid antlerless-deer-only licenses may be purchased for any season in counties where licenses are available, except as outlined in 106.6(2)"b." A license must be used in the season, county or deer population management area selected at the time the license is purchased.

b. No one may obtain paid licenses for both the first regular gun season and second regular gun season regardless of whether the licenses are valid for any deer or antlerless deer only. Paid antlerless-deer-only licenses for the early muzzleloader season may only be purchased by hunters who have already purchased one of the 7,500 paid statewide any-deer licenses.

c. Prior to September 15, a hunter may purchase one antlerless-deer-only license for any season for which the hunter is eligible. Beginning September 15, a hunter may purchase an unlimited number of antlerless-deer-only licenses for any season for which the hunter is eligible, as set forth in 106.6(2)"b," until the county or population management area quotas are filled. Licenses purchased for deer population management areas will not count in the county quota.

ITEM 3. Amend subrule 106.6(3) as follows:

106.6(3) November antlerless-deer-only season. *Antlerless-deer-only licenses for the November antlerless-deer-only season shall be available in the following counties: Adair, Adams, Allamakee, Appanoose, Benton, Bremer, Buchanan, Cass, Cedar, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Fremont, Guthrie, Harrison, Henry, Howard, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Winneshiek, and Woodbury.* Beginning the second Saturday prior to the opening of the November antlerless-deer-only season, an unlimited number of paid antlerless-deer-only licenses may be purchased for the November antlerless-deer-only season. These licenses may be obtained regardless of any other paid any-deer or paid antlerless-deer-only licenses that may have been obtained. Licenses will be sold until county quotas are filled.

ITEM 4. Amend subrule 106.6(4) as follows:

106.6(4) January antlerless-deer-only licenses. Antlerless-deer-only licenses for the January antlerless-deer-only season shall be available in the following counties: Adair, Adams, Allamakee, Appanoose, Benton, Bremer, Buchanan, Cass, Cedar, Chickasaw, Clarke, Clayton, Clinton, Dallas, Davis, Decatur, Delaware, Des Moines, Dubuque, Fayette, Fremont, Guthrie, Harrison, Henry, Howard, Iowa, Jackson, Jasper, Jefferson, Johnson, Jones, Keokuk, Lee, Linn, Louisa, Lucas, Madison, Mahaska, Marion, Mills, Monona, Monroe, Montgomery, Muscatine, Page, Polk, Pottawattamie, Poweshiek, Ringgold, Scott, Taylor, Union, Van Buren, Wapello, Warren, Washington, Wayne, Winneshiek, and Woodbury. ~~Prior to October 1, a person may purchase up to three antlerless-deer-only licenses for the January antlerless-deer-only season. Beginning October 1, an unlimited number of licenses may be obtained until quotas are filled. January antlerless-deer-only licenses may be obtained regardless of any other deer licenses that may have been obtained.~~

ITEM 5. Amend subrule 106.6(6) as follows:

106.6(6) Antlerless-deer-only licenses. Paid antlerless-deer-only licenses will be available by county as follows:

County	Quota
Adair	~~1500~~ *1750*
Adams	~~1650~~ 1850
Allamakee	~~3750~~ *4500*
Appanoose	~~3000~~ *3300*
Audubon	100
Benton	1000
Black Hawk	0
Boone	500
Bremer	500
Buchanan	300
Buena Vista	0
Butler	250
Calhoun	0
Carroll	100
Cass	~~600~~ *800*
Cedar	1000
Cerro Gordo	0
Cherokee	0
Chickasaw	600
Clarke	~~1250~~ *1700*
Clay	0
Clayton	~~4500~~ *5500*
Clinton	1200
Crawford	150
Dallas	~~1500~~ *1800*
Davis	~~3000~~ *3300*
Decatur	~~2500~~ *2800*
Delaware	~~1200~~ *1400*
Des Moines	2000
Dickinson	0
Dubuque	2000
Emmet	0
Fayette	~~2000~~ *2500*
Floyd	250
Franklin	150
Fremont	~~850~~ *1100*
Greene	150
Grundy	0
Guthrie	~~2500~~ *3000*
Hamilton	100

NATURAL RESOURCE COMMISSION[571](cont'd)

County	Quota
Hancock	0
Hardin	400
Harrison	~~700~~ *1000*
Henry	~~1900~~ *2000*
Howard	800
Humboldt	0
Ida	0
Iowa	1200
Jackson	~~1600~~ *1800*
Jasper	~~950~~ *1000*
Jefferson	~~1800~~ *2000*
Johnson	~~1900~~ *2000*
Jones	~~1400~~ *1500*
Keokuk	~~1500~~ *1700*
Kossuth	0
Lee	2500
Linn	~~1700~~ *1900*
Louisa	1500
Lucas	~~1050~~ *1600*
Lyon	~~100~~ *0*
Madison	~~1500~~ *2000*
Mahaska	1100
Marion	~~1200~~ *1350*
Marshall	500
Mills	~~850~~ *1000*
Mitchell	250
Monona	~~650~~ *950*
Monroe	~~2500~~ *3000*
Montgomery	~~800~~ *1000*
Muscatine	~~1500~~ *1700*
O'Brien	0
Osceola	0
Page	~~1100~~ *1300*
Palo Alto	0
Plymouth	~~150~~ *100*
Pocahontas	0
Polk	~~750~~ *1000*
Pottawattamie	~~1100~~ *1300*
Poweshiek	750
Ringgold	~~2250~~ *2500*
Sac	0
Scott	~~1100~~ *800*
Shelby	~~200~~ *250*
Sioux	~~150~~ *0*
Story	400
Tama	800
Taylor	~~2100~~ *2300*
Union	~~1500~~ *1900*
Van Buren	~~4000~~ *5000*
Wapello	2000
Warren	~~1150~~ *1800*
Washington	~~1900~~ *2150*
Wayne	2500
Webster	100
Winnebago	0
Winneshiek	~~3000~~ *3500*
Woodbury	~~750~~ *950*
Worth	100
Wright	0

ITEM 6. Amend subrule 106.7(5) as follows:

106.7(5) January antlerless-deer-only season. Bows, shotguns, muzzleloaders and handguns as described in this rule may be used during the January antlerless-deer-only season. Centerfire rifles .24 caliber or larger may be used ~~during the last seven days of the season~~ in the southern two tiers of counties. ~~For deer hunting, semiautomatic rifles may have no more than six rounds in the chamber and magazine combined.~~

ITEM 7. Adopt **new** subrule 106.7(8) as follows:

106.7(8) Ground blinds. No person shall use a ground blind for hunting deer during the regular gun deer seasons unless such blind exhibits a solid blaze orange marking visible in all directions with a minimum height of 12 inches and a minimum width of 12 inches. As used in this subrule, "ground blind" means a constructed place of concealment used for the purpose of hiding a person who is hunting from sight. A ground blind is not a naturally occurring feature that a hunter merely uses for concealment.

ITEM 8. Amend subrule 106.10(2) as follows:

106.10(2) Season dates. Deer of either sex may be taken statewide ~~during the 16-day period that ends on the first Sunday in October~~ *for 16 consecutive days beginning on the third Saturday in September. A person who is issued a youth deer hunting license and does not take a deer during the youth deer hunting season may use the deer hunting license and unused tag during the early muzzleloader, late muzzleloader and one of the shotgun seasons. The license will be valid for the type of deer and in the area specified on the original license. A youth hunting in one of these seasons must obtain a hunting license and habitat stamp or hunt with a licensed adult if required by Iowa Code section 483A.24. If the tag is filled during one of the seasons, the license will not be valid in subsequent seasons.*

ITEM 9. Amend rule 571—106.11(481A) as follows:

571—106.11(481A) Deer depredation management. *The deer depredation management program provides assistance to producers through technical advice and additional deer licenses and permits where the localized reduction of female deer is needed to reduce damage.* Upon signing a depredation management agreement with the department, producers of agricultural or high-value horticultural crops may be issued deer depredation permits to shoot deer causing excessive crop damage. If immediate action is necessary to forestall serious damage, depredation permits may be issued before an agreement is signed. Further permits will not be authorized until an agreement is signed.

106.11(1) Method of take and other regulations. Legal weapons and restrictions will be governed by 571—106.7(481A). For deer shooting permits only, there are no shooting hour restrictions*; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93*. The producer or designee must meet the deer hunters' orange apparel requirement in Iowa Code section 481A.122.

106.11(2) Eligibility. Producers growing typical agricultural crops (such as corn, soybeans, hay and oats and tree farms and other forestlands under a timber management program) and producers of high-value horticultural crops (such as Christmas trees, fruit or vegetable crops, nursery stock, and commercially grown nuts) shall be eligible to enter into depredation management agreements if these crops sustain excessive damage.

a. The producer may be the landowner or a tenant, whoever has cropping rights to the land.

b. Excessive damage is defined as crop losses exceeding $1,000 in a single growing season, or the likelihood that damage will exceed $1,000 if preventive action is not taken, or a documented history of at least $1,000 *of* damage annually in previous years.

c. Producers who lease their deer hunting rights are not eligible for the deer depredation management program.

d. Crops in confined storage areas (such as hay, grain, silage, corn gluten) will not be considered eligible unless exclusionary measures (such as fencing, gates) have been implemented to protect agricultural products.

106.11(3) Depredation management plans. Upon request from a producer, field employees of the wildlife bureau will inspect and identify the type and amount of crop damage sustained from deer. If damage is not excessive, technical advice will be given to the producer on methods to reduce or prevent future damage. If damage is excessive and the producer agrees to participate, a written depredation management plan will be developed by ~~the field employee~~ *depredation biologists* in consultation with the producer.

a. The goal of the management plan will be to reduce damage to below excessive levels within a specified time period through a combination of producer-initiated preventive measures and the issuance of deer depredation permits.

(1) Depredation plans written for producers of typical agricultural crops may require preventive measures such as harassment of deer with pyrotechnics and cannons, guard dogs, *and* temporary fencing, *as well as* allowing more hunters, increasing the take of antlerless deer, and other measures that may prove effective.

(2) Depredation plans written for producers of high-value horticultural crops may include all of the measures in (1) above, plus permanent fencing where necessary. Fencing will not be required if the cost of a fence exceeds $1,000.

(3) Depredation permits to shoot deer may be issued to Iowa residents ~~only~~ to ~~temporarily~~ reduce deer numbers until long-term preventive measures become effective. Depredation permits will not be used as a long-term solution to deer damage problems.

b. Depredation management plans will normally be written for a three-year period with progress reviewed annually by the department and the producer.

(1) The plan will become effective when signed by the ~~field employee of the wildlife bureau~~ *depredation biologist* and the producer.

(2) Plans may be modified or extended if mutually agreed upon by the department and the producer.

(3) Depredation permits will not be issued after the initial term of the management plan if the producer fails to implement preventive measures outlined in the plan.

106.11(4) Depredation permits. ~~Three~~ *Two* types of permits may be issued under a depredation management plan.

a. Deer depredation licenses. Deer depredation licenses may be sold to resident hunters only for the regular deer license fee for use during one or more legal hunting seasons. Depredation licenses will be available to producers of agricultural and horticultural crops.

(1) Depredation licenses will be issued in blocks of five licenses up to the number specified in the management plan.

(2) Depredation licenses may be sold to individuals designated by the producer as having permission to hunt. No individual may obtain more than ~~two~~ *three* depredation licenses per management plan. Licenses will be sold by designated department field employees.

~~(3) A depredation license issued to the producer or producer's family member may be the one free license for which the producer's family is eligible annually.~~

~~(4)~~ *(3)* Depredation licenses will be valid only for hunting antlerless deer, ~~unless otherwise specified in the management plan,~~ regardless of restrictions that may be imposed on regular deer hunting licenses in that county.

~~(5)~~ *(4)* Hunters may keep any deer legally tagged with a depredation license.

~~(6)~~ *(5)* All other regulations for the hunting season specified on the license will apply.

~~(7)~~ *(6)* Depredation licenses will be valid only on the land where damage is occurring and the immediately adjacent property unless the land is within a designated block hunt area as described in subparagraph ~~(8)~~ *(7)*. Other parcels of land in the farm unit not adjacent to the parcels receiving damage will not qualify.

~~(8)~~ *(7)* Block hunt areas are areas designated and delineated by wildlife biologists of the wildlife bureau to facilitate herd reduction in a given area where all producers may not qualify for the depredation program or in areas of persistent deer depredation. Depredation permits issued to producers within the block hunt zone are valid on all properties within the delineated boundaries. Individual landowner permission is required for hunters utilizing depredation licenses within the block hunt boundaries. Creation of a given block hunt area does not authorize trespass.

b. Deer shooting permits. Permits for shooting deer outside an established hunting season may be issued to producers of high-value horticultural crops when damage cannot be controlled in a timely manner during the hunting seasons (such as late summer buck rubs in an orchard and winter browsing in a Christmas tree plantation) and to other agricultural producers *who have an approved DNR deer depredation plan,* and on areas such as airports where public safety may be an issue.

(1) Deer shooting permits will be issued at no cost to the applicant.

(2) The applicant or one or more designees approved by the department may take all the deer specified on the permit.

(3) Permits available to producers of high-value horticultural crops ~~will allow taking deer from August 1 through March 31. Permits issued for August 1 through August 31 shall be valid only for taking antlered deer. Permits issued for September 1 through March 31~~ *or agricultural crops* may be valid for taking ~~any~~ deer~~, antlerless deer or antlered deer,~~ *outside of a hunting season* depending on the nature of the damage. *The number and type of deer to be killed will be determined by a department depredation biologist and will be part of the deer depredation management plan.*

(4) Permits issued due to public safety concerns may be used for taking any deer, as necessary, to address unpredictable intrusion which could jeopardize public safety. Permits may be issued for an entire year (January 1 through December 31) if the facility involved maintains a deerproof fence *and signs an agreement with the department*.

(5) Disposal of deer killed under these permits shall be coordinated with the local conservation officer. *All deer killed must be recovered and processed for consumption.*

~~(5)~~ *(6)* The times, dates, place and other restrictions on the shooting of deer will be specified on the permit.

~~(6)~~ *(7)* Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.

~~(7)~~ *(8)* ~~Shooters must wear blaze orange and comply with all other applicable laws and regulations pertaining to shooting and hunting.~~ *For out-of-season shooting permits there are no shooting hour restrictions; however, taking deer with an artificial light is prohibited by Iowa Code section 481A.93.*

~~c. Agricultural depredation shooting permits. Agricultural depredation shooting permits will be issued to a landowner or designated tenant who is a resident of Iowa who has sustained at least $1,000 of damage to agricultural crops if the resident is cooperating with the U.S. Department of Agriculture's Animal and Plant Health Inspection Service (APHIS) to reduce crop damage by deer or has an approved DNR deer depredation plan.~~

~~(1) Agricultural depredation shooting permits will be issued to the resident landowner or designated tenant at no cost and shall be valid only on the farm unit where the damage is occurring.~~

~~(2) Permits issued to the resident landowner or designated tenant shall allow the taking of antlerless deer from September 1 through November 30. The number of permits issued to individual landowners or tenants will be determined by a department depredation biologist and will be part of the deer depredation management plan.~~

~~(3) Deer taken on these permits must be taken by the resident landowner or the designated tenant only.~~

~~(4) Times, places, and other restrictions will be specified on the permit.~~

~~(5) Shooters must wear blaze orange and comply with all other applicable laws and regulations.~~

~~(6) For agricultural depredation shooting permits there are no shooting hour restrictions.~~

~~(7) Antlers from all deer recovered must be turned over to the conservation officer to be disposed of according to department rules.~~

~~(8) Agricultural depredation shooting permits will be valid only on the land where damage is occurring.~~

~~d. Rescinded IAB 5/29/02, effective 7/3/02.~~

~~e~~ *c*. Depredation licenses~~, agricultural depredation shooting permits~~ and shooting permits will be issued in addition to any other licenses for which the hunters may be eligible.

~~f~~ *d*. Depredation licenses~~, agricultural depredation shooting permits~~ and shooting permits will not be issued if the producer restricts the legal take of deer from the property sustaining damage by limiting hunter numbers below levels required to control the deer herd. *This restriction does not apply in situations where permits are issued for public safety concerns.*

106.11(5) Disposal. It shall be the producer's responsibility for shooting permits~~, excluding those issued for public safety, and for agricultural depredation shooting permits~~ to see that all deer are field dressed and removed immediately from the field. Dead deer must be handled for consumption, and the producer must coordinate through the local conservation officer the disposal of deer offered to the public. Charitable organizations will have the first opportunity to take deer offered to the public. No producer shall keep more than two deer taken under depredation shooting permits. By express permission from a DNR enforcement officer, the landowner may dispose of deer carcasses through a livestock sanitation facility.

[Filed 6/14/07, effective 8/8/07]
[Published 7/4/07]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

ARC 6001B

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 108, "Mink, Muskrat, Raccoon, Badger, Opossum, Weasel, Striped Skunk, Fox (Red and Gray), Beaver, Coyote, River Otter, Bobcat, Gray (Timber) Wolf and Spotted Skunk Seasons," Iowa Administrative Code.

These amendments allow a limited number of bobcats to be taken in the southern part of Iowa, close the beaver trapping season on April 1 instead of April 15, and establish the grace and tagging period for both the otter and bobcat seasons at 48 hours.

Notice of Intended Action was published in the Iowa Administrative Bulletin on May 9, 2007, as **ARC 5873B**. A public hearing was held on May 30, 2007. Approximately 20 comments in total were received. About 75 percent of the comments received were opposed to the bobcat season. Most commenters were against bobcat trapping under any circumstances. Several commenters stated that they would like to see bobcat populations continue to grow and expand and, therefore, trapping should be delayed. About 25 percent of the commenters supported the season. A few commenters asked that the season be expanded to include their areas because they felt there were enough animals there to warrant a season. The adopted amendments are identical to those published under Notice of Intended Action.

These amendments will become effective August 8, 2007.

These amendments are intended to implement Iowa Code sections 481A.6, 481A.38, 481A.39, 481A.87, and 481A.90.

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 [108.4, 108.6, 108.7, 108.8] is being omitted. These amendments are identical to those published under Notice as **ARC 5873B**, IAB 5/9/07.

[Filed 6/14/07, effective 8/8/07]
[Published 7/4/07]

[For replacement pages for IAC, see IAC Supplement 7/4/07.]

ARC 5997B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 328.19, the Department of Transportation, on June 12, 2007, adopted amendments to Chapter 720, "Iowa Airport Registration," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the April 25, 2007, Iowa Administrative Bulletin as **ARC 5841B**.

These amendments improve readability and clarity of the rules, remove outdated language, update and clarify guidelines for airport registration and airport safety standards, and enhance minimum safety standards for increased safety and practical application.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 328.

These amendments will become effective August 8, 2007.

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 [720.2 to 720.6, 720.10, 720.15(2), 720.15(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 5841B**, IAB 4/25/07.

[Filed 6/14/07, effective 8/8/07]
[Published 7/4/07]

[For replacement pages for IAC, see IAC Supplement 7/4/07.]

ARC 5995B

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10, 307.12 and 321.377, the Department of Transportation, on June 13, 2007, adopted amendments to Chapter 911, "School Transportation Services Provided by Regional Transit Systems," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the May 9, 2007, Iowa Administrative Bulletin as **ARC 5868B**.

Item 1 adopts the current versions of those parts of the Code of Federal Regulations (CFR) referenced in Chapter 911 and adds the acronym "ADA" to paragraph 911.5(1)"a." Item 2 eliminates a reference to an obsolete date. Item 3 is amended to include additional Federal Motor Vehicle Safety Standards (FMVSS). These additional standards are: Standard 213, Child Restraint Systems, and Standard 225, Child Restraint Anchoring Systems. Item 4 is amended to add a new requirement for a posttrip inspection when school transportation is provided. This amendment coincides with changes made to 281 IAC 43.41(285).

The amendments to the CFR that affect Chapter 911 and have become final and effective since the 2003 edition are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

49 CFR Part 38

No changes.

49 CFR Part 571

FR Vol. 69, No. 28, P. 6583
(FMVSS; fuel system integrity; final rule; correcting amendment)

This document contains a correction to the final rule published on December 1, 2003, (68 FR 67068) that amended the rear and side impact test procedures for the fuel system integrity. The standard subject to this correction is FMVSS No. 301, Fuel System Integrity. This correction references Part 586 rather than Part 590 as published in the December 2003 final rule.

FR Vol. 69, No. 106, P. 31034-31035
(FMVSS; occupant crash protection; correcting amendment)

This document corrects an inconsistency between FMVSS No. 208, Occupant Crash Protection, and 49 CFR Part 595, Subpart B, Retrofit On-Off Switches for Air Bags. This document resolves the problem by permitting the use of the abbreviation "pass" in lieu of "passenger" on the telltales.

FR Vol. 71, No. 167, P. 51129-51132
(FMVSS; occupant crash protection; final rule; delay of compliance date)

This document delays the compliance date of the requirement for vehicles to meet the air bag suppression requirement with LATCH-equipped child restraints, FMVSS No. 208. The previous compliance date of September 1, 2006, has been extended to September 1, 2007.

FR Vol. 70, No. 138, P. 41631-41634
(FMVSS; occupant crash protection; interim final rule; request for comments)

The National Highway Traffic Safety Administration amends 49 CFR Part 571, Standard No. 208, Occupant Crash Protection, pertaining to vehicles manufactured on or after September 1, 2003, and before September 1, 2006. This rule revises the phase-in of compliance for limited line manufacturers with the advanced air bag requirements.

FR Vol. 71, No. 168, P. 51522-51529
(FMVSS; seat belt assemblies; final rule)

This document responds to three petitions for reconsideration of an August 2005 final rule amending the FMVSS for seat belt assemblies. The amendments made in this final rule become mandatory for all seat belt assemblies subject to the standard that are manufactured on or after February 22, 2007. The petitions requested minor technical modifications to the emergency-locking retractor provisions of FMVSS No. 209.

FR Vol. 70, No. 155, P. 47131-47137
(FMVSS; bus emergency exits and window retention and release; final rule; response to petitions for reconsideration)

This document responds to petitions for reconsideration of an April 19, 2002, final rule amending FMVSS No. 217, Bus Emergency Exits and Window Retention and Release. A request was granted to allow manufacturers the same flexibility for placing wheelchair securement anchorages as manufacturers currently have for maintaining the rear exit door clear-

TRANSPORTATION DEPARTMENT[761](cont'd)

ance area required by FMVSS No. 217. Other requests pertaining to "do not block" warning labels were denied.

49 CFR Part 655

No changes.

These rules do not provide for waivers. Issuing waivers would be inappropriate for safety-related rules.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapters 321 and 324A.

These amendments will become effective August 8, 2007.

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 [911.5(1), 911.7(1)"b," 911.7(2), 911.10(8)] is being omitted. These amendments are identical to those published under Notice as **ARC 5868B**, IAB 5/9/07.

[Filed 6/14/07, effective 8/8/07]
[Published 7/4/07]

[For replacement pages for IAC, see IAC Supplement 7/4/07.]

ARC 6010B

UTILITIES DIVISION[199]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.4, 476.2, 476.32, and 478.13, the Utilities Board (Board) gives notice that on June 14, 2007, the Board issued an order in Docket No. RMU-06-10, In re: Filing of Line and Pole Replacement Data [199 IAC 20.18(7) and 25.3(3)], "Order Adopting Amendments," that adopted amendments to 199 IAC 20.18(7) and 25.3(1), 25.3(3), and 25.3(4). Notice of Intended Action with the proposed amendments was published in IAB Vol. XXIX, No. 13 (12/20/06) p. 857, as **ARC 5612B**.

The Board proposed amendments to subrule 20.18(7) to require rate-regulated electric utilities with more than 50,000 Iowa retail customers to include information about the replacement of lines and poles in their annual reliability reports and to subrule 25.3(3) to require all electric utilities to include a schedule for pole inspections beyond visual inspections in their inspection plans required in 199 IAC 25.3(476, 478). Editorial changes were also proposed in rule 199 IAC 25.3(476,478).

MidAmerican Energy Company (MidAmerican), Interstate Power and Light Company (IPL), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), the Iowa Association of Electric Cooperatives (IAEC), and the Iowa Association of Municipal Utilities (IAMU) filed initial comments. On February 7, 2007, an oral presentation was held to receive oral comments and allow the Board to ask questions about the comments. On February 9, 2007, the Board issued an order requesting that MidAmerican, IPL, IAEC, and IAMU file estimates of any additional costs associated with the proposed amendments. MidAmerican, IAEC, and IAMU filed responses to the Board's order.

The Board is adopting amendments to subrules 20.18(7), 25.3(1), 25.3(3), and 25.3(4) with revisions based upon the comments. The order containing a summary of the comments and a discussion of the revisions can be found on the Board's Web site: www.state.ia.us/iub.

These amendments are intended to implement Iowa Code sections 17A.4, 476.2, 476.32, and 478.13.

These amendments will become effective August 8, 2007.

The following amendments are adopted.

ITEM 1. Adopt **new** paragraph **20.18(7)"i"** as follows:

i. The annual reliability report, starting with the reliability report for calendar year 2008, shall include the number of poles inspected, the number rejected, and the number replaced.

ITEM 2. Amend subrule 25.3(1) as follows:

25.3(1) Filing of plan. Each electric utility shall adopt and file with the board a written ~~program~~ *plan* for inspecting and maintaining its electric supply lines and substations (excluding generating stations) in order to determine the necessity for replacement, maintenance, and repair, and for tree trimming or other vegetation management. If the plan is amended or altered, revised copies of the appropriate plan pages shall be filed.

ITEM 3. Adopt **new** paragraph **25.3(3)"d"** as follows:

d. Pole inspections. Pole inspections shall periodically include an examination of the poles that includes tests in addition to visual inspection in appropriate circumstances. These additional tests may include sounding, boring, groundline exposure, and, if applicable, pole treatment.

ITEM 4. Amend subrule 25.3(4) as follows:

25.3(4) Records. Each utility shall keep sufficient records to demonstrate compliance with its inspection and vegetation management ~~programs~~ *plans*. For each inspection unit, the records of line~~, pole,~~ and substation inspections *and pole inspections* shall include the inspection date(s), the findings of the inspection, and the disposition or scheduling of repairs or maintenance found necessary during the inspection. For each inspection unit, the records of vegetation management shall include the date(s) during which the work was conducted. The ~~record~~ *records* shall be kept until two years after the next periodic inspection or vegetation management action is completed or until all necessary repairs ~~or~~ *and* maintenance are completed, whichever is longer.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 7/4/07.

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