IOWA ADMINISTRATIVE BULLETIN

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Pages 1300 to 1329 include **ARC 6587B** to **ARC 6604B**

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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Schedule for Rule Making
2008

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. 26 '07	Jan. 16 '08	Feb. 5 '08	Feb. 20 '08	Feb. 22 '08	Mar. 12 '08	Apr. 16 '08	July 14 '08
Jan. 11 '08	Jan. 30	Feb. 19	Mar. 5	Mar. 7	Mar. 26	Apr. 30	July 28
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Feb. 8	Feb. 27	Mar. 18	Apr. 2	Apr. 4	Apr. 23	May 28	Aug. 25
Feb. 22	Mar. 12	Apr. 1	Apr. 16	Apr. 18	May 7	June 11	Sept. 8
Mar. 7	Mar. 26	Apr. 15	Apr. 30	May 2	May 21	June 25	Sept. 22
Mar. 21	Apr. 9	Apr. 29	May 14	***May 14***	June 4	July 9	Oct. 6
Apr. 4	Apr. 23	May 13	May 28	May 30	June 18	July 23	Oct. 20
Apr. 18	May 7	May 27	June 11	June 13	July 2	Aug. 6	Nov. 3
May 2	May 21	June 10	June 25	***June 25***	July 16	Aug. 20	Nov. 17
May 14	June 4	June 24	July 9	July 11	July 30	Sept. 3	Dec. 1
May 30	June 18	July 8	July 23	July 25	Aug. 13	Sept. 17	Dec. 15
June 13	July 2	July 22	Aug. 6	Aug. 8	Aug. 27	Oct. 1	Dec. 29
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Sept. 5	Sept. 24	Oct. 14	Oct. 29	Oct. 31	Nov. 19	Dec. 24	Mar. 23 '09
Sept. 19	Oct. 8	Oct. 28	Nov. 12	***Nov. 12***	Dec. 3	Jan. 7 '09	Apr. 6 '09
Oct. 3	Oct. 22	Nov. 11	Nov. 26	***Nov. 26***	Dec. 17	Jan. 21 '09	Apr. 20 '09
Oct. 17	Nov. 5	Nov. 25	Dec. 10	***Dec. 10***	Dec. 31	Feb. 4 '09	May 4 '09
Oct. 31	Nov. 19	Dec. 9	Dec. 24	***Dec. 24***	Jan. 14 '09	Feb. 18 '09	May 18 '09
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PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
19	**Friday, February 22, 2008**	**March 12, 2008**
20	**Friday, March 7, 2008**	**March 26, 2008**
21	**Friday, March 21, 2008**	**April 9, 2008**

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*****

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Community empowerment gifts and grants accounts, 1.4, 1.6(3), 1.9 IAB 1/30/08 **ARC 6584B**	Room 142 Lucas State Office Bldg. Des Moines, Iowa	March 4, 2008 10 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Underground storage tanks—Tier 2 model, 135.2, 135.8(1), 135.10, 135.12, 135.18, Appendix B IAB 2/13/08 **ARC 6596B**	Community Meeting Room Clerk's Office, City Hall 111 N. Main St. Denison, Iowa	March 4, 2008 1 to 3 p.m.
	Meeting Room B, Public Library 123 S. Linn St. Iowa City, Iowa	March 5, 2008 1 to 3 p.m.
	Fifth Floor Conference Rooms Wallace State Office Bldg. Des Moines, Iowa	March 6, 2008 1 to 3 p.m.
MEDICINE BOARD[653]		
Resident physician licensure, 10.3(1) IAB 2/13/08 **ARC 6590B**	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	March 4, 2008 2:45 p.m.
Standards of practice—pain management, 13.2 IAB 2/13/08 **ARC 6604B**	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	March 11, 2008 3 p.m.
NATURAL RESOURCE COMMISSION[571]		
No-wake zone, Mississippi River, Burlington, 40.56 IAB 2/13/08 **ARC 6597B**	Fourth Floor W. Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	March 5, 2008 9 a.m.
State parks and recreation areas, 61.2, 61.5(1), 61.15 IAB 2/13/08 **ARC 6600B**	Fourth Floor W. Conference Rm. Wallace State Office Bldg. Des Moines, Iowa	March 4, 2008 10 a.m.
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]		
Propane education and research council, ch 1 IAB 1/30/08 **ARC 6554B**	Conference Room, Suite 8 4830 Maple Dr. Pleasant Hill, Iowa	February 22, 2008 10 a.m.
PUBLIC SAFETY DEPARTMENT[661]		
Liquefied natural gas, rescind ch 51; adopt ch 228 IAB 1/30/08 **ARC 6567B**	First Floor Conference Rm. 125 State Public Safety HQS Bldg. 215 E. 7th St. Des Moines, Iowa	February 21, 2008 8:30 a.m.
Devices and methods to test for alcohol or drugs, 157.3 IAB 1/16/08 **ARC 6544B** (See also **ARC 6543B**)	First Floor Conference Rm. 125 State Public Safety HQS Bldg. 215 E. 7th St. Des Moines, Iowa	February 15, 2008 8:30 a.m.

PUBLIC SAFETY DEPARTMENT[661] (Cont'd)

Electrician and electrical contractor licensing program, chs 500 to 504 IAB 1/16/08 **ARC 6536B** (See also **ARC 6535B**)	First Floor Conference Rm. 125 State Public Safety HQS Bldg. 215 E. 7th St. Des Moines, Iowa	February 21, 2008 10 a.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:

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ARC 6596B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 455B.474, the Environmental Protection Commission hereby gives Notice of Intended Action to amend Chapter 135, "Technical Standards and Corrective Action Requirements for Owners and Operators of Underground Storage Tanks," Iowa Administrative Code.

The amendments propose to revise the current Tier 2 software model (Tier 2 Version 2.51) based on observations during the first decade of use. There was a perception that the length of plumes generated by the Tier 2 groundwater model may significantly overestimate the length of actual groundwater contamination plumes. Therefore, changes are proposed to recalibrate the Tier 2 software model to make the modeled groundwater plumes more closely match the actual plumes.

The Department also looked at the potential impact of the RBCA Tier 2 model revision (Tier 2 Version 3.1) on sites with respect to public water supply wells and what effect public water supply wells may have on inducing contaminant plume movement. For situations where there is a potential for plumes to be drawn into the water supply, the revised RBCA Tier 2 Version 3.1 model alone could be an inappropriate tool for evaluating the risk of contamination to these water supplies. Therefore, the proposed amendments establish a screening process whereby the Department will use its existing source water protection evaluation of the public water supply well to determine whether the risk to the public water supply well should be assessed using the previous Tier 2 Version 2.51 model, which is more conservative.

The proposed amendments also establish a procedure to implement corrective action at high risk sites, either through a collaborative meeting process resulting in a Memorandum of Agreement between the interested parties and the Department or through the submittal and Departmental approval of a Corrective Action Design Report.

Any interested person may make written suggestions or comments pertaining to the proposed amendments on or before March 6, 2008. Such written materials should be directed to Tammy Vander Bloemen, Iowa Department of Natural Resources, Wallace State Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-8895; or E-mail tammy.vander_bloemen@dnr.iowa.gov. Persons wishing to convey their views orally should contact Tammy Vander Bloemen at (515)281-8957.

Three public hearings will be held, at which time persons may present their views either orally or in writing. At the hearings, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

The public hearings will be held as follows:

March 4, 2008 1 to 3 p.m.
Community Meeting Room
Denison City Hall, Clerk's Office
111 N. Main Street
Denison, Iowa

March 5, 2008 1 to 3 p.m.
Iowa City Public Library
Meeting Room B
123 S. Linn Street
Iowa City, Iowa

March 6, 2008 1 to 3 p.m.
Wallace State Office Building
Fifth Floor Conference Rooms
502 E. Ninth Street
Des Moines, Iowa

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

These amendments are intended to implement Iowa Code section 455B.474.

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 **567—135.2(455B)** by adopting the following **new** definitions in alphabetical order:

"Corrective action meeting process" is a series of meetings organized by department staff with owners or operators and other interested parties such as certified groundwater professionals, funding source representatives, and affected property owners. The purpose of the meeting process is to develop and agree on a corrective action plan and the terms for implementation of the plan.

"Corrective action plan" is a plan which specifies the corrective action to be undertaken by the owner or operator in order to comply with requirements in this chapter and which is incorporated into a memorandum of agreement or other written agreement between the department and the owner or operator. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

"Memorandum of agreement" is a written agreement between the department and the owner or operator which specifies the corrective action that will be undertaken by the owner or operator in order to comply with requirements in this chapter and the terms for implementation of the plan. The plan may include but is not limited to provisions for additional site assessment, site monitoring, Tier 2 revisions, Tier 3 assessment, excavation, and other soil and groundwater remedial action.

"Public water supply well" is a well connected to a system for the provision to the public of piped water for human consumption, if such system has at least 15 service connections or regularly serves an average of at least 25 individuals daily at least 60 days out of the year.

"Sensitive area" is a screening tool used to determine if a public water supply well warrants a more in-depth assessment. It is not intended to be a mechanism to assign a risk classification to the public water supply well receptor. If the leaking underground storage tank site is within a five-year

capture zone, or within the 2,500-foot radius as determined by the Iowa Geological Survey in the source water protection evaluation, or within 1,000 feet of a public water supply well, whichever area is larger, and has a source water protection aquifer designation of highly susceptible or susceptible, the leaking underground storage tank site will be considered located within a sensitive area.

ITEM 2. Amend subrule **135.8(1)**, paragraphs **"a"** and **"c,"** as follows:

a. Tier 1. The purpose of a Tier 1 assessment is to identify sites which do not pose an unreasonable risk to public health and safety or the environment based on limited site data. The objective is to determine maximum concentrations of chemicals of concern at the source of a release(s) in soil and groundwater. *If a Tier 1 assessment is required and the department determines the leaking underground storage tank site is located within a sensitive area for a public water supply well, the department will issue a letter notifying the owner or operator that a Tier 2 site cleanup report is required and the Tier 2 Version 2.51 software must be used to evaluate the risk to the public water supply well receptor. The public water supply well operator will be notified and provided the opportunity to submit any pertinent information to support the additional assessment.* The Tier 1 assessment assumes worst-case scenarios in which the actual or potential receptors could be exposed to these chemicals at maximum concentrations through certain soil and groundwater pathways. The point of exposure is assumed to be the source showing maximum concentrations. Risk-based screening levels (Tier 1 levels) contained in the Tier 1 Look-Up Table have been derived from models which use conservative assumptions to predict exposure to actual and potential receptors. (These models and default assumptions are contained in Appendix A.) If Tier 1 levels are not exceeded for a pathway, that pathway may not require further assessment. If the maximum concentrations exceed a Tier 1 level, the options are to conduct a more extensive Tier 2 assessment, apply an institutional control, or in limited circumstances excavate contaminated soil to below Tier 1 levels. If all pathways clear the Tier 1 levels, it is possible for the site to obtain a no action required classification.

c. Tier 3. Where site conditions may not be adequately addressed by Tier 2 procedures, a Tier 3 assessment may provide more accurate risk assessment. The purpose of Tier 3 is to identify reasonable exposure levels of chemicals of concern and to assess the risk of exposure to existing and potential receptors based on additional site assessment information, probabilistic evaluations, or sophisticated chemical fate and transport models in accordance with 135.11(455B). *The department may request a Tier 3 assessment of risk if the site conditions have not been adequately addressed by the Tier 2 procedures.*

ITEM 3. Amend subrule 135.10(1), introductory paragraph, as follows:

135.10(1) General conditions. A Tier 2 site assessment must be conducted and a site cleanup report submitted for all sites which have not obtained a no action required site classification and for all pathways and chemicals of concern groups that have not obtained no further action clearance as provided in 135.9(455B). If in the course of conducting a Tier 2 assessment, data indicates the conditions for pathway clearance under Tier 1 no longer exist, the pathway shall be further assessed under this rule. The Tier 2 assessment and report must be completed whenever free product is discovered as provided in 135.7(455B) *or, if required by departmental correspondence pursuant to 135.8(1)"a," the public water supply well receptor must be evaluated by the Tier 2 Version 2.51 software*. If the owner or operator elects to complete the Tier 2 site assessment without doing a Tier 1 assessment, all the Tier 1 requirements as provided in 135.9(455B) must be met in addition to requirements under this rule. *If the department determines the leaking underground storage tank site is within a sensitive area, the public water supply well operator will be notified and provided the opportunity to submit any pertinent information to support additional assessment.*

ITEM 4. Amend subrule **135.10(4)**, paragraphs **"a"** and **"b,"** as follows*:*

a. Pathway completeness. Unless cleared at Tier 1, this pathway is complete and must be evaluated under any of the following conditions: (1) the first encountered groundwater is a protected groundwater source; ~~or~~ (2) there is a drinking water well or a non-drinking water well within the modeled groundwater plume or the actual plume as provided in 135.10(2)"j" and 135.10(2)"k."*; or (3) the department has determined the leaking underground storage tank site is within a sensitive area.*

b. Receptor evaluation*. At a minimum, all drinking water wells and non-drinking water wells located within 1,000 feet of the site must be identified. If the leaking underground storage tank site is located within a sensitive area for a public water supply well, the groundwater ingestion to drinking water well pathway must be evaluated using the Tier 2 Version 2.51 software. All other pathways may be evaluated using the Tier 2 Version 3.1 software. An owner or operator, a certified groundwater professional, a public water supply operator, or the department may request a meeting to discuss the evaluation of the potential risk to a public water supply well.*

All drinking water wells and non-drinking water wells located within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested, at a minimum, for chemicals of concern as part of the receptor evaluation. Actual plumes refer to groundwater plumes for all chemicals of concern. Untreated or raw water should be collected for analysis. The certified groundwater professional or the department may request additional sampling of drinking water wells and non-drinking water wells as part of its evaluation.

All existing drinking water wells and non-drinking water wells within the modeled plume or the actual plume as provided in paragraph "a" must be evaluated as actual receptors. Potential receptors only exist if the groundwater is a protected groundwater source. Potential receptor points of exposure are those points within the modeled plume or actual plume that exceed the potential point of exposure target level. The point(s) of compliance for actual receptor(s) is the receptor. The point(s) of compliance for potential receptor(s) is the potential receptor point of exposure as provided in 135.10(2)"j" and 135.10(2)"k."

ITEM 5. Amend subrule **135.12(3)**, paragraphs **"d"** and **"e,"** as follows:

d. A corrective action design report (CADR) must be submitted by a certified groundwater professional for all high risk sites *unless the terms of a corrective action plan are formalized in a memorandum of agreement within a reasonable time frame specified by the department*. The CADR must be submitted on a form provided by the department and in accordance with department CADR guidance within 60 days of site classification approval as provided in 135.10(11). The CADR must identify at least two principally applicable cor-

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

rective action options designed to meet the objectives in 135.12(3), an outline of the projected timetable and critical performance benchmarks, *and* a specific monitoring proposal designed to verify its effectiveness, and *must* provide sufficient supporting documentation consistent with industry standards that the technology is effective to accomplish site-specific objectives. The CADR must contain an analysis of its cost-effectiveness in relation to other options. The department will review the CADR in accordance with 135.12(9).

e. Interim monitoring. From the time a Tier 2 site cleanup report is submitted and until the department determines a site is classified as no action required, interim monitoring is required at least annually for all sites classified as high risk. Groundwater samples must be taken: (1) from a monitoring well at the maximum source concentration; (2) *from* a transition well, meaning a monitoring well with detected levels of contamination closest to the leading edge of the groundwater plume as defined to the pathway-specific target level, and between the source(s) and the point(s) of exposure; and (3) *from* a guard well, meaning a monitoring well between the source(s) and the point(s) of exposure with concentrations below the SSTL ~~line~~. If concentrations at the point of exposure already exceed the SSTL, the point of exposure must be monitored. Monitoring conducted as part of remediation or as a condition of establishing a no action required classification may be used to the extent it meets ~~this~~ *these* criteria. Soil monitoring is required at least annually for all applicable pathways in accordance with 135.12(5)"d." *All existing plastic water lines, drinking water wells and non-drinking water wells within 100 feet of the largest actual plume (defined to the appropriate target level for the receptor type) must be tested annually for chemicals of concern. Actual plumes refer to groundwater plumes for all chemicals of concern.*

ITEM 6. Amend subrule **135.12(9)**, paragraphs **"a"** and **"d,"** as follows:

a. Owners and operators must submit a corrective action design report (CADR) within 60 days of the date the department approves or is deemed to approve a Tier 2 assessment report under 135.10(11) or a Tier 3 assessment is to be conducted. The department may establish an alternative schedule for submittal. *As an alternative to submitting a CADR, owners or operators may participate in a corrective action meeting process to develop a corrective action plan which would be incorporated into a memorandum of agreement or other written agreement approved by the department. Owners or operators shall implement the terms of an approved CADR, memorandum of agreement, or other corrective action plan agreement.*

d. Review. Unless the report proposes to classify the site as no action required, the department must approve the report within 60 days for purposes of completeness or disapprove the report upon a finding of incompleteness, inaccuracy or noncompliance with these rules. If no decision is made within this 60-day period, the report is deemed to be approved for purposes of completeness. The department retains the authority to review the report at any time a no action required site classification is proposed. *Owners or operators who fail to implement actions or meet the activity schedule in a memorandum of agreement resulting from a corrective action meeting or other written corrective action plan agreement or who fail to implement the actions or schedule outlined in an approved CADR are subject to legal action.*

ITEM 7. Amend rule 567—135.18(455B) by adopting the following **new** subrules:

135.18(5) Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports accepted prior to [insert effective date of this subrule]. Any owner or operator who had a Tier 2 site cleanup report, Tier 3 report, or corrective action design report approved by the department prior to [insert effective date of this subrule] may elect to submit a Tier 2 site cleanup report to the department using the Tier 2 Version 3.1 software. The owner or operator shall notify the department that the owner or operator wishes to evaluate the leaking underground storage tank site with the Tier 2 Version 3.1 software. If the owner or operator so elects, the site shall be assessed, classified, and, if necessary, remediated in accordance with the rules of the department as of [insert effective date of this subrule]. If the leaking underground storage tank site is undergoing active remediation, the remediation system shall remain in operation until the reevaluation is completed and accepted or as otherwise approved by the department. Once a site has been evaluated using the Tier 2 Version 3.1 software, it can no longer be evaluated with the previous Tier 2 Version 2.51 software except for the groundwater ingestion to drinking water well pathway where applicable pursuant to 135.10(4)"b."

135.18(6) Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports in the process of preparation with a submittal schedule established prior to [insert effective date of this subrule]. The owner or operator shall notify the department that the owner or operator wishes to use the Tier 2 Version 3.1 software to evaluate the leaking underground storage tank site before submitting the next report, and prior to the expiration of the previously established submittal schedule. The department will determine if a sensitive area is present and establish a new activity schedule. Once a site has been evaluated using the Tier 2 Version 3.1 software, it can no longer be evaluated with the previous Tier 2 Version 2.51 software except for the groundwater ingestion to drinking water well pathway where applicable pursuant to 135.10(4)"b."

135.18(7) Risk-based corrective action assessment reports, corrective action plans, and corrective action design reports received by the department but not yet reviewed. The owner or operator shall notify the department within 60 days of [insert effective date of this subrule] whether the owner or operator is electing to complete a risk-based corrective action assessment using Tier 2 Version 3.1 or is proceeding with the risk-based corrective action assessment using Tier 2 Version 2.51. Once a site has been evaluated using the Tier 2 Version 3.1 software, it can no longer be evaluated with the previous software except for the groundwater ingestion to drinking water well pathway where applicable pursuant to 135.10(4)"b."

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

ITEM 8. Amend **567—Chapter 135**, Appendix B, as follows:

Rescind the Equation for Tier 2 Groundwater Contaminant Transport Model and adopt the following **new** Equations (1) and (2) and Table 1:

Equations for Tier 2 Groundwater Contaminant Transport Model

Equation (1)

$$C(x) = C_s \exp\left(\frac{x_m}{2\alpha_x}\left[1-\sqrt{1+\frac{4\lambda\alpha_x}{u}}\right]\right) erf\left(\frac{S_w}{4\sqrt{\alpha_y x_m}}\right) erf\left(\frac{S_d}{4\sqrt{\alpha_z x_m}}\right)$$

Equation (2)

Where $x_m = ax + bx^c$

The value of X_m is computed from Equation (2), where the values for a, b and c in Equation (2) are given in Table 1.

Table 1. Parameter Values for Equation (2)

Chemical	a	b	c
Benzene	1	0.000000227987	3.929438689
Toluene	1	0.000030701	3.133842393
Ethylbenzene	1	0.0001	2.8
Xylenes	1	0.0	0.0
TEH-Diesel	1	0.000000565	3.625804634
TEH-Waste Oil	1	0.000000565	3.625804634
Naphthalene	1	0	0

Amend the First-order Decay Coefficients Table, Groundwater Transport Modeling Parameters, as follows:

First-order Decay Coefficients

Chemical	Default Value λ(d−1)	Required
Benzene	~~0.0005~~ *0.000127441*	default
Toluene	~~0.0007~~ *0.0000208066*	default
Ethylbenzene	~~0.00013~~ *0.0*	default
Xylenes	0.0005	default
Naphthalene	0.00013	default
~~Benzo(a)pyrene~~ *TEH-Diesel*	~~0~~ *0.0000554955*	default
~~Benz(a)anthracene~~ *TEH-Waste Oil*	~~0~~ *0.0000554955*	default
~~Chrysene~~	~~0~~	~~default~~

ARC 6594B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 4, "Campaign Disclosure Procedures," Iowa Administrative Code.

By law, the Iowa Ethics and Campaign Disclosure Board is directed to impose sanctions for the late filing of campaign reports filed with the Board. The Board has adopted rules to implement a process of imposing civil penalties for late-filed reports. The proposed amendment would exempt from the civil penalty assessment process any late-filed campaign report that was filed using the Board's electronic filing system when the report was filed late because the system was not functioning properly.

The proposed amendment does not contain a waiver provision as no obligation is being imposed on the regulated community.

Any interested person may make written or oral comments on the proposed amendment on or before March 4, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515) 281-3489.

This amendment is intended to implement Iowa Code section 68B.32A.

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.

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

Amend subrule 4.59(1) as follows:

4.59(1) Administrative resolution. In administrative resolution of violations for late-filed disclosure reports, the board shall assess and collect monetary penalties for all late-filed disclosure reports. The board shall notify any person assessed a penalty of the amount of the assessment and the person's ability to request a waiver under rule 351—4.60(68B). *A committee using the board's electronic filing system shall not be assessed a civil penalty if the board's electronic fling system is not properly functioning and causes the committee to be unable to timely file the report.*

Days Delinquent	1st ~~Occurrence~~ *Delinquency*	2nd ~~Occurrence in a calendar year~~ *Delinquency*	Subsequent ~~Occurrences in a calendar year~~ *Delinquencies*
1 to 14	$ 25	$ 50	$100
15 to 30	$ 50	$100	$200
31 and over	$100	$200	$400

For purposes of this subrule, second and subsequent delinquencies apply to a report that covers any quarter of the year for which the lobbyist is registered to lobby the executive branch.

ARC 6593B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 8, "Executive Branch Lobbying," Iowa Administrative Code.

Executive branch lobbyists register with the Iowa Ethics and Campaign Disclosure Board and file quarterly disclosure reports. The report for the last quarter is filed in January of the next year. Currently, civil penalties are assessed for reports that are filed late by calendar year instead of for the year the lobbyist is registered. Therefore, the January report that actually covers the last quarter of the previous year is subject to a different civil penalty schedule. The proposed amendment would assess penalties by registered year instead of by calendar year.

All civil penalties assessed by rule are subject to a waiver process.

Any interested person may make written or oral comments on the proposed amendment on or before March 4, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515) 281-3489.

This amendment is intended to implement Iowa Code section 68B.32A.

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

The following amendment is proposed.

Amend subrule 8.11(1) as follows:

8.11(1) Late lobbyist report. An executive branch lobbyist who fails to timely file an executive branch periodic lobbyist report shall be subject to an automatic civil penalty according to the following schedule:

ARC 6592B

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 68B.32A, the Iowa Ethics and Campaign Disclosure Board hereby gives Notice of Intended Action to amend Chapter 9, "Complaint, Investigation, and Resolution Procedures," Iowa Administrative Code.

By law, the Iowa Ethics and Campaign Disclosure Board is directed to impose sanctions for the late filing of disclosure reports that are filed with the Board. The Board has adopted rules to implement a process of imposing civil penalties for late-filed reports. The civil penalties are deposited in the state general fund. The proposed amendment would permit the Board to retain two dollars of a civil penalty that is not ultimately waived by the Board or a court of law. The purpose of retaining the two dollars would be to recover printing and postage costs incurred by the Board.

The proposed amendment does not contain a waiver provision. However, all civil penalties assessed by rule are subject to a waiver process.

Any interested person may make written or oral comments on the proposed amendment on or before March 4, 2008. Comments should be directed to Charlie Smithson, Iowa Ethics and Campaign Disclosure Board, 510 E. 12th Street, Suite 1A, Des Moines, Iowa 50319. Persons who wish to comment orally should contact Charlie Smithson at (515) 281-3489.

This amendment is intended to implement Iowa Code section 68B.32A.

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

The following amendment is proposed.

Amend subrule 9.4(5) as follows:

ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351](cont'd)

9.4(5) Automatic civil penalties. The board may administratively resolve late-filed ~~campaign finance disclosure reports, late-filed personal financial disclosure statements, and late-filed executive branch lobbyist and client~~ reports by the assessment of automatic civil penalties, subject to ~~an appeal process~~ *the civil penalty waiver process*, as set out by board rule. *The board may retain two dollars of any civil penalty that is ultimately not waived by the board or by a court of law as return receipts covering incidental costs such as printing and postage. The remainder of the civil penalty shall be deposited in the state general fund.*

ARC 6601B

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D]

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 544B.5, the Landscape Architectural Examining Board hereby gives Notice of Intended Action to amend Chapter 2, "Examinations and Licensing," Iowa Administrative Code.

The proposed amendments to Chapter 2 outline a process that allows a registrant to register as "inactive" and provides a procedure to reinstate a "lapsed" registration to "inactive" status.

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

Any interested party may make written or oral comments on the proposed amendments on or before March 4, 2008. Comments should be addressed to Glenda Loving, Landscape Architectural Examining Board, 1920 S. E. Hulsizer, Ankeny, Iowa 50021; telephone (515)281-7362; or fax (515) 281-7411. E-mail may be sent to glenda.loving@iowa.gov.

These amendments are intended to implement Iowa Code chapters 17A, 272C and 544B.

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. Adopt the following **new** subrule:

2.8(8) Inactive status. This subrule establishes a procedure under which a person issued a certificate of registration as a landscape architect may apply to the board to register as inactive. Registration under this subrule is available to a registrant residing within or outside the state of Iowa who is not using the title "landscape architect" while offering services as a landscape architect. A person eligible to register as inactive may, as an alternative to such registration, allow the certificate of registration to lapse. During any period of inactive status, a person shall not engage in the practice of landscape architecture while using the title "landscape architect" or any other title that might imply that the person is offering services as a landscape architect in violation of Iowa Code section 544B.18. The board will continue to maintain a database of persons registered as inactive, including information which is not routinely maintained after a certificate of registration has lapsed through the person's failure to renew. A person who registers as inactive will accordingly receive a renewal notice if the notice is sent by the board, board newsletters, and other mass communications from the board.

a. Affirmation. The renewal application shall contain a statement in which the applicant affirms that the applicant will not engage in the practice of landscape architecture while using the title "landscape architect" in violation of Iowa Code section 544B.18, without first complying with all rules governing reinstatement to active status. A person in inactive status may reinstate to active status at any time pursuant to rule 193D—2.9(544B,17A).

b. Renewal. A person registered as inactive may renew the person's certificate of registration on the biennial schedule described in 193D—2.8(544B,272C,17A). This person shall be exempt from the continuing education requirements and will be charged a reduced renewal fee as provided in 193D—2.10(544B,17A). An inactive certificate of registration shall lapse if not timely renewed.

c. Permitted practices. A person may, while registered as inactive, perform for a client, business, employer, government body, or other entity those services which may lawfully be provided by a person to whom a certificate of registration has never been issued. Such services may be performed as long as the person does not in connection with such services use the title "landscape architect" or any other title restricted for use only by landscape architects pursuant to Iowa Code section 544B.18 (with or without additional designations such as "inactive"). Restricted titles may be used only by active landscape architects who are subject to continuing education requirements to ensure that the use of such titles is consistently associated with the maintenance of competency through continuing education.

d. Prohibited practices. A person who, while registered as inactive, engages in any of the practices described in Iowa Code section 544B.18 is subject to disciplinary action.

ITEM 2. Amend rule 193D—2.9(544B,17A) as follows:

193D—2.9(544B,17A) Reinstatement. ~~An applicant for reinstatement must inform the board in writing of the intention to reinstate. The board shall use the following criteria when determining the individual requirements for reinstatement:~~

2.9(1) *Reinstatement to active status from lapsed status.*

a. An individual may reinstate an expired ~~license~~ *certificate of registration to active status* within two years *of expiration* by:

~~a.~~ *(1)* Paying the reinstatement fee of ~~$100~~ *$25 per month of expired registration*;

~~b.~~ *(2)* Paying the current renewal fee;

~~c.~~ *(3)* Providing a written statement outlining the professional activities of the applicant during the period of nonregistration *while the individual was using the title "landscape architect"*; and

~~d.~~ *(4)* Submitting documented evidence of completion of 12 contact hours of continuing education in health, safety, welfare subjects for each year or portion of a year of expired registration in compliance with requirements in 193D—Chapter 3. The hours reported shall be in addition to the 24 hours in health, safety, welfare subjects which should have been reported on the June 30 renewal date on which the registrant failed to renew. The continuing education hours used for reinstatement *to active status* may not be used again at the next renewal.

Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of

LANDSCAPE ARCHITECTURAL EXAMINING BOARD[193D](cont'd)

compliance with their resident state's mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

~~**2.9(2)**~~ *b.* An individual may reinstate *to active status* a ~~license~~ *certificate of registration* which has been expired for more than two years by:

~~a.~~ *(1)* Paying the reinstatement fee of ~~$100~~ *$25 per month of expired registration up to a maximum of $750*;

~~b.~~ *(2)* Paying the current renewal fee;

~~c.~~ *(3)* Providing a written statement outlining the professional activities of the applicant during the period of nonregistration *while the individual was using the title "landscape architect"*; and

~~d.~~ *(4)* Submitting documented evidence of completion of continuing education as determined by the board. The board shall require no more than 48 hours in health, safety, welfare subjects; however, the hours reported shall not have been earned more than four years prior to the date of the application to reinstate *to active status*.

Out-of-state residents may submit a statement from their resident state's licensing board as documented evidence of compliance with their resident state's mandatory continuing education requirements during the period of nonregistration. The statement shall bear the seal of the licensing board. Out-of-state residents whose resident state has no mandatory continuing education shall comply with the documented evidence requirements outlined in this subrule.

The board shall review reinstatement applications on a case-by-case basis and may, at its discretion, require that the applicant take the L.A.R.E. as a prerequisite to reinstatement *to active status*.

2.9(2) *Reinstatement to inactive status from lapsed status. An individual may reinstate a lapsed certificate of registration to inactive status as follows:*

a. Reinstatement fees. The individual shall:

(1) Pay the reinstatement fee of $25 per month of expired registration up to a maximum of $100 if the application for reinstatement is filed on or before June 30, 2009.

(2) Pay the reinstatement fee of $25 per month of expired registration up to a maximum of $750 if the application for reinstatement is filed on or after July 1, 2009.

b. The individual shall pay the current renewal fee.

c. The individual shall provide a written statement in which the applicant affirms that the individual has not engaged in any of the practices in Iowa that are listed in Iowa Code section 544B.18 during the period of lapsed registration.

2.9(3) *Reinstatement to active status from inactive status or retired status. An individual may reinstate an inactive registration or retired registration to active registration as follows:*

a. The individual shall pay the current active registration fee. If the individual is reinstating to active status at a date that is less than 12 months from the next biennial renewal date, one-half of the current active registration fee shall be paid.

b. The individual shall submit documented evidence of completion of 24 contact hours (16 contact hours in public protection subjects) of continuing education in compliance with requirements in 193D—Chapter 3. The continuing education hours used for reinstatement to active status may not be used again at the next renewal.

c. Continuing education for subsequent renewals.

(1) At the first biennial renewal date of July 1 that is less than 12 months from the date of the filing of the application to restore the certificate of registration to active status, the individual shall not be required to report continuing education.

(2) At the first biennial renewal date of July 1 which is more than 12 months, but less than 24 months, from the date of the filing of the application to restore the certificate of registration to active status, the individual shall report 12 hours of previously unreported continuing education.

2.9(4) *An individual shall not be allowed to reinstate to inactive status from retired status.*

ITEM 3. Amend rule 193D—2.10(544B,17A) as follows:

193D—2.10(544B,17A) Fee schedule. The appropriate examination fee or examination exemption filing fee shall accompany the application. Filing fees are not refundable.

Examination fee	not to exceed $1000
Initial examination filing fee	$50
Proctoring fee	$50
Examination exemption fee	$300
(This certificate of registration is to be effective to the June 30 which is at least 12 months beyond the date of the application.)	
~~Certificate of registration~~ *Wall certificate* fee	$50
~~(This certificate is to be effective to the June 30 which is at least 12 months beyond the date of the application.)~~	
Wall certificate replacement fee	$25
Certificate of ~~license~~ *registration* fee	$15/month
(This certificate of ~~license~~ *registration* is to be effective the day of board action until June 30.)	
Biennial registration fee *(active)*	$350
Biennial registration fee (inactive)	*$100*
Reinstatement of lapsed registration	*not to exceed $750*

ARC 6590B

MEDICINE BOARD[653]

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 147.76 and 272C.3, the Board of Medicine hereby proposes to amend Chapter 10, "Resident, Special and Temporary Physician Licensure," Iowa Administrative Code.

The proposed amendment removes a requirement in order to allow a physician who has previously held a permanent physician license in a United States jurisdiction to practice under a resident physician license when the physician is enrolled as an intern, resident or fellow in an Iowa resident training program.

The Board approved the amendment to Chapter 10 during a regularly scheduled meeting on January 17, 2008.

Any interested person may present written comments on this proposed amendment not later than 4:30 p.m. on March 4, 2008. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686; or sent by E-mail to ann.mowery@iowa.gov.

MEDICINE BOARD[653](cont'd)

There will be a public hearing on March 4, 2008, at 2:45 p.m. in the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

This amendment is intended to implement Iowa Code chapters 147, 148, and 272C.

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

The following amendment is proposed.

Amend subrule **10.3(1)**, paragraph **"b,"** as follows:

b. An Iowa resident physician license or an Iowa permanent physician license is required of any resident physician enrolled in an Iowa resident training program and practicing in Iowa. ~~A physician in a resident training program who has previously held a permanent license in Iowa or the equivalent in any United States jurisdiction shall be required to have an active permanent physician license in Iowa.~~

ARC 6604B

MEDICINE BOARD[653]

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 147.76 and 272C.3, the Board of Medicine hereby proposes to amend Chapter 13, "Standards of Practice and Principles of Medical Ethics," Iowa Administrative Code.

The proposed amendments are intended to update the Board's pain rules to meet current national standards and to establish standards of practice for the proper assessment and treatment of acute pain. The proposed amendments recognize that the undertreatment of pain is a serious health problem and is a departure from the acceptable standard of practice in Iowa. The amended rules encourage a multidisciplinary approach to pain management, particularly if a patient has a substance abuse history or comorbid psychiatric disorder. The proposed amendments also recognize that the goals of proper pain management may change when a physician is treating patients with different types of pain, including acute pain and pain associated with the progression of cancer or other terminal illness, and end-of-life care. Finally, the proposed amendments provide references to current pain management resources that licensees may consult for further guidance in providing proper pain treatment.

The Board approved these amendments to Chapter 13 during a regularly scheduled meeting on January 17, 2008.

Any interested person may present written comments on these proposed amendments not later than 4:30 p.m. on March 4, 2008. Such written materials should be sent to Ann E. Mowery, Executive Director, Board of Medicine, 400 S.W. Eighth Street, Suite C, Des Moines, Iowa 50309-4686, or E-mailed to ann.mowery@iowa.gov.

There will be a public hearing on March 11, 2008, at 3 p.m. at the Board office, at which time persons may present their views either orally or in writing. The Board of Medicine office is located at 400 S.W. Eighth Street, Suite C, Des Moines, Iowa.

These amendments are intended to implement Iowa Code chapters 147, 148, and 272C.

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

The following amendments are proposed.

ITEM 1. Amend rule 653—13.2(148,150,150A,272C), introductory paragraph, as follows:

653—13.2(148,150,150A,272C) Standards of practice—~~prescribing or administering controlled substances for the treatment of patients with chronic, nonmalignant pain~~ *appropriate pain management.* This rule establishes standards of practice for the management of *acute and* chronic~~, nonmalignant~~ pain. ~~The purpose of the rule is to assist physicians who prescribe and administer drugs to provide relief and eliminate suffering in patients with chronic, nonmalignant pain as defined in this rule.~~ *The board encourages the use of adjunct therapies such as acupuncture, physical therapy and massage in the treatment of acute and chronic pain. This rule focuses on prescribing and administering controlled substances to provide relief and eliminate suffering for patients with acute pain or chronic pain.*

1. This rule is intended to encourage appropriate pain management, including the use of controlled substances for the treatment of pain, while stressing the need to establish safeguards to minimize the potential for substance abuse and drug diversion.

2. The goal of pain management is to treat each patient's pain in relation to the patient's overall health, including physical function and psychological, social and work-related factors. At the end of life, the goals may shift to palliative care.

3. The board recognizes that pain management, including the use of controlled substances, is an important part of general medical practice. Unmanaged or inappropriately treated pain impacts patients' quality of life, reduces patients' ability to be productive members of society, and increases patients' use of health care services.

4. Physicians should not fear board action for treating pain with controlled substances as long as the physicians' prescribing is consistent with appropriate pain management practices. Dosage alone is not the sole measure of determining whether a physician has complied with appropriate pain management practices. The board recognizes the complexity of treating patients with chronic pain or a substance abuse history. Generally, the board is concerned about a pattern of improper pain management or a single occurrence of willful or gross overtreatment or undertreatment of pain.

5. The board recognizes that the undertreatment of pain is a serious public health problem that results in decreases in patients' functional status and quality of life, and that adequate access by patients to proper pain treatment is an important objective of any pain management policy.

6. Inappropriate pain management may include nontreatment, undertreatment, overtreatment, and the continued use of ineffective treatments. Inappropriate pain management is a departure from the acceptable standard of practice in Iowa and may be grounds for disciplinary action.

ITEM 2. Amend subrule 13.2(1) as follows:

MEDICINE BOARD[653](cont'd)

13.2(1) Definitions. ~~As used in this rule~~ *For the purposes of this rule, the following terms are defined as follows*:

"Acute pain" means the normal, predicted physiological response to a noxious chemical, thermal or mechanical stimulus and typically is associated with invasive procedures, trauma and disease. Generally, acute pain is self-limited, lasting no more than a few weeks following the initial stimulus.

"Addiction" means a primary, chronic, neurobiologic disease, with genetic, psychosocial, and environmental factors influencing its development and manifestations. It is characterized by behaviors that include the following: impaired control over drug use, craving, compulsive use, and continued use despite harm. Physical dependence and tolerance are normal physiological consequences of extended opioid therapy for pain and are not the same as addiction.

~~"Agency for Healthcare Research and Quality" or "AHRQ" means the agency within the U.S. Department of Health and Human Services which is responsible for establishing Clinical Practice Guidelines on various aspects of medical practice.~~

~~"American Academy of Pain Medicine" or "AAPM" means the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.~~

~~"American Pain Society " or "APS" means the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.~~

"Chronic~~, nonmalignant~~ pain ~~(i.e., not caused by cancer)~~" means persistent or episodic pain of a duration or intensity that adversely affects the functioning or well-being of a patient when (1) no relief or cure for the cause of pain is possible; (2) no relief or cure for the cause of pain has been found; or (3) relief or cure for the cause of pain through other medical procedures would adversely affect the well-being of the patient. *If pain persists beyond the anticipated healing period of a few weeks, patients should be thoroughly evaluated for the presence of chronic pain.*

"Pain" means an unpleasant sensory and emotional experience associated with actual or potential tissue damage or described in terms of such damage. Pain is an individual, multifactorial experience influenced by culture, previous pain events, beliefs, mood and ability to cope.

"Physical dependence" means a state of adaptation that is manifested by drug class-specific signs and symptoms that can be produced by abrupt cessation, rapid dose reduction, decreasing blood level of the drug, or administration of an antagonist. Physical dependence, by itself, does not equate with addiction.

"Pseudoaddiction" means an iatrogenic syndrome resulting from the misinterpretation of relief-seeking behaviors as though they are drug-seeking behaviors that are commonly seen with addiction. The relief-seeking behaviors resolve upon institution of effective analgesic therapy.

"Substance abuse" means the use of a drug, including alcohol, by the patient in an inappropriate manner that may cause harm to the patient or others, or the use of a drug for an indication other than that intended by the prescribing clinician. An abuser may or may not be physically dependent on or addicted to the drug.

"Tolerance" means a physiological state resulting from regular use of a drug in which an increased dosage is needed to produce a specific effect, or a reduced effect is observed with a constant dose over time. Tolerance may or may not be evident during opioid treatment and does not equate with addiction.

"Undertreatment of pain" means the failure to properly assess, treat and manage pain or the failure to appropriately document a sound rationale for not treating pain.

ITEM 3. Rescind subrule 13.2(2) and adopt the following **new** subrule in lieu thereof:

13.2(2) Laws and regulations governing controlled substances. Nothing in this rule relieves a physician from fully complying with applicable federal and state laws and regulations governing controlled substances.

ITEM 4. Renumber subrule **13.2(3)** as **13.2(5)** and adopt the following **new** subrules:

13.2(3) Undertreatment of pain. The undertreatment of pain is a departure from the acceptable standard of practice in Iowa. Undertreatment may include a failure to recognize symptoms and signs of pain, a failure to treat pain within a reasonable amount of time, a failure to allow interventions, e.g., analgesia, to become effective before invasive steps are taken, a failure to address pain needs in patients with reduced cognitive status, a failure to use controlled substances for terminal pain due to the physician's concern with addicting the patient, or a failure to use an adequate level of pain management.

13.2(4) Assessment and treatment of acute pain. Appropriate assessment of the etiology of the pain is essential to the appropriate treatment of acute pain. Acute pain is not a diagnosis; it is a symptom. Prescribing controlled substances for the treatment of acute pain should be based on clearly diagnosed and documented pain. Appropriate management of acute pain should include an assessment of the mechanism, type and intensity of pain. The patient's medical record should clearly document a medical history, a pain history, a clinical examination, a medical diagnosis and a treatment plan.

ITEM 5. Amend renumbered subrule 13.2(5) as follows:

13.2(5) Effective *management of* chronic~~, nonmalignant~~ pain ~~management~~. *Proper management of chronic pain can only be accomplished within an established physician-patient relationship. Prescribing controlled substances for the treatment of chronic pain should be based on clearly diagnosed and documented unrelieved pain.* To ensure that *chronic* pain is properly ~~and promptly~~ assessed and treated, a physician who prescribes or administers controlled substances to a patient for the treatment of chronic~~, nonmalignant~~ pain shall exercise sound clinical judgment ~~by establishing~~ *and establish* an effective pain management plan in accordance with the following:

a. Patient evaluation. A patient evaluation that includes a physical examination and a comprehensive medical history shall be conducted prior to the initiation of treatment. The evaluation shall also include an assessment of the pain, physical and psychological function, diagnostic studies, previous interventions, including medication history, substance abuse history and any underlying or coexisting conditions. Consultation/referral to a physician with expertise in pain medicine, addiction medicine or substance abuse counseling or a physician who specializes in the treatment of the area, system, or organ perceived to be the source of the pain may be warranted depending upon the expertise of the physician

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and the complexity of the presenting patient. Interdisciplinary evaluation is strongly encouraged.

b. Treatment plan. The physician shall establish a comprehensive treatment plan that tailors drug therapy to the individual needs of the patient. To ensure proper evaluation of the success of the treatment, the plan shall clearly state the objectives of the treatment, for example, pain relief, or improved physical or psychosocial functioning. The treatment plan shall also indicate if any further diagnostic evaluations or treatments are planned and their purposes. The treatment plan shall also identify any other treatment modalities and rehabilitation programs utilized. *The patient's short- and long-term needs for pain relief shall be considered when drug therapy is prescribed. The patient's ability to request pain relief as well as the patient setting shall be considered. For example, nursing home patients are unlikely to have their pain control needs assessed on a regular basis, making prn (on an as-needed basis) drugs less effective than drug therapy prescribed for routine administration that can be supplemented if pain is found to be worse. The patient should receive prescriptions for controlled substances from a single physician and a single pharmacy whenever possible.*

c. Informed consent. The physician shall document discussion of the risks and benefits of controlled substances with the patient or person representing the patient.

d. Periodic review. The physician shall periodically review the course of drug treatment of the patient and the etiology of the pain. *The physician should adjust drug therapy to the individual needs of each patient.* Modification or continuation of drug therapy by the physician shall be dependent upon evaluation of the patient's progress toward the objectives established in the treatment plan. The physician shall consider the appropriateness of continuing drug therapy and the use of other treatment modalities if periodic reviews indicate *that* the objectives of the treatment plan are not being met or *that* there is evidence of diversion or a pattern of substance abuse. *Long-term opioid treatment is associated with the development of tolerance to its analgesic effects. There is also evidence that opioid treatment may paradoxically induce abnormal pain sensitivity, including hyperalgesia and allodynia. Thus, increasing opioid doses may not improve pain control and function.*

e. Consultation/referral. *A specialty consultation may be considered at any time if there is evidence of significant adverse effects or lack of response to the medication. Pain, physical medicine, rehabilitation, general surgery, orthopedics, anesthesiology, psychiatry, neurology, rheumatology, oncology, addiction medicine, or other consultation may be appropriate.* The physician ~~shall~~ *should also* consider consultation with, or referral to, a physician with expertise in ~~pain medicine,~~ addiction medicine or substance abuse counseling, if ~~the objectives of the treatment plan are not being met or~~ there is evidence of diversion or a pattern of substance abuse. *The board encourages a multidisciplinary approach to chronic pain management, including the use of adjunct therapies such as acupuncture, physical therapy and massage.*

f. Documentation. The physician shall keep accurate, timely, and complete records that detail compliance with this subrule, including patient evaluation, diagnostic studies, treatment modalities, treatment plan, informed consent, periodic review, consultation, and any other relevant information about the patient's condition and treatment.

g. Physician-patient agreements. ~~Physicians~~ *A physician* treating patients *with controlled substances or opiates that put patients* at risk for substance abuse *or drug diversion* shall consider establishing physician-patient agreements that specify the rules for medication use and the consequences for misuse. In preparing ~~agreements~~ *an agreement*, a physician shall evaluate the case of each patient on its own merits, taking into account the nature of the risks to the patient and the potential benefits of treatment.

h. Substance abuse history or comorbid psychiatric disorder. A patient's prior history of substance abuse does not necessarily contraindicate appropriate pain management. However, treatment of patients with a history of substance abuse or with a comorbid psychiatric disorder may require extra care and communication with the patient, monitoring, documentation, and consultation with or referral to an expert in the management of such patients. The board strongly encourages a multidisciplinary approach for pain management of such patients that incorporates the expertise of other health care professionals.

~~h~~ *i*. Termination of care. The physician shall consider termination of patient care if there is evidence of *noncompliance with the rules for medication use, drug* diversion, or a repeated pattern of substance abuse.

ITEM 6. Adopt **new** subrules 13.2(6) and 13.2(7) as follows:

13.2(6) Pain management for terminal illness. The provisions of this subrule apply to patients who are at the stage in the progression of cancer or other terminal illness when the goal of pain management is comfort care. When the goal of treatment shifts to comfort care rather than cure of the underlying condition, the board recognizes that the dosage level of opiates or controlled substances to control pain may exceed dosages recommended for chronic pain and may come at the expense of patient function. The determination of such pain management should involve the patient, if possible, and others the patient has designated for assisting in end-of-life care.

13.2(7) Pain management resources. The board strongly recommends that physicians consult the following resources regarding the proper treatment of chronic pain.

a. American Academy of Hospice and Palliative Medicine or AAHPM is the American Medical Association-recognized specialty society of physicians who practice in hospice and palliative medicine in the United States. The mission of the AAHPM is to enhance the treatment of pain at the end of life.

b. American Academy of Pain Medicine or AAPM is the American Medical Association-recognized specialty society of physicians who practice pain medicine in the United States. The mission of the AAPM is to enhance pain medicine practice by promoting a climate conducive to the effective and efficient practice of pain medicine.

c. American Pain Society or APS is the national chapter of the International Association for the Study of Pain, an organization composed of physicians, nurses, psychologists, scientists and other professionals who have an interest in the study and treatment of pain. The mission of the APS is to serve people in pain by advancing research, education, treatment and professional practice.

d. DEA Policy Statement: Dispensing Controlled Substances for the Treatment of Pain. On August 28, 2006, the Drug Enforcement Agency (DEA) issued a policy statement establishing guidelines for practitioners who dispense controlled substances for the treatment of pain. This policy statement may be helpful to practitioners who treat pain with controlled substances.

e. Interagency Guideline on Opioid Dosing for Chronic Non-cancer Pain. In March 2007, the Washington State Agency Medical Directors' Group published an educational

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pilot to improve care and safety of patients with chronic, noncancer pain who are treated with opioids. The guidelines include opioid dosing recommendations.

f. Responsible Opioid Prescribing: A Physician's Guide. In 2007, in collaboration with author Scott Fishman, M.D., the Federation of State Medical Boards' (FSMB) Research and Education Foundation published a book on responsible opioid prescribing based on the FSMB Model Policy for the Use of Controlled Substances for the Treatment of Pain.

g. World Health Organization: Pain Relief Ladder. Cancer pain relief and palliative care. Technical report series 804. Geneva: World Health Organization.

ARC 6597B

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 section 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

This amendment is requested by the City of Burlington in Des Moines County. This amendment establishes a no-wake zone on the Mississippi River. Regulatory buoys will be placed in such a way as to define the no-wake area existing between the north city docks/boat ramp and the south city docks/boat ramp. The marker buoys will be placed no farther than 300 feet from the shoreline.

Any person may make written comments on this proposed amendment on or before March 4, 2008. Such comments and written materials should be directed to the Law Enforcement Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034. Persons who wish to convey their comments orally should contact Steve Dermand of the Law Enforcement Bureau at (515)281-4515.

A public hearing will be held on March 5, 2008, at 9 a.m. in the Fourth Floor West Conference Room of the Wallace 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 amendment.

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

This amendment is intended to implement Iowa Code section 456A.25.

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 571—Chapter 40 by adopting the following **new** rule:

571—40.56(462A) Zoning of Mississippi River, Des Moines County, city of Burlington. All vessels shall be operated at a no-wake speed within the area designated by marker buoys or other approved uniform waterway markers beginning north at the city boat ramp and public dock and extending downstream to the south city boat ramp and public dock. The zoned area shall extend no farther than 300 feet from the shore. The city of Burlington shall designate the no-wake zone with buoys approved by the natural resource commission.

ARC 6600B

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 61, "State Parks and Recreation Areas," Iowa Administrative Code.

These amendments formally recognize Honey Creek Resort State Park as a state park, establish rental fees for four new camping cabins at Prairie Rose State Park and a new day-use rental lodge at Lake Darling State Park, exempt Honey Creek Resort State Park from rules applicable to other state parks with some exceptions, and organize the rules to account for some of these changes. The new facilities at Prairie Rose and Lake Darling were completed as partnership projects with local friends groups and communities and are currently under construction.

Any interested person may make written suggestions or comments on the proposed amendments on or before March 4, 2008. Such written materials should be directed to the State Parks Bureau, Iowa Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Bureau at (515)242-6233 or TDD (515)242-5967 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on March 4, 2008, at 10 a.m. in the Fourth Floor West Conference Room of the Wallace 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 Department of Natural Resources and advise of specific needs.

These amendments are intended to implement Iowa Code sections 461A.3, 461A.3A, 461A.35, 461A.47, and 461A.57 and Iowa Code Supplement chapter 463C.

NATURAL RESOURCE COMMISSION[571](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 proposed.

ITEM 1. Amend rule **571—61.2(461A)** by adopting the following **new** definition in alphabetical order:

"State park managed by a management company" means the following area established by Iowa Code chapter 463C:

Area	County
Honey Creek Resort State Park	Appanoose

Use and management of this area is governed by rules established in this chapter, as well as by the indenture of trust entered into by and among the department, the treasurer of state, the Honey Creek Premiere Destination Park bond authority as established by Iowa Code chapter 463C, and Banker's Trust Corporation, dated October 1, 2006.

ITEM 2. Amend subrule **61.5(1)**, paragraph **"a,"** as follows:

a. Cabin rental. This fee does not include tax. Tax will be calculated at time of final payment.

	Per Night*	Per Week
Backbone State Park, Delaware County		
Renovated modern cabins	$ 50	$300
Two-bedroom modern cabins	85	510
Deluxe cabins	100	600
Black Hawk *State Park*, Sac County	100	600
Brushy Creek State Recreation Area, Webster County		
Nonequestrian camping cabins	35	210
Equestrian camping cabins	40	240
Dolliver Memorial State Park, Webster County	35	210
Green Valley State Park, Union County	35	210
Honey Creek State Park, Appanoose County	35	210
Lacey-Keosauqua State Park, Van Buren County	50	300
Lake Darling State Park, Washington County	35	210
Lake of Three Fires State Park, Taylor County	50	300
Lake Wapello State Park, Davis County (Cabin Nos. 1-12)	60	360
Lake Wapello State Park, Davis County (Cabin No. 13)	85	510
Lake Wapello State Park, Davis County (Cabin No. 14)	75	450
Palisades-Kepler State Park, Linn County	50	300
Pine Lake State Park, Hardin County		
Studio cabins (four-person occupancy limit)	65	390
One-bedroom cabins	75	450
Pleasant Creek State Recreation Area, Linn County	25	150
Prairie Rose State Park, Shelby County	*35*	*210*
Springbrook State Park, Guthrie County	35	210
Stone State Park, Woodbury County	35	210
Waubonsie State Park, Fremont County		
Two-bedroom modern cabins	85	510
One-bedroom modern cabin	60	360
Two-bedroom camping cabins	50	300
One-bedroom camping cabin	35	210
Camping cabin	25	150
Wilson Island State Recreation Area, Pottawattamie County	25	150
Extra cots, where available	1	

*Minimum two nights

ITEM 3. Amend subrule **61.5(1)**, paragraph **"c,"** as follows:

c. Lodge rental per reservation. This fee does not include tax. Tax will be calculated at time of payment.

	Per Weekday M-Th***	Per Weekend Day Fr-Su
A. A. Call State Park, Kossuth County	$ 40	$ 80
Backbone State Park Auditorium, Delaware County**	25	50
Backbone State Park, Delaware County	62.50	125

NATURAL RESOURCE COMMISSION[571](cont'd)

	Per Weekday M-Th***	Per Weekend Day Fr-Su
Beed's Lake State Park, Franklin County	40	80
Bellevue State Park-Nelson Unit, Jackson County	50	100
Clear Lake State Park, Cerro Gordo County	50	100
Dolliver Memorial State Park-Central Lodge, Webster County**	30	60
Dolliver Memorial State Park-South Lodge, Webster County	37.50	75
Ft. Defiance State Park, Emmet County	35	70
George Wyth State Park, Black Hawk County**	35	70
Gull Point State Park, Dickinson County	100	200
Lacey-Keosauqua State Park, Van Buren County	35	70
Lake Ahquabi State Park, Warren County	45	90
Lake Darling State Park, Washington County	*100*	*200*
Lake Keomah State Park, Mahaska County	45	90
Lake Macbride State Park, Johnson County		
Beach lodge	35	70
Lodge	35	70
Lake of Three Fires State Park, Taylor County	35	70
Lake Wapello State Park, Davis County	30	60
Lewis and Clark State Park, Monona County	35	70
Palisades-Kepler State Park, Linn County	87.50	175
Pine Lake State Park, Hardin County	40	80
Pleasant Creek Recreation Area, Linn County**	37.50	75
Stone State Park, Woodbury/Plymouth Counties	62.50	125
Viking Lake State Park, Montgomery County	30	60
Walnut Woods State Park, Polk County	100	200
Wapsipinicon State Park, Jones County		
Heated year-round lodge	35	70
Unheated seasonal lodge	20	40

**Does not contain kitchen facilities

***The weekend day fee applies to New Year's Day, Memorial Day, Fourth of July, Labor Day, Thanksgiving, and Christmas, even though the holiday may fall on a weekday.

ITEM 4. Amend 571—Chapter 61 by adopting the following **new** rule:

571—61.15(461A,463C) Honey Creek Resort State Park. This chapter shall not apply to Honey Creek Resort State Park, with the exception that subrules 61.7(1) through 61.7(9) and 61.7(11) through 61.7(16) and rule 61.12(461A) shall apply to the operation and management of Honey Creek Resort State Park. Where permission is required to be obtained from the department, an authorized representative of the department's management company may provide such permission in accordance with policies established by the department.

ITEM 5. Amend **571—Chapter 61**, implementation sentence, as follows:

These rules are intended to implement Iowa Code sections 422.43, 455A.4, 461A.3, 461A.3A, 461A.35, 461A.38, 461A.39, 461A.42, 461A.43, 461A.45 to 461A.51, 461A.57, and 723.4 and Iowa Code ~~chapter~~ *chapters 463C and* 724.

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:

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%
August 1, 2007 — August 31, 2007	7.00%
September 1, 2007 — September 30, 2007	7.00%
October 1, 2007 — October 31, 2007	6.75%
November 1, 2007 — November 30, 2007	6.50%
December 1, 2007 — December 31, 2007	6.50%
January 1, 2008 — January 31, 2008	6.25%
February 1, 2008 — February 29, 2008	6.00%

ARC 6587B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

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

The purpose of these rules is to implement the All Iowa Opportunity Scholarship Program as enacted by 2007 Iowa Acts, Senate File 588 [Iowa Code Supplement section 261.87].

These rules were initially proposed by the Commission on June 14, 2007, published under Notice of Intended Action in the July 4, 2007, Iowa Administrative Bulletin as **ARC 6017B**, and simultaneously Adopted and Filed Emergency as **ARC 6006B**.

A subsequent Adopted and Filed Emergency rule making was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6135B**. Based on comments received from college and university officials following publication of the subsequent emergency rules, changes were made that required a new Notice of Intended Action to revise Chapter 8. The Notice of Termination and the revision of these rules were proposed at the Commission's September 20, 2007, meeting, and the revised rules were published under Notice of Intended Action in the October 10, 2007, Iowa Administrative Bulletin as **ARC 6326B**.

As a result of comments submitted during the public comment period, several changes have been made to the rules. In rule 8.2(261), definitions, the term "financial need" has been changed to "expected family contribution." Paragraph 8.3(1)"c" has been revised to allow students seeking diplomas and certificates to be eligible to receive All Iowa Opportunity Scholarships. A new paragraph "a" has been added to subrule 8.4(2) to clarify that priority will be given to all students eligible for renewal awards, and the subsequent paragraphs have been relettered as "b" and "c." Finally, subrule 8.4(3) has been expanded to clarify that all full-time recipients will be eligible for maximum awards and that part-time awards are for prorated amounts.

These rules were adopted during the January 17, 2008, meeting of the Iowa College Student Aid Commission.

These rules will become effective on March 19, 2008, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code Supplement section 261.87.

The following amendment is adopted.

Rescind **283—Chapter 8** and adopt the following **new** chapter in lieu thereof:

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.

"Expected family contribution (EFC)" is the means by which the commission ranks the relative need of an applicant for financial assistance. Expected family contribution 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 expected family contribution. Relative need will be ranked based on the applicant's expected family contribution (EFC) provided by the U.S. Department of Education. 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 and any additional applications or documents required by the commission. 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 eligible for federal student aid under Title IV of the federal Higher Education Act leading to an undergraduate degree, diploma, or certificate 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.

a. All eligible renewal applicants will be funded prior to new applicants. In the event that all renewal applicants cannot be funded, applicants will be awarded based on EFC and application date.

b. Priority will be given to students who participated in federal TRIO programs or alternative programs in high school and to students who graduated from alternative high schools. Awards will be made to students in this category based on EFC levels within the parameters defined by the commission, with students in the lowest EFC levels awarded first and at increasing EFC levels until the maximum EFC level is reached.

c. If sufficient funding is not available to make awards to all remaining eligible applicants, 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. Students will be awarded by EFC level beginning with the lowest EFC levels until all funds have been expended.

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. The maximum award for a full-time recipient will not be affected by the ranking system used to prioritize grants. A part-time recipient will receive a prorated award, as defined by the commission, based on the number of hours for which the student is enrolled.

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 until all funding has been expended.

c. The commission will notify recipients and college and university officials of the awards, 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 will apply awards directly to student accounts to cover tuition and fees.

e. 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 and must not have exceeded the funding limit as described in 8.4(6).

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 Supplement section 261.87.

[Filed 1/18/08, effective 3/19/08]
[Published 2/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/13/08.

ARC 6588B

COLLEGE STUDENT AID COMMISSION[283]

Adopted and Filed

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

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 [Iowa Code Supplement section 261.6].

These rules were initially proposed by the Commission on June 14, 2007, published under Notice of Intended Action in the July 4, 2007, Iowa Administrative Bulletin as **ARC 6018B**, and simultaneously Adopted and Filed Emergency as **ARC 6007B**.

A subsequent Adopted and Filed Emergency rule making was published in the August 15, 2007, Iowa Administrative Bulletin as **ARC 6136B**. Based on comments received from college and university officials following publication of the subsequent emergency rules, changes were made that required a new Notice of Intended Action to revise Chapter 9. The Notice of Termination and the revision of these rules were proposed at the Commission's September 20, 2007, meeting, and the revised rules were published under Notice of Intended Action in the October 10, 2007, Iowa Administrative Bulletin as **ARC 6327B**. No comments were re-

ceived, and the adopted rules are identical to those published under Notice.

These rules were adopted during the January 17, 2008, meeting of the Iowa College Student Aid Commission.

These rules will become effective on March 19, 2008, at which time the Adopted and Filed Emergency rules are hereby rescinded.

These rules are intended to implement Iowa Code Supplement section 261.6.

The following amendment is adopted.

Rescind **283—Chapter 9** and adopt the following **new** chapter in lieu thereof:

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 sixteenth 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).

"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. The applicant's initial application date must be subsequent to the applicant's reaching the age of 17, and the start date of the education or training program must be subsequent to the applicant's reaching the age of 18 and prior to the applicant's reaching the age of 23. In addition to completing the required applications, a recipient 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; or

(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 will be considered for funding.

9.4(2) Priority for grants. 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 if funds become available 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.

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(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. The commission will notify all recipients and the colleges or universities they attend in writing of the amount of their awards. 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 recipients 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.

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. Awards shall not exceed the full cost of attendance as determined by the college or university minus other federal, state, or college or university financial aid provided to the student.

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.

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 college or university 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 Supplement section 261.1.

[Filed 1/18/08, effective 3/19/08]
[Published 2/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/13/08.

ARC 6602B

CREDIT UNION DIVISION[189]

Adopted and Filed

Pursuant to the authority of Iowa Code section 17A.3 and Iowa Code Supplement section 533.107, the Credit Union Division hereby adopts new Chapter 5, "Debt Cancellation Products," Iowa Administrative Code.

These rules implement the authority of credit unions organized in accordance with Iowa Code chapter 533 to engage in the activity of offering debt cancellation products in accordance with Iowa Code Supplement section 533.315(9)"b." The rules are promulgated under the authority of Iowa Code Supplement section 533.107.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 5, 2007, as **ARC 6430B**. There were comments received, but the Credit Union Review Board decided to consider amendments at a later date. This chapter is identical to that published under Notice.

These rules were adopted by the Board on January 22, 2008.

These rules shall become effective March 19, 2008.

These rules are intended to implement Iowa Code Supplement chapter 533.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 5] is being omitted. These rules are identical to those published under Notice as **ARC 6430B**, IAB 12/5/07.

[Filed 1/24/08, effective 3/19/08]
[Published 2/13/08]

[For replacement pages for IAC, see IAC Supplement 2/13/08.]

ARC 6599B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code section 455B.133, the Environmental Protection Commission hereby adopts

amendments to Chapter 20, "Scope of Title—Definitions—Forms—Rules of Practice," Chapter 22, "Controlling Pollution," and Chapter 23, "Emission Standards for Contaminants," Iowa Administrative Code.

The purposes of the amendments are to modify requirements for certain types of grain elevators and to modify requirements for feed mill equipment located at certain types of grain elevators by adopting new air quality rules and clarifying existing rules. The rule making defines each type of facility and specifies for each type of facility the permitting options, emissions calculation methodology, emissions reporting and record keeping, and best management practices for controlling air pollution. A new particulate matter emission standard for bin vents located at country grain elevators, country grain terminal elevators, and grain terminal elevators also is established through amendments to subrule 23.4(7).

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 29, 2007, as **ARC 6186B**. Public hearings were held on September 24, September 26, and October 2, 2007, in Urbandale, Cedar Rapids, and Spencer, respectively. No oral comments were received at the public hearings. Four sets of written comments were received before the public comment period closed on October 3, 2007.

The submitted comments and the Department's response to the comments are summarized in a responsiveness summary available from the Department.

The Department made changes to the adopted amendments from those published in the Notice in response to comments and also to make corrections and clarifications. These changes are explained in detail in the responsiveness summary and also are summarized below.

Owners and operators of air pollution sources, including owners and operators of grain elevators, are required to obtain permits and meet applicable air pollution standards. However, in 1978, the Sixty-Seventh Iowa General Assembly limited the Department's ability to regulate country grain elevators (1978 Iowa Acts, chapter 1004, section 17). Since that time, the Department has not enforced the requirement that the owner or operator of a country grain elevator obtain air construction permits. However, the passage of the 1990 amendments to the federal Clean Air Act (CAA) created a new operating permit program for major sources of regulated air pollutants. As a result, the U.S. Environmental Protection Agency (EPA) required that the restrictions limiting the regulation of country grain elevators be removed to allow Iowa to have a federally approved operating permit program. In 1995, the Iowa General Assembly subsequently removed these restrictions (1995 Iowa Acts, chapter 2, section 2), and EPA granted federal approval of Iowa's operating permit program in 1995. Removal of the restrictions necessitated that the Department review and permit air emissions at hundreds of country grain elevators and other similar facilities to bring these facilities into compliance with the air construction permitting requirements of rule 567—22.1(455B).

In an effort to minimize the regulatory burden to the owners or operators of country grain elevators while still ensuring that Iowa's air quality is protected, the Department began working with the Agribusiness Association of Iowa (AAI) to develop a streamlined mechanism for permitting. During this process, the Department discovered that more information about the grain elevator source sector in Iowa was needed to better characterize air emissions equipment and the typical operating limitations at grain elevators. This need, combined with the ongoing uncertainty about the air quality compliance status of each individual facility, resulted in a Departmental amnesty program for grain elevators.

The Department began the amnesty program in August 2003 by asking grain elevator owners and operators to complete a registration form. Submittal of the registration form granted a facility temporary amnesty from the requirement to obtain a construction permit and temporary amnesty from the emission limits for particulate matter specified in rule 567—23.4(455B). Through the amnesty program, the Department received detailed information regarding each facility's grain throughput and the grain storage capacities and types of air emissions equipment located at each facility. In total, 838 facilities registered for the amnesty program.

Facility information from the amnesty registrations, along with information received through an unofficial survey of the permitting requirements for grain elevators in surrounding states, assisted the Department and the workgroup in developing a permitting strategy.

The adopted amendments allow grain elevators in Iowa to be regulated in a manner similar to that of surrounding states. Regardless of the individual grain elevator's emissions, the Department is requiring that an owner or operator of a grain elevator apply best management practices (BMP) and comply with the fugitive dust standard. The Department is also requiring that an owner or operator of a grain elevator comply with the emissions controls specified in required construction permits. Application of BMP and the emissions controls specified in the required construction permits will serve to protect the ambient air and will minimize the impact of emissions from each facility. This strategy includes reducing the presence of fugitive dust, which has occasionally been a problem even at some of the smaller grain elevators.

Of the 838 facilities submitting registrations for the amnesty program, 793 registrations were for country grain elevators, while 45 of the registrations were for grain terminal elevators. Equipment information for other types of grain elevators, for associated processes such as feed mill equipment, and for grain storage elevators also was included with some of the registrations submitted.

The regulatory strategy encompassed in the new rule proposed in Item 5 minimizes the burden to the owners or operators of the most common types of grain elevators in the state, while allowing the Department to focus its permitting and compliance resources on the facilities with emissions that are likely to have the greatest potential to impact human health and the environment.

Item 1 amends the definition of "country grain elevator" in rule 567—20.2(455B) to refer to the definition of "country grain elevator" in new subrule 22.10(1).

Item 2 adopts definitions of "grain processing" and "grain storage elevator" in rule 567—20.2(455B). The definition of "grain storage elevator" is derived from the definition contained in the federal New Source Performance Standards (NSPS) for grain elevators contained in 40 Code of Federal Regulations (CFR) Part 60, Subpart DD. The Department includes additional language to better distinguish grain storage elevators from other types of grain elevators. The definition of "grain processing" was developed by Department staff in conjunction with workgroup members, and is based on definitions used in nearby states. The Department adopts this definition because the new rules for grain elevators do not apply to a grain processing facility.

Item 3 amends the definition of "potential to emit" in rule 567—20.2(455B) to refer to the method for calculating potential to emit at country grain elevators as specified in new subrule 22.10(2).

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Item 4 amends subrule 22.1(1) to adopt new paragraph "d," specifying that alternative permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment are set forth in rule 567—22.10(455B).

Item 5 adopts new rule 567—22.10(455B) that establishes air quality rules for grain elevators that are classified as country grain elevators, country grain terminal elevators, and grain terminal elevators. The new rule also includes the permitting requirements for feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

Grain processing plants and grain storage elevators are not eligible to use the provisions set forth in rule 567—22.10(455B). The Department has always required that an owner or operator of a grain processing facility obtain air construction permits for all equipment at the facility because grain processing facilities may emit air pollutants at levels that classify them as major stationary sources for the Prevention of Significant Deterioration (PSD) program and for the Title V operating permit program. Equipment at grain processing facilities also may be subject to federal New Source Performance Standards (NSPS) and National Emission Standards for Hazardous Air Pollutants (NESHAP). Grain storage elevators are part of the grain processing operations at grain mills and soybean oil extraction plants and may be subject to federal NSPS. Grain storage elevators are not eligible to use the provisions set forth in rule 567—22.10(455B).

Rule 567—22.10(455B) contains four subrules specifying air quality requirements. The definitions applicable to rule 567—22.10(455B) are set forth in subrule 22.10(1). The methods for determining the potential emissions of particulate matter (PM) and particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}) are set forth in subrule 22.10(2). Subrule 22.10(3) sets forth the provisions for grain elevator classification and the requirements for permits, emissions controls, record keeping and reporting. Subrule 22.10(4) contains the permitting requirements for feed mill equipment located at specific types of grain elevators.

The definition of "country grain elevator" is similar to the definition that is contained in existing rules 567—20.2(455B) and 567—22.100(455B). The Department is revising the definition to better distinguish country grain elevators from other types of grain elevators.

The definition of "country grain terminal elevator" was developed by Department staff to cover grain elevators with operations that are similar to both country grain elevators and grain terminal elevators, but that do not fall into either category.

The definition of "feed mill equipment" was developed by Department staff to apply to feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator. A stand-alone feed mill or feed mill equipment that is not located at a country grain elevator, country grain terminal elevator or grain terminal elevator is considered to be a type of grain processing and is not included under rule 567—22.10(455B).

The definition of "grain" is the definition contained in Iowa Code section 203.1(9), which states that "grain" means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer) and field peas.

The definition of "grain processing" refers to the definition specified in the amendments to 567—20.2(455B).

The definition of "grain storage elevator" refers to the definition specified in the amendments to 567—20.2(455B).

The definition of "grain terminal elevator" incorporates the definition in the grain elevator NSPS (40 CFR Part 60, Subpart DD). The Department is revising the definition to better distinguish grain terminal elevators from other types of grain elevators.

The definition of "permanent storage capacity" is the same as the definition contained in the federal grain elevator NSPS (40 CFR Part 60, Subpart DD).

Subrule 22.10(2) specifies the methods for determining the potential to emit (PTE) for PM_{10} at country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment.

The method specified by the Department and in state rule for calculating potential emissions at country grain elevators was first published in a 1995 EPA memorandum and takes into account the seasonal throughput of country grain elevator operations. The Department has accepted the use of the EPA-developed calculation to determine PTE since 1995. The calculation method specified in subrule 22.10(2) also allows country grain elevators to account for additional control of PM and PM_{10} emissions through BMP and other emissions control measures established in a registration or in a permit issued pursuant to subrule 22.10(3).

Subrule 22.10(2) also stipulates that the owners or operators of grain terminal elevators, country grain terminal elevators and feed mill equipment shall calculate their PTE as set forth in the definition of "potential to emit" in rule 567—20.2(455B).

Some grain terminal elevators are subject to federal NSPS and have PTEs that trigger both construction and operating permitting requirements. Based on these considerations, the Department is clarifying that an owner or operator of a grain terminal elevator must calculate the PTE for each piece of emissions equipment at the facility (grain terminal elevators may not use the special facilitywide PTE calculation allowed for country grain elevators). For purposes of determining applicability for the PSD and Title V programs, fugitive emissions at sources with grain terminal elevators also must be included in PTE calculations.

The Department is aware of a small number of facilities that operate similarly to both country grain elevators and grain terminal elevators, but that do not fall into either category. This type of facility is termed "country grain terminal elevator" in rule 567—22.10(455B). Because the operations and emissions at these country grain terminal elevators appear to be similar to grain terminal elevators, country grain terminal elevators also must calculate the PTE for each piece of emissions equipment at the facility.

The Department has always required an owner or operator of feed mill equipment to calculate the PTE for each piece of feed mill equipment at the facility.

Subrule 22.10(3) contains the requirements for construction permits, operating permits, emissions controls, record keeping and reporting at country grain elevators, country grain terminal elevators and grain terminal elevators.

The Department estimated the grain elevators' PTE for PM_{10} using the information submitted on the amnesty registration forms. The Department then used the emission thresholds typically used for permitting grain elevators in surrounding states and split the grain elevator source sector into four groups characterized by their PTE for PM_{10}. The PTE thresholds that trigger specific requirements are set at 15, 50, and 100 tons per year (tpy), as illustrated in the following table:

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Grain Elevator Group	PTE for PM_{10} (in tons per year)
Group 1	<15
Group 2	≥15 and ≤ 50
Group 3	> 50 and < 100
Group 4	≥ 100

The requirements for permitting, emission controls, and emissions reporting and record keeping increase for facilities with a greater PTE.

Country grain elevators, country grain terminal elevators and grain terminal elevators in the lowest PTE group, termed "Group 1" in the above table and in rule 567—22.10(455B), are exempt from the requirement to obtain a construction permit. However, the owner or operator of a Group 1 facility is required to submit a registration and PTE calculations, on forms supplied by the Department, certifying that the facility's PTE for PM_{10} is less than 15 tpy. A registration form may be obtained from the Department or downloaded from the Department's Internet Web site.

Additionally, the owner or operator of a Group 1 facility is required to use BMP for controlling air pollution and for limiting fugitive dust from crossing the property line. The owner or operator shall implement BMP according to the Department manual, "Best Management Practices (BMP) for Grain Elevators (December 2007)."

The owner or operator of a country grain elevator, country grain terminal elevator or grain terminal elevator qualifying for the Group 2 category may use a Group 2 permit application for grain elevators on forms provided by the Department in lieu of obtaining a regular construction permit. A Group 2 permit application may be obtained from the Department or downloaded from the Department's Internet Web site. The Group 2 permit for grain elevators is a combined permit application and permit that is specific for grain elevators that meet the eligibility criteria for Group 2 facilities. The Group 2 permit application for grain elevators should be easier for an owner or operator to complete than a regular construction permit application, and is expected to streamline the permit application process for eligible facilities.

The Group 2 permit for grain elevators will specify that the owner or operator of a Group 2 facility must oil the grain at the facility, or otherwise achieve facilitywide PM_{10} emission reductions that are equivalent to the reductions achieved through grain oiling. Additionally, the owner or operator of a Group 2 facility must: apply BMP; keep a record of the total annual grain handled in the past five years; and calculate the annual PTE for PM_{10}. A Group 2 facility owner or operator also must submit emissions inventories to the Department as specified in subrule 21.1(3).

An owner or operator of a country grain elevator, country grain terminal elevator or grain terminal elevator that is a Group 3 facility is required to apply for and obtain air construction permits. The construction permits for these facilities may contain requirements for the installation of emissions controls that may include grain oiling or equivalent measures to meet applicable air quality emission and ambient air quality standards. Because the PTE for PM may exceed the PTE for PM_{10}, Group 3 facilities may potentially have a PTE for PM that is greater than or equal to 250 tons per year. Facilities with a PTE for PM or PM_{10} that is greater than or equal to 250 tons per year are considered to be major stationary sources for the PSD program. Thus, the owner or operator of a Group 3 facility is required to calculate the PTE for both PM and PM_{10} to ensure that annual emissions for both pollutants are less than 250 tons. An owner or operator of a Group 3 facility also must submit emissions inventories to the Department as specified in subrule 21.1(3).

The owner or operator of a country grain elevator, country grain terminal elevator or grain terminal elevator that is a Group 4 facility must: apply for construction permits, as applicable; apply for an operating permit, as applicable; and submit to the Department annual emissions inventories that report all regulated air pollutants. The construction and operating permits for these facilities may contain requirements for installation of emissions controls that may include grain oiling or equivalent measures to meet applicable air quality standards.

The permitting, emissions controls, record-keeping and reporting requirements of each of the four groups apply even if a country grain elevator, country grain terminal elevator or grain terminal elevator did not register for the amnesty program. These requirements apply to both new and existing facilities. The owner or operator of an existing facility must submit the appropriate registration form or permit application by March 31, 2008. The owner or operator of a new facility must apply for and obtain the appropriate registration or permit prior to initiating construction of air emissions equipment.

The Department is aware that a limited number of facilities may exist that do not meet the definition of "country grain elevator," "country grain terminal" or "grain terminal elevator." The Department currently does not have enough information on the equipment and associated air emissions at these other types of grain elevators. Thus, owners or operators of these other types of grain elevators are not eligible to use the alternative provisions in rule 567—22.10(455B) for country grain elevators, country grain terminal elevators, and grain terminal elevators.

The Department made changes to the provisions for subrule 22.10(3) from those published under Notice. The Department also made changes to some of the forms and documents associated with the provisions in 22.10(3). The Department made changes in response to comments and also to provide consistency between and clarification of the rule making and the associated documents. The changes are described below.

In response to comments, the Department made changes to the Group 1 registration form. These changes consist of necessary corrections and clarifications and are explained in detail in the Department's responsiveness summary.

During the Department's review of the record-keeping requirements contained in the proposed Group 1 registration form, the Department identified that the language as proposed in the Notice for subparagraph 22.10(3)"a"(1) pertaining to provisions for modifying the Group 1 registration form needed to be changed to be consistent with the Group 1 registration form. Changes to throughput or operations needed to be added to the provisions that state that an owner or operator is allowed to add, remove and modify the emissions units at the facility without modifying the Group 1 registration, provided that the requirements in subparagraph 22.10(3)"a"(1), numbered paragraph "2," are met. The adopted rules for Group 1 facilities include these changes.

The Department made a number of changes to the Best Management Practices (BMP) document in response to public comments. These changes consist of necessary corrections and clarifications and are explained in detail in the Department's responsiveness summary. In the adopted rules, the Department also clarified that the owner or operator of an existing Group 1 facility shall fully implement applicable BMP no later than March 31, 2009. The owner or operator of

a new Group 1 facility shall fully implement applicable BMP upon startup of equipment at the facility.

In response to comments, the Department made changes to the Group 2 permit application. These changes consist of necessary corrections and clarifications and are explained in detail in the Department's responsiveness summary. In the adopted rules and the Group 2 permit application, the Department also clarified that the owner or operator of an existing Group 2 facility shall fully implement applicable BMP no later than March 31, 2009. The owner or operator of a new Group 2 facility shall fully implement applicable BMP upon startup of equipment at the facility.

During the Department's review of the record-keeping requirements contained in the proposed Group 2 permit, the Department identified that the language as proposed in the Notice for subparagraph 22.10(3)"b"(1) pertaining to provisions for modifying the Group 2 permit needed to be changed to be consistent with the Group 2 permit application. The needed changes were similar to the changes explained above for Group 1 facilities. Specifically, changes to throughput or operations needed to be added to the provisions that state that an owner or operator is allowed to add, remove and modify the emissions units at the facility without modifying the Group 2 permit, provided that the requirements in subparagraph 22.10(3)"b"(1), numbered paragraph "1," are met. The adopted rules for Group 2 facilities include these changes.

The Department received comments from the EPA requesting clarification that the Department has the authority to perform an air quality analysis on a Group 2 facility, as necessary, to ensure that the National Ambient Air Quality Standards (NAAQS) are sufficiently protected. The Department agrees that the Department may, as necessary, evaluate the emissions from a Group 2 facility to ensure that the emissions, in conjunction with all other emissions, will not result in exceedances of the NAAQS. The proposed rules for Group 2 facilities published under Notice do not prohibit the Department from conducting an air quality analysis. Therefore, no change to the adopted rules was needed to address this comment.

The Agribusiness Association of Iowa (AAI) also raised some implementation questions regarding Group 1 and Group 2 facilities that did not require any changes to the adopted provisions in subrule 22.10(3). Specifically, AAI asked when Group 1 and Group 2 facilities could begin submitting the forms required by the new rules and when the Department would act on the submitted forms. These implementation issues are addressed below.

An owner or operator of a new or existing Group 1 facility may submit the registration form and accompanying PTE calculations to the Department on or after December 4, 2007. The registration form and PTE calculations must be received by the Department on or before March 31, 2008. The registration form and PTE calculations for a new Group 1 facility must be received by the Department before the owner or operator initiates construction or reconstruction of the facility.

The Department will begin processing the Group 1 registrations for completeness on the effective date of the adopted rules, March 19, 2008. Therefore, complete Group 1 registrations and accompanying PTE calculations submitted to the Department prior to March 19, 2008, shall not become effective until March 19, 2008.

An owner or operator of a new or existing Group 2 facility may submit the Group 2 permit application and accompanying PTE calculations to the Department on or after December 4, 2007. The Group 2 permit application and the PTE calculations must be received by the Department on or before March 31, 2008. A Group 2 permit for a new Group 2 facility must be issued by the Department before the owner or operator initiates construction or reconstruction of the facility. The Department will begin processing complete Group 2 permit applications and accompanying PTE calculations on the effective date of the adopted rules, March 19, 2008.

Subrule 22.10(4) sets forth the permitting provisions for feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator. The Department has always required that feed mills obtain construction permits. However, through the amnesty program and workgroup proceedings, the Department learned that feed mill equipment may be located at grain elevators and that the owners and operators of this equipment may not have obtained the required construction permits. The provisions set forth in subrule 22.10(4) provide an opportunity for the owners and operators of feed mill equipment that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator to apply for the required construction permits and, if applicable, to comply with the requirements under the PSD and operating permit programs. The Department did not make any changes to the adopted provisions for subrule 22.10(4) from those published under Notice.

The Department also received comments from AAI regarding the need for some grain elevators to obtain construction permits. Specifically, AAI questioned whether grain elevators constructed prior to 1970 needed to obtain construction permits. AAI also questioned the need for construction permits for grain elevators that were constructed during the time period that the Iowa General Assembly restricted the Department's ability to regulate grain elevators (1978-1995).

As explained in the Department's responsiveness summary, existing sources constructed prior to September 23, 1970, are not required to have air construction permits (subrule 22.1(1)). Any modifications made to these existing sources after this date require air construction permits. Item 4, as proposed in the Notice and in the adopted rules, gives grain elevator owners or operators the option to comply with the requirements specified in rule 567—22.10(455B) instead of obtaining construction permits as required in subrule 22.1(1). Neither subrule 22.1(1) nor new rule 567— 22.10(455B) require that owners or operators of existing sources constructed prior to September 23, 1970, obtain air construction permits, unless the owner or operator elects to do so.

Additionally, when the Iowa General Assembly lifted the regulatory restrictions on grain elevators in 1995, the General Assembly did not prohibit the Department from requiring grain elevators constructed or modified during the restriction period to obtain the required air construction permits. The streamlined construction permitting mechanism set forth in the adopted rules is intended to create a level playing field for all grain elevators in the state.

Item 6 amends the definition of "country grain elevator" in rule 567—22.100(455B) to refer to the definition of "country grain elevator" in new rule 567—22.10(455B).

Item 7 amends the definition of "potential to emit" in rule 567—22.100(455B) to refer to the method for calculating potential to emit for country grain elevators as specified in new subrule 22.10(2).

Item 8 amends subrule 23.4(7) to specify a new particulate matter emission limit for bin vents located at country grain elevators, country grain terminal elevators, and grain terminal elevators.

The Department's August 2003 amnesty program included temporary amnesty from the emission limit for particulate matter specified in rule 567—23.4(455B). Bin vent information obtained from the facilities that registered for the amnesty program indicated that the majority of the grain elevator bin vents affected by this rule making have been operated uncontrolled since the bins were constructed. Available particulate matter emissions testing data reviewed by the Department for grain elevator bin vents affected by this rule making indicate that a representative level of uncontrolled particulate matter emissions from a grain elevator bin vent is 1.0 grain per dry standard cubic foot (gr/dscf) of exhaust gas. Because of the ambiguous status of the regulatory requirements for existing bin vents during the period that the state statute limited the Department's authority to regulate grain elevators, the Department is allowing particulate matter emissions from existing grain elevator bin vents affected by this rule making to continue to meet a 1.0 gr/dscf of exhaust gas emission limit.

The 0.1 gr/dscf of exhaust gas emission limit was in place before the statute that limited the Department's authority to regulate grain elevators existed. Construction of new bins at other facilities with throughputs similar to those at country grain terminal elevators and grain terminal elevators has shown that emissions of particulate matter from the new bins can be controlled to meet the existing 0.1 gr/dscf of exhaust gas emission limit. The amendment to subrule 23.4(7) reaffirms that particulate matter emissions from new bin vents at a country grain terminal elevator or grain terminal elevator can be reasonably controlled to the 0.1 gr/dscf of exhaust gas emission limit but that retrofitting of controls on existing bin vents is impractical due to safety and cost concerns.

During the public comment period on the Notice, EPA commented that the change in the emission limit for bin vents (from 0.1 to 1.0 gr/dscf) constitutes a significant relaxation. EPA requested that the Department provide a detailed air quality analysis for the change, including a discussion of the anticipated emissions increases and air quality impacts projected as a result of the change.

Bin vent testing data obtained by the Department indicate that existing uncontrolled bin vents are already emitting at 1.0 gr/dscf. Thus, the change from 0.1 to 1.0 gr/dscf will not result in any actual emissions increases from these bin vents.

The threshold for the state implementation plan (SIP) approved rules for the "small unit" exemption (paragraph 22.1(2)"w") is 5 tons per year (tpy) of PM emissions. An analysis by the Department of the PM emissions from a bin vent emitting at 1.0 gr/dscf of exhaust gas showed that the PM emissions would be less than 5 tpy at a facility with 35 million bushel per year throughput rate. This throughput rate is on the upper end of the throughput range for the majority of the grain elevators that will be affected by the new rules.

The conservative air quality screening analysis completed to support the technical validity of the small unit exemption indicated that a minimum stack height of 20 feet above grade was necessary to be protective of the PM_{10} NAAQS when PM_{10} emissions (assuming that all PM was PM_{10}) were set at 5 tpy. The release height for the majority of the bin vents currently in operation is well over 20 feet. Based on these considerations, and the fact that existing uncontrolled bin vents are already emitting at 1.0 gr/dscf of exhaust gas, the Department does not expect that this relaxation will result in a perceptible or measurable change in air quality.

The Department also received several comments from AAI recommending that the 1.0 gr/dscf be extended to all grain bin vents. A detailed summary of AAI's comments and the Department's responses is contained in the Department's responsiveness summary.

The issue in question is whether the 0.1 gr/dscf particulate standard is a reasonable emission limit for new grain bin vents. The Department has found that construction of new bins at other facilities with throughputs similar to those at country grain terminal elevators or grain terminal elevators has shown that emissions of particulate matter from the new bins can be controlled to meet the existing 0.1 gr/dscf of exhaust gas emission limit. For example, all grain bins constructed at new ethanol plants over the last few years have included particulate controls to meet this standard. Therefore, the adopted rules contain the changes to the particulate matter emission limit as proposed in the published Notice.

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

These amendments will become effective on March 19, 2008.

The following amendments are adopted.

ITEM 1. Amend rule **567—20.2(455B)**, definition of "country grain elevator," as follows:

"Country grain elevator" ~~means any grain elevator that receives more than 50 percent of its grain, as defined by 40 CFR 60.301(a) as amended through August 3, 1978, produced by farms in the vicinity. This definition does not include grain terminal elevators or grain storage elevators, as defined in paragraph 23.1(2)"ooo."~~ *shall have the same definition as "country grain elevator" set forth in 567—subrule 22.10(1)*.

ITEM 2. Amend rule **567—20.2(455B)** by adopting the following **new** definitions in alphabetical order:

"Grain processing" means the equipment, or the combination of different types of equipment, used in the processing of grain to produce a product primarily for wholesale or retail sale for human or animal consumption, including the processing of grain for production of biofuels, except for "feed mill equipment," as "feed mill equipment" is defined in rule 567—22.10(455B).

"Grain storage elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and that is located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant which has a permanent grain storage capacity (grain storage capacity which is inside a building, bin, or silo) of more than 35,200 m^3 (ca. 1 million U.S. bushels).

ITEM 3. Amend rule **567—20.2(455B)**, definition of "potential to emit," introductory and first unnumbered paragraphs, as follows:

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, ~~"maximum capacity" means the greatest amount of grain received by the elevator during one year of the previous five-year period, multiplied by an adjustment factor of 1.2. If the source is subject to new source construc-~~

~~tion permit review, then potential to emit is defined as stated above or as established in a federally enforceable permit~~ *the provisions set forth in 567—subrule 22.10(2) shall apply.*

ITEM 4. Amend subrule **22.1(1)** by adopting **new** paragraph **"d"** as follows:

d. Permit requirements for country grain elevators, country grain terminal elevators, grain terminal elevators, and feed mill equipment. The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment, as "country grain elevator," "country grain terminal elevator," "grain terminal elevator," and "feed mill equipment" are defined in subrule 22.10(1), may elect to comply with the requirements specified in rule 567—22.10(455B) for equipment at these facilities.

ITEM 5. Amend 567—Chapter 22 by adopting **new** rule 567—22.10(455B) as follows:

567—22.10(455B) Permitting requirements for country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment. The requirements of this rule apply only to country grain elevators, country grain terminal elevators, grain terminal elevators and feed mill equipment, as these terms are defined in subrule 22.10(1). The requirements of this rule do not apply to equipment located at grain processing plants or grain storage elevators, as "grain processing" and "grain storage elevator" are defined in rule 567—20.2(455B). Compliance with the requirements of this rule does not alleviate any affected person's duty to comply with any applicable state or federal regulations. In particular, the emission standards set forth in 567—Chapter 23, including the regulations for grain elevators contained in 40 CFR Part 60, Subpart DD (as adopted by reference in 567—paragraph 23.1(2)"ooo"), may apply.

22.10(1) Definitions. For purposes of rule 567—22.10(455B), the following terms shall have the meanings indicated in this subrule.

"Country grain elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives more than 50 percent of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Country grain terminal elevator" means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Has a permanent storage capacity of less than or equal to 2.5 million U.S. bushels, as "permanent storage capacity" is defined in this subrule;

3. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Feed mill equipment," for purposes of rule 567—22.10(455B), means grain processing equipment that is used to make animal feed including, but not limited to, grinders, crackers, hammermills, and pellet coolers, and that is located at a country grain elevator, country grain terminal elevator or grain terminal elevator.

"Grain," as set forth in Iowa Code section 203.1(9), means any grain for which the United States Department of Agriculture has established standards including, but not limited to, corn, wheat, oats, soybeans, rye, barley, grain sorghum, flaxseeds, sunflower seed, spelt (emmer), and field peas.

"Grain processing" shall have the same definition as "grain processing" set forth in rule 567—20.2(455B).

"Grain storage elevator" shall have the same definition as "grain storage elevator" set forth in rule 567—20.2(455B).

"Grain terminal elevator," for purposes of rule 567—22.10(455B), means any plant or installation at which grain is unloaded, handled, cleaned, dried, stored, or loaded and which meets the following criteria:

1. Receives 50 percent or less of its grain, as "grain" is defined in this subrule, from farmers in the immediate vicinity during harvest season;

2. Has a permanent storage capacity of more than 88,100 m^3 (2.5 million U.S. bushels), as "permanent storage capacity" is defined in this subrule;

3. Is not located at an animal food manufacturer, pet food manufacturer, cereal manufacturer, brewery, or livestock feedlot;

4. Is not located at any wheat flour mill, wet corn mill, dry corn mill (human consumption), rice mill, or soybean oil extraction plant.

"Permanent storage capacity" means grain storage capacity which is inside a building, bin, or silo.

22.10(2) Methods for determining potential to emit (PTE). The owner or operator of a country grain elevator, country grain terminal elevator, grain terminal elevator or feed mill equipment shall use the following methods for calculating the potential to emit (PTE) for particulate matter (PM) and for particulate matter with an aerodynamic diameter less than or equal to 10 microns (PM_{10}).

a. Country grain elevators. The owner or operator of a country grain elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in rule 567—20.2(455B), except that "maximum capacity" means the greatest amount of grain received at the country grain elevator during one calendar, 12-month period of the previous five calendar, 12-month periods, multiplied by an adjustment factor of 1.2. The owner or operator may make additional adjustments to the calculations for air pollution control of PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable air pollution control measures no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs. Credit for the application of some best management practices, as specified in subrule 22.10(3) or in a permit issued by the department, may also be used to make additional adjustments in the PTE for PM and PM_{10} if the owner or operator submits the calculations to the department using the PTE calculation tool provided by the department, and only if the owner or operator fully implements the applicable best management practices no later than March 31, 2009, or upon startup of the equipment, whichever event first occurs.

b. Country grain terminal elevators. The owner or operator of a country grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in rule 567—20.2(455B).

c. Grain terminal elevators. For purposes of the permitting and other requirements specified in subrule 22.10(3), the owner or operator of a grain terminal elevator shall calculate the PTE for PM and PM_{10} as specified in the definition of "potential to emit" in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the

prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1) and in rule 567—22.100(455B), in the PTE calculation.

d. Feed mill equipment. The owner or operator of feed mill equipment, as "feed mill equipment" is defined in subrule 22.10(1), shall calculate the PTE for PM and PM_{10} for the feed mill equipment as specified in the definition of "potential to emit" in rule 567—20.2(455B). For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, or for determining whether the stationary source is subject to the operating permit requirements set forth in rules 567—22.100(455B) through 567—22.300(455B), the owner or operator of feed mill equipment shall sum the PTE of the feed mill equipment with the PTE of the country grain elevator, country grain terminal elevator or grain terminal elevator.

22.10(3) Classification and requirements for permits, emissions controls, record keeping and reporting for Group 1, Group 2, Group 3 and Group 4 grain elevators. The requirements for construction permits, operating permits, emissions controls, record keeping and reporting for a stationary source that is a country grain elevator, country grain terminal elevator or grain terminal elevator are set forth in this subrule.

a. Group 1 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 1 facility if the PTE at the stationary source is less than 15 tons of PM_{10} per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 1 facility is one that commenced construction or reconstruction before February 6, 2008. A "new" Group 1 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 1 registration. The owner or operator of a Group 1 facility shall submit to the department a Group 1 registration, including PTE calculations, on forms provided by the department, certifying that the facility's PTE is less than 15 tons of PM_{10} per year. The owner or operator of an existing facility shall provide the Group 1 registration to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the Group 1 registration to the department prior to initiating construction or reconstruction of a facility. The registration becomes effective upon the department's receipt of the signed registration form and the PTE calculations.

1. If the owner or operator registers with the department as specified in subparagraph 22.10(3)"a"(1), the owner or operator is exempt from the requirement to obtain a construction permit as specified under subrule 22.1(1).

2. Upon department receipt of a Group 1 registration and PTE calculations, the owner or operator is allowed to add, remove and modify the emissions units or change throughput or operations at the facility without modifying the Group 1 registration, provided that the owner or operator calculates the PTE for PM_{10} on forms provided by the department prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 1 registration.

3. If equipment at a Group 1 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a registration made pursuant to subparagraph 22.10(3)"a"(1).

(2) Best management practices (BMP). The owner or operator of a Group 1 facility shall implement best management practices (BMP) for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. The owner or operator shall implement BMP according to the department manual, Best Management Practices (BMP) for Grain Elevators (December 2007), as adopted by the commission on January 15, 2008, and adopted by reference herein (available from the department, upon request) and on the department's Internet Web site. No later than March 31, 2009, the owner or operator of an existing Group 1 facility shall fully implement applicable BMP. Upon startup of equipment at the facility, the owner or operator of a new Group 1 facility shall fully implement applicable BMP.

(3) Record keeping. The owner or operator of a Group 1 facility shall retain a record of the previous five calendar years of total annual grain handled and shall calculate the facility's potential PM_{10} emissions annually by January 31 for the previous calendar year. These records shall be kept on site for a period of five years and shall be made available to the department upon request.

(4) Emissions increases. The owner or operator of a Group 1 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that PM_{10} emissions at a Group 1 facility will increase to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(5) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 1 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to 15 tons per year or more, the owner or operator shall comply with the requirements set forth for Group 2, Group 3 or Group 4 facilities, as applicable, prior to making the change.

b. Group 2 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 2 facility if the PTE at the stationary source is greater than or equal to 15 tons of PM_{10} per year and is less than or equal to 50 tons of PM_{10} per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 2 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 2 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Group 2 permit for grain elevators. The owner or operator of a Group 2 facility may, in lieu of obtaining air construction permits for each piece of emissions equipment at the facility, submit to the department a completed Group 2

permit application for grain elevators, including PTE calculations, on forms provided by the department. Alternatively, the owner or operator may obtain an air construction permit as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the appropriate completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department on or before March 31, 2008. The owner or operator of a new facility shall provide the appropriate, completed Group 2 permit application for grain elevators or the appropriate construction permit applications to the department prior to initiating construction or reconstruction of a facility.

1. Upon department issuance of a Group 2 permit to a facility, the owner or operator is allowed to add, remove and modify the emissions units at the facility, or change throughput or operations, without modifying the Group 2 permit, provided that the owner or operator calculates the PTE for PM_{10} prior to making any additions to, removals of or modifications to equipment, and only if the facility continues to meet the emissions limits and operating limits (including restrictions on material throughput and hours of operation, if applicable, as specified in the PTE for PM_{10} calculations) specified in the Group 2 permit.

2. If a Group 2 facility currently has an air construction permit issued by the department, that permit shall remain in full force and effect, and the permit shall not be invalidated by the subsequent submittal of a Group 2 permit application for grain elevators made pursuant to this rule. However, the owner or operator of a Group 2 facility may request that the department incorporate any equipment with a previously issued construction permit into the Group 2 permit for grain elevators. The department will grant such requests on a case-by-case basis. If the department grants the request to incorporate previously permitted equipment into the Group 2 permit for grain elevators, the owner or operator of the Group 2 facility is responsible for requesting that the department rescind any previously issued construction permits.

(2) Best management practices (BMP). The owner or operator shall implement BMP, as specified in the Group 2 permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 2 facilities after a facility is issued a Group 2 permit, the owner or operator of the Group 2 facility may request that the department modify the facility's Group 2 permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis. No later than March 31, 2009, the owner or operator of an existing Group 2 facility shall fully implement BMP, as specified in the Group 2 permit. Upon startup of equipment at the facility, the owner or operator of a new Group 2 facility shall fully implement BMP, as specified in the Group 2 permit.

(3) Record keeping. The owner or operator of a Group 2 facility shall retain all records as specified in the Group 2 permit.

(4) Emissions inventory. The owner or operator of a Group 2 facility shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(5) Emissions increases. The owner or operator of a Group 2 facility shall calculate any emissions increases prior to making any additions to, removals of or modifications to equipment. If the owner or operator determines that potential PM_{10} emissions at a Group 2 facility will increase to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making any additions to, removals of or modifications to equipment.

(6) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 2 facility plans to change the facility's operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will increase the facility's PTE for PM_{10} such that the facility PTE increases to more than 50 tons per year, the owner or operator shall comply with the requirements set forth for Group 3 or Group 4 facilities, as applicable, prior to making the change.

c. Group 3 facilities. A country grain elevator, country grain terminal elevator or grain terminal elevator may qualify as a Group 3 facility if the PTE for PM_{10} at the stationary source is greater than 50 tons per year, but is less than 100 tons of PM_{10} per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 3 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 3 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 3 facility shall obtain the required construction permits as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified in subrule 22.1(3), to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified in subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 3 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the source and for limiting fugitive dust at the source from crossing the property line. If the department revises the BMP requirements for Group 3 facilities after a facility is issued a permit, the owner or operator of the Group 3 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) Emissions inventory. The owner or operator shall submit an emissions inventory for the facility for all regulated air pollutants as specified under 567—subrule 21.1(3).

(4) Changes to facility classification or permanent grain storage capacity. If the owner or operator of a Group 3 facility plans to change its operations or increase the facility's permanent grain storage capacity to more than 2.5 million U.S. bushels, the owner or operator, prior to making any changes, shall reevaluate the facility's classification and the allowed method for calculating PTE to determine if any increases to the PTE for PM_{10} will occur. If the proposed change will alter the facility's classification or will increase the facility's PTE for PM_{10} such that the facility PTE increases to greater than or equal to 100 tons per year, the owner or operator shall comply with the requirements set forth for Group 4 facilities, as applicable, prior to making the change.

(5) PSD applicability. If the PTE for PM or PM_{10} at the Group 3 facility is greater than or equal to 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 3 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(6) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

d. Group 4 facilities. A facility qualifies as a Group 4 facility if the facility is a stationary source with a PTE equal to or greater than 100 tons of PM_{10} per year, as PTE is specified in subrule 22.10(2). For purposes of this paragraph, an "existing" Group 4 facility is one that commenced construction, modification or reconstruction before February 6, 2008. A "new" Group 4 facility is one that commenced construction or reconstruction on or after February 6, 2008.

(1) Air construction permit. The owner or operator of a Group 4 facility shall obtain the required construction permits, as specified under subrule 22.1(1). The owner or operator of an existing facility shall provide the construction permit applications, as specified by subrule 22.1(3) to the department on or before March 31, 2008. The owner or operator of a new facility shall obtain the required permits, as specified by subrule 22.1(1), from the department prior to initiating construction or reconstruction of a facility.

(2) Permit conditions. Construction permit conditions for a Group 4 facility shall include, but are not limited to, the following:

1. The owner or operator shall implement BMP, as specified in the permit, for controlling air pollution at the facility and for limiting fugitive dust at the facility from crossing the property line. If the department revises the BMP requirements for Group 4 facilities after a facility is issued a permit, the owner or operator of the Group 4 facility may request that the department modify the facility's permit to incorporate the revised BMP requirements. The department will issue permit modifications to incorporate BMP revisions on a case-by-case basis.

2. The owner or operator shall retain all records as specified in the permit.

(3) PSD applicability. If the PTE for PM or PM_{10} at the facility is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements specified in 567—Chapter 33, as applicable. The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions, as "fugitive emissions" is defined in 567—subrule 33.3(1), in the PTE calculation for determining PSD applicability.

(4) Record keeping. The owner or operator shall keep the records of annual grain handled at the facility and annual PTE for PM and PM_{10} emissions on site for a period of five years, and the records shall be made available to the department upon request.

(5) Operating permits. The owner or operator of a Group 4 facility shall apply for an operating permit for the facility if the facility's annual PTE for PM_{10} is equal to or greater than 100 tons per year as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator of a Group 4 facility that is a grain terminal elevator shall include fugitive emissions in the calculations to determine if the PTE for PM_{10} is greater than or equal to 100 tons per year. The owner or operator also shall submit annual emissions inventories and fees, as specified in rule 567—22.106(455B).

22.10(4) Feed mill equipment. This subrule sets forth the requirements for construction permits, operating permits, and emissions inventories for an owner or operator of feed mill equipment as "feed mill equipment" is defined in subrule 22.10(1). For purposes of this subrule, the owner or operator of "existing" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment before February 6, 2008. The owner or operator of "new" feed mill equipment shall have commenced construction or reconstruction of the feed mill equipment on or after February 6, 2008.

a. Air construction permit. The owner or operator of feed mill equipment shall obtain an air construction permit as specified under subrule 22.1(1) for each piece of feed mill equipment that emits a regulated air pollutant. The owner or operator of "existing" feed mill equipment shall provide the appropriate permit applications to the department on or before March 31, 2008. The owner or operator of "new" feed mill equipment shall provide the appropriate permit applications to the department prior to initiating construction or reconstruction of feed mill equipment.

b. Emissions inventory. The owner or operator shall submit an emissions inventory for the feed mill equipment for all regulated air pollutants as specified under 567—subrule 21.1(3).

c. Operating permits. The owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator, as PTE is specified in subrule 22.10(2), to determine if operating permit requirements specified in rules 567—22.100(455B) through 567—22.300(455B) apply to the stationary source. If the operating permit requirements apply, then the owner or operator shall apply for an operating permit as specified in rules 567—22.100(455B) through 567—22.300(455B). The owner or operator also shall begin submitting annual emissions inventories and fees, as specified under rule 567—22.106(455B).

d. PSD applicability. For purposes of determining whether the stationary source is subject to the prevention of significant deterioration (PSD) requirements set forth in 567—Chapter 33, the owner or operator shall sum the PTE of the feed mill equipment with the PTE of the equipment at the country grain elevator, country grain terminal elevator or grain terminal elevator. If the PTE for PM or PM_{10} for the stationary source is equal to or greater than 250 tons per year, the owner or operator shall comply with requirements for PSD specified in 567—Chapter 33, as applicable.

ITEM 6. Amend rule **567—22.100(455B)**, definition of "country grain elevator," as follows:

"Country grain elevator" ~~means any grain elevator that receives more than 50 percent of its grain, as defined by 40 CFR 60.301(a) as amended through August 3, 1978, produced by farms in the vicinity. This definition does not include grain terminal elevators or pertain to grain storage elevators, as defined in paragraph 23.1(2)"ooo."~~ *shall have the same definition as "country grain elevator" set forth in subrule 22.10(1).*

ITEM 7. Amend rule **567—22.100(455B)**, definition of "potential to emit," introductory and first unnumbered paragraphs, as follows:

"Potential to emit" means the maximum capacity of a stationary source to emit any air pollutant under its physical and operational design. Any physical or operational limitation

on the capacity of a source to emit an air pollutant, including air pollution control equipment and restrictions on hours of operation or on the type or amount of material combusted, stored, or processed, shall be treated as part of its design if the limitation is enforceable by the administrator. This term does not alter or affect the use of this term for any other purposes under the Act, or the term "capacity factor" as used in Title IV of the Act or the regulations relating to acid rain.

For the purpose of determining potential to emit for country grain elevators, ~~"maximum capacity" means the greatest amount of grain received by the elevator during one year of the previous five-year period, multiplied by an adjustment factor of 1.2~~ *the provisions set forth in subrule 22.10(2) shall apply.*

ITEM 8. Amend subrule 23.4(7) as follows:

23.4(7) Grain handling and processing plants. ~~No person shall cause, allow or permit the operation~~ *The owner or operator* of equipment at a permanent installation~~,~~ for the handling or processing of grain, grain products and grain byproducts ~~such that~~ *shall not cause, allow or permit* the particulate matter discharged to the atmosphere to exceed 0.1 grain per *dry* standard cubic foot of exhaust gas~~.~~*, except as follows:*

a. The particulate matter discharged to the atmosphere from a grain bin vent at a country grain elevator, as "country grain elevator" is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

b. The particulate matter discharged to the atmosphere from a grain bin vent that was constructed, modified or reconstructed before March 31, 2008, at a country grain terminal elevator, as "country grain terminal elevator" is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as "grain terminal elevator" is defined in 567—subrule 22.10(1), shall not exceed 1.0 grain per dry standard cubic foot of exhaust gas.

c. The particulate matter discharged to the atmosphere from a grain bin vent that is constructed or reconstructed on or after March 31, 2008, at a country grain terminal elevator, as "country grain terminal elevator" is defined in 567—subrule 22.10(1), or at a grain terminal elevator, as "grain terminal elevator" is defined in 567—subrule 22.10(1), shall not exceed 0.1 grain per dry standard cubic foot of exhaust gas.

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ARC 6595B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 61, "Water Quality Standards," Iowa Administrative Code.

Pursuant to Iowa Code section 455B.176A(6), the Commission is required to adopt rules that establish procedures and criteria to be used in the development of a use attainability analysis. The Commission has previously adopted the "Cold Water Use Designation Assessment Protocol" by reference at subrule 61.3(6) and the "Warm Water Stream Use Assessment and Attainability Analysis Protocol" by reference at subrule 61.3(7). Adopted subrule 61.3(8) fulfills the Commission's requirements pursuant to Iowa Code section 455B.176A(6).

Notice of Intended Action was published in the September 26, 2007, Iowa Administrative Bulletin as **ARC 6251B**. A public hearing was held on October 23, 2007. Three oral comments were received. The oral comments were given by the Sierra Club - Iowa Chapter, the Hawkeye Fly Fishing Association, and the Iowa Farm Bureau Federation. Written comments were also received from four interested parties. Written comments were received from the Sierra Club - Iowa Chapter, the Hawkeye Fly Fishing Association, the Iowa Environmental Council, and U.S. EPA Region VII.

The following changes were made to the Recreational Use Assessment and Attainability Analysis Protocol in response to comments received:

1. In regard to the bacteria table on page 8 of the Protocol, the sentence indicating that the bacterial limits would not apply when the use was not reasonably expected to occur was deleted.
2. Also on page 8 of the Protocol, the table was amended to more clearly indicate that bacteria limits apply year-round for waters designated as Class A2, B(CW1), or HQ.
3. Changes were made to page 9 of the Protocol to clarify that the A3, children's recreational use designation, is equivalent to an A1, primary contact recreational use designation, and does not constitute a downgrade from the rebuttable presumption of highest attainable use.
4. On page 10 of the protocol, the language related to the recreational use season was modified to clarify the Department's position on the collection of data outside of the recreational use season. While assessments will normally be conducted during the recreational use season, data may be collected at other times of the year, as appropriate. The Department believes that it is important that the Protocol not exclude relevant data that may be obtained during the periods where decreased vegetative cover may make evidence of recreational use or recreational use attainability more readily observable.
5. On page 11 of the Protocol, additional language was added in regard to interviews. The additional language acknowledges the use of the online stream survey to gather recreational use information.
6. On page 13 of the Protocol, language relating to physical factors to be considered was clarified and reorganized to be attributed to the correct justification for the removal of a recreational use. Additionally, a footnote was added to provide justification for the consideration of low flow conditions or depth when applying Factor 2. The Department is relying upon written guidance from EPA for the use of flow and depth consideration pursuant to Factor 2.

On Tuesday, December 4, 2007, the amendment was presented to the Environmental Protection Commission. On that date, the amendment was tabled in order to provide the opportunity for the Commission to propose changes to the Protocol. The following changes were recommended and adopted:

1. On page 9, language was added to acknowledge that when primary contact recreation is an existing use for a stream segment, that segment shall be designated for primary contact recreation.
2. On page 10, under "Points of Observation," changes were made to acknowledge the additional information ap-

propriate to be obtained prior to recommending an A2 designation.

3. On page 10, under "Points of Observation," additional language was added noting the likelihood of the existence of recreational uses in areas where people congregate and the investigation efforts justified by such likelihood.

4. On pages 12 and 13, under "Interviews," changes were made to acknowledge the additional information appropriate to be obtained prior to recommending an A2 designation.

5. On page 23, additional grammatical or style changes were made.

This amendment is intended to implement Iowa Code section 455B.176A(6).

This amendment will become effective on March 19, 2008.

The following amendment is adopted.

Amend 567—Chapter 61 by adopting the following **new** subrule:

61.3(8) Recreational use assessment and attainability analysis protocol. The department hereby incorporates by reference "Recreational Use Assessment and Attainability Analysis Protocol," effective March 19, 2008. This document may be obtained on the department's Web site.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/13/08.

ARC 6598B

ENVIRONMENTAL PROTECTION COMMISSION[567]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 455B.105 and 455B.173, the Environmental Protection Commission hereby amends Chapter 213, "Packaging—Heavy Metal Content," Iowa Administrative Code.

This rule making is in response to 2007 Iowa Acts, chapter 151. The adopted amendments are taken directly from the legislation that was passed, with only minor formatting changes offered by the Administrative Code Editor.

Notice of Intended Action was published in the October 24, 2007, Iowa Administrative Bulletin as **ARC 6355B**.

A public hearing was held on November 14, 2007. No comments were received. Since publication of the Notice of Intended Action, references were updated to reflect publication of the 2007 Iowa Code Supplement.

These amendments are intended to implement Iowa Code Supplement section 455D.19.

These amendments will become effective March 19, 2008.

The following amendments are adopted.

ITEM 1. Amend rule **567—213.3(455D)**, definition of "distributor," as follows:

"Distributor" means a person who takes title to one or more packages or packaging components purchased for promotional purposes or resale. A person involved solely in delivering *or storing* packages or packaging components on behalf of third parties is not a distributor.

ITEM 2. Amend subrule 213.4(3) as follows:

213.4(3) Concentration levels. The sum of the concentration levels of lead, cadmium, mercury, and hexavalent chromium present in a package or packaging component shall not exceed ~~the following:~~

~~a. Effective July 1, 1992, 600 parts per million by weight, or 0.06 percent.~~

~~b. Effective July 1, 1993, 250 parts per million by weight, or 0.025 percent.~~

~~c. Effective July 1, 1994,~~ 100 parts per million by weight, or 0.01 percent. Concentration levels of lead, cadmium, mercury, and hexavalent chromium shall be determined using American Standard of Testing Materials test methods, as revised, or U.S. Environmental Protection Agency test methods for evaluating solid waste, S-W 846, as revised.

ITEM 3. Amend rule 567—213.5(455D), introductory paragraph, as follows:

567—213.5(455D) Certification of compliance. ~~By July 1, 1992, a~~ *A* manufacturer or distributor of packaging or packaging components shall make available to purchasers, to the department, and to the general public upon request, certificates of compliance conforming to the requirements of this rule. Certificates provided shall substantially conform with either or both, as applicable, of the following forms:

ITEM 4. Amend subrule 213.7(2) as follows:

213.7(2) Violation. ~~A manufacturer or distributor who does not comply with the requirements of Iowa Code section 455D.19 is guilty of a simple misdemeanor.~~

a. Violations of this chapter are subject to the provisions of Iowa Code Supplement sections 455D.22 to 455D.25.

b. Each package or packaging component in violation constitutes the basis of a separate offense *for purposes of the calculation of penalties pursuant to Iowa Code Supplement section 455D.25(2)*.

ITEM 5. Amend **567—Chapter 213**, implementation sentence, as follows:

These rules are intended to implement Iowa Code *Supplement* section 455D.19.

[Filed 1/23/08, effective 3/19/08]
[Published 2/13/08]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/13/08.

ARC 6589B

HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 30.5, the Iowa Emergency Response Commission amends Chapter 104, "Required Reports and Records," Iowa Administrative Code.

These amendments implement 2007 Iowa Acts, Senate File 551, by changing the office for filing reports required under Sections 311 and 312 of the Emergency Planning and Community Right-to-know Act [Section 302 & Tier II] from

the Department of Workforce Development to the Department of Natural Resources.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 5, 2007, as **ARC 6468B**. No comments were made by the public regarding the proposed amendments. These amendments are identical to those published under Notice.

These amendments are intended to implement Iowa Code chapter 29C.

These amendments will become effective March 19, 2008.

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 [104.1(1), 104.2, 104.3] is being omitted. These amendments are identical to those published under Notice as **ARC 6468B**, IAB 12/5/07.

[Filed 1/18/08, effective 3/19/08]
[Published 2/13/08]

[For replacement pages for IAC, see IAC Supplement 2/13/08.]

ARC 6603B

LABOR SERVICES DIVISION[875]

Adopted and Filed

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby amends Chapter 66, "Waivers or Variances from Administrative Rules by the Elevator Safety Board," and Chapter 71, "Administration," Iowa Administrative Code.

These amendments change the requirements for using a waiver as a defense to an enforcement action, and create a new requirement that waivers be permanently and conspicuously posted. The amendments also make a technical change relating to safety tests.

The purpose of these amendments is to facilitate the automatic transfer of variances from one building owner to the next while still protecting the safety of the public and implementing legislative intent.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 7, 2007, as **ARC 6394B**. A public hearing was scheduled for November 30, 2007. No member of the public commented on the Notice of Intended Action. No changes have been made from the Notice of Intended Action.

No waiver provision is contained in these rules as there are waiver procedures at 875—Chapter 66.

These amendments are intended to implement Iowa Code chapter 89A.

These amendments will become effective on March 19, 2008.

The following amendments are adopted.

ITEM 1. Amend rule 875—66.10(17A,89A) by adopting **new** subrule 66.10(10) as follows:

66.10(10) Posting of orders granting waivers. The order or a copy of the order granting a waiver shall be conspicuously and permanently posted in the machine room corresponding to the conveyance. The order or a copy of the order granting a waiver that relates to a conveyance that does not have a machine room shall be posted in a protective sleeve attached to the inside of the controller cabinet door corresponding to the conveyance.

ITEM 2. Amend rule 875—66.15(17A,89A) as follows:

875—66.15(17A,89A) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein only for the ~~person to whom~~ *specific conveyance to which* the order pertains in any proceeding in which the rule in question is sought to be invoked.

ITEM 3. Amend paragraph **71.2(2)"c,"** introductory paragraph, as follows:

c. Safety tests shall be performed by a qualified person who is employed by a recognized elevator company or persons certified by the commissioner for the purpose of performing safety tests on their own facilities. All tests shall be in accordance with ASME A17.1-2004, A17.1a-2005 and A17.1S-2005, part 8 (except for rule 8.11.1.1), ~~and~~ *or* A18.1 (2003), part 10*, as applicable*. Safety tests shall be in a format approved by the commissioner. The firm or person conducting the tests shall:

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ARC 6591B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed

Pursuant to the authority of Iowa Code section 99F.4, subsection 18, the Department of Public Safety hereby amends Chapter 141, "Closed Circuit Surveillance Systems," Iowa Administrative Code.

Iowa Code section 99F.4, subsection 18, requires that gambling activities on excursion gambling boats be continuously recorded and that the requirements for such recording be established by administrative rules of the Department of Public Safety. The Iowa Racing and Gaming Commission has extended the application of these rules to all gambling facilities (491 Iowa Administrative Code 5.4(7)).

The amendments adopted herein clarify that the video surveillance and recording must occur within the premises of the gambling facility or, with the approval of the Division of Criminal Investigation (DCI), in a building adjacent to the casino, that video surveillance equipment must be maintained on the premises or in an adjacent building, and that existing video surveillance systems which are converted to digital prior to January 1, 2011, shall comply with the requirements for digital systems established in these rules.

These amendments were proposed in a Notice of Intended Action published in the Iowa Administrative Bulletin on October 10, 2007, as **ARC 6282B**. A public hearing on the proposed amendments was held on November 7, 2007. Comments were received from representatives of the gaming industry. The following changes have been made to the amendments in response to these comments:

PUBLIC SAFETY DEPARTMENT[661](cont'd)

• In the definition of "'closed network' or 'closed circuit'," language is added allowing for interconnection of a closed network, with approval of the DCI.

• Language is added allowing surveillance rooms and surveillance equipment to be maintained on property adjacent to a casino, with approval of the DCI.

• Language is added clarifying that images from a video surveillance system may be used without restriction by the Racing and Gaming Commission for regulatory purposes.

• Proposed language restricting access to surveillance rooms only to those persons approved by the DCI is not included in the adopted amendments. Existing language allowing such access with the approval of the DCI or the Racing and Gaming Commission is retained.

These amendments will become effective on April 1, 2008.

These amendments are intended to implement Iowa Code section 99F.4.

The following amendments are adopted.

ITEM 1. Amend rule **661—141.1(99F)** as follows:

Amend the definition of "casino" as follows:

"Casino" means all areas of an excursion gambling boat ~~or~~, racetrack enclosure*, or gambling structure* licensed to conduct gambling games.

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

"Closed network" or "closed circuit" means all digital recording equipment and all other associated surveillance equipment must be designed, configured, and maintained on a separate and exclusive network system located on the same premises as the casino. This closed network system must not be touched by, connected to, or partitioned off of any other network, except with approval of the DCI.

ITEM 2. Amend rule 661—141.4(99F) as follows:

Amend subrule 141.4(1) as follows:

141.4(1) Every licensee shall install, maintain and operate*, on the same premises where the casino is located or, with the approval of the DCI, on a property adjacent to the casino,* a closed circuit surveillance system according to specifications set forth in these rules and shall provide to the commission and the DCI access at all times to the system or its signal.

Amend subrule 141.4(3) as follows:

141.4(3) All licensees shall have in place digital recording systems that meet the requirements of this chapter no later than January 1, 2011. *Any system converted to digital prior to January 1, 2011, must meet the requirements of this chapter upon installation.*

ITEM 3. Amend subrule **141.5(9)**, paragraph **"d,"** as follows:

d. If the licensee chooses to use a network for the digital recording equipment, it must be a closed network with limited access *located on the same premises as the casino, or, with the approval of the DCI, on a property adjacent to the casino*. The licensee must submit, for approval by the DCI, written policies governing the administration of the network, which shall include*, but not be limited to,* employee access levels *and the transmission or release of live or recorded images, video, or audio*. *Nothing in this paragraph shall be interpreted to prevent the commission from utilizing or transmitting for regulatory purposes images recorded by a video surveillance system.*

ITEM 4. Amend rule 661—141.10(99F) as follows:

Amend the introductory paragraph as follows:

661—141.10(99F) Surveillance room. There shall be provided ~~for~~ *in* each ~~gaming~~ *gambling* facility *or gambling structure* a room specifically utilized to monitor and record activities on the casino floor, count room, cashier cages, gangplank areas, admission entrances and exits, and slot change booths. This room shall have a trained surveillance person present at all times during casino operation hours. In addition, ~~an~~ *a gambling structure,* excursion gambling boat or racetrack enclosure may have satellite monitoring equipment. The following are requirements for the operation of equipment in the surveillance room and of satellite monitoring equipment:

Amend subrule 141.10(1) as follows:

141.10(1) Surveillance equipment location. All equipment that may be utilized to monitor or record views obtained by a casino surveillance system must remain ~~located~~ in ~~the~~ *a* room *located on the same premises as the casino, or, with the approval of the DCI, on property adjacent to the casino and must be* used exclusively for casino surveillance security purposes. The satellite monitoring equipment must be capable of being disabled from the casino surveillance room when not in use. The entrance to the casino surveillance room must be locked or secured at all times.

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