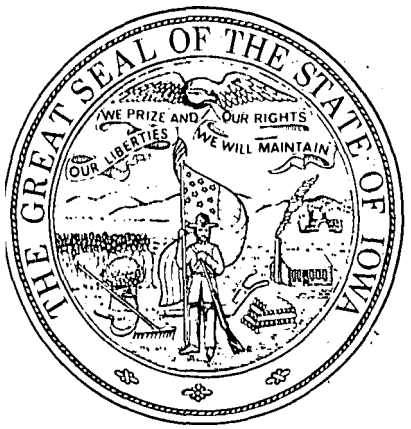

IOWA ADMINISTRATIVE BULLETIN

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PREFACE

The Iowa Administrative Bulletin is published in pamphlet form biweekly pursuant to Chapter 17A, Code of Iowa as amended by Sixty-seventh General Assembly, H.F. 2099, section 3, and supersedes Part I of the Iowa Administrative Code Supplement.

The Bulletin contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies [continue to refer to General Information for drafting style and form], all proclamations and executive orders of the Governor which are general and permanent in nature, and other "materials deemed fitting and proper by the Administrative Rules Review Committee."

The Bulletin may also contain economic impact statements to proposed rules and filed emergency rules, objections filed by Administrative Rules Review Committee, Governor or the Attorney General, any delay by the Committee of the effective date of filed rules, and agenda for monthly committee meetings.

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

The Iowa Administrative Code Supplement is also published every other week in loose-leaf form, pursuant to section 17A.6 of the Code as amended by 67GA, H.F. 2099 and S.F. 244. It contains replacement pages for the Iowa Administrative Code. These replacement pages incorporate amendments to existing rules, new rules or emergency or temporary rules which have been filed with the administrative rules co-ordinator and published in the Bulletin.

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

The Iowa Administrative Bulletin is sold as a separate publication and may be purchased by subscription or single copy. All subscriptions will expire on June 30 of each year. Subscriptions must be paid in advance and are prorated quarterly as follows:

First quarter	July 1, 1978, to June 30, 1979	$42.00 plus $1.26 tax
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Third quarter	January 1, 1979, to June 30, 1979	21.00 plus 0.63 tax
Fourth quarter	April 1, 1979, to June 30, 1979	10.50 plus 0.32

Single copies may be purchased for $2.00 plus $0.06 tax. Back issues may be purchased if the issues are available.

Iowa Administrative Code

The Iowa Administrative Code and Supplements are sold in complete sets and subscription basis only. All subscriptions for the Supplement (replacement pages) must be for the complete year and will expire on June 30 of each year.

Prices for the Iowa Administrative Code and its Supplement are as follows:

Iowa Administrative Code - $305.00 plus $9.15 tax
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Iowa Administrative Code Supplement (replacement pages) - $110.00 plus $3.30 tax
(Subscription expires June 30, 1979.)

All checks should be made payable to the Iowa State Printing Division. Send all inquiries and subscription orders to:

Iowa Department of General Services
Printing Division
Grimes State Office Building
Des Moines, Iowa 50319
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The Administrative Rules Review Committee will hold a two-day meeting Monday, September 11, 1978, 8:30 a.m., and continued Tuesday, September 12, 1978, Senate Committee Room 24. The following rules will be reviewed.

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NOTICE OF INTENDED ACTION

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

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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of Acts of the Sixty-seventh General Assembly 1978, House File 2467, section 23, and Section 17A.3 of the Code of Iowa, 1977, rules of the Department of Banking appearing in the IAC are hereby amended by adding the following new chapter:

On October 11, 1978, at 1:00 P.M., in the office of the Superintendent of Banking located at 418 Sixth Avenue, 530 Liberty Building, Des Moines, Iowa 50309, the superintendent shall consider for adoption the following rules as described herein. Such action shall be in accord with the Administrative Procedures Act, chapter 17A of the Code, and Department of Banking Rules, chapter 3, "Procedure for Adoption of Rules."

Comments and requests to make an oral presentation shall be addressed to the Department of Banking, 418 Sixth Avenue, 530 Liberty Building, Des Moines, Iowa 50309.

Written comments or written requests to make an oral presentation on the above specified date concerning the proposed rule may be accepted if received by the Department of Banking on or before September 27, 1978.

Any person or agency as described in section 17A.2, paragraphs one and six of the 1977 Code of Iowa, may submit written comments or requests shall clearly state:

1. The name, address and phone number of the person or agency authoring the comment or request.
2. The title and number of the proposed rule as given in this notice which is the subject of the comment or request. (Comments pertaining to a specified section of a proposed rule shall reference that section by subrule, paragraph, subparagraph and line as appropriate.)
3. With regard to requests to make an oral presentation, the general content shall be indicated.

Proposed rule making action:

Adopt rules to be set forth in chapter 27 of the Banking Department's existing rules concerning establishment of share draft legal reserves for credit union share drafts and to provide for an orderly discontinuance of the credit union share draft program.

CHAPTER 27
CREDIT UNION SHARE DRAFTS

140—27.1(533) Definitions. As used in these rules the following definitions shall apply:

27.1(1) "Share draft" means a draft used by credit union members to withdraw funds from a credit union for payment to nonmembers.

27.1(2) "Share draft legal reserve account" means an allocation of cash redeemable on call and recorded on the credit union's records as an asset account.

140—27.2(533) Reserve requirements. Each credit union participating in a share draft program shall establish and maintain, on a daily basis, a share draft legal reserve account in the Corporate Central Credit Union with the reserve amount to be determined as follows:

27.2(1) One hundred and twenty-five percent of the aggregate amount of share drafts actually paid by the credit union during the preceding month divided by the number of days in that calendar month, excluding Saturdays, Sundays and legal holidays.

27.2(2) After the initial reserve is established, the reserve requirement shall be calculated on the first business day of each subsequent month and adjusted according to the formula set out in subrule 27.2(1)

140—27.3(533) Corporate Central Credit Union. The Corporate Central Credit Union shall maintain the funds received under subrule 27.2(1) and (2) in a share draft legal reserve account.

140—27.4(533) Discontinuance of the use of share drafts. Credit unions offering share drafts to members shall give written notice by first-class mail to all participants no later than November 3, 1978 substantially as follows:

27.4(1) The practice of writing share drafts by members for the payment of funds to nonmembers shall terminate February 2, 1979.

27.4(2) Share drafts entering the clearing system after the termination date of February 2, 1979 may continue to be processed until April 15, 1979.

27.4(3) Share drafts presented to the credit union for payment after April 15, 1979 must be dishonored and returned to the payee.

This rule is intended to implement Acts of the Sixty-seventh General Assembly, House File 2467, section 23, and section 17A.3 of the Code of Iowa, 1977 and is identical to the emergency rule filed with the administrative rules co-ordinator on August 10, 1978 for publication in the IAB and IAC on September 6, 1978.

ENVIRONMENTAL QUALITY DEPARTMENT[400]

AIR QUALITY COMMISSION

NOTICE OF INTENDED ACTION

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

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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

The Air Quality Commission intends to take action on rules proposed below relating to fluoride emissions from phosphate fertilizer manufacturers.

Section 111(d) of the federal Clean Air Act as amended, 42 U.S.C. § 7411(d), requires each state air pollution control agency to submit to the Administrator of the federal Environmental Protection Agency (EPA) a plan to control emissions from existing sources of certain pollutants that would be controlled under new source performance standards (NSPS) if they were new sources. For EPA proposed rules that would deal with approval of such state plans for these so-called "designated facilities and pollutants", see 43 Fed. Reg. 29585 (July 10, 1978). The first designated pollutant and facility to be subject to section 111(d) is fluoride from existing phosphate fertilizer plants.

ENVIRONMENTAL QUALITY[400] *(cont'd)*

EPA's new source performance standards (NSPS) establish emission standards for fluorides from the following designated facilities: Wet process phosphoric acid plants; superphosphoric acid plants; diammonium phosphate plants; triple superphosphate plants; and granular triple superphosphate storage facilities. The rules proposed below would cover only phosphoric acid plants and diammonium phosphate plants from the NSPS list of designated facilities because there are no other existing designated facilities in Iowa.

The rules proposed below also cover fluoride emissions from nitrophosphate plants, the only significant existing source of fluoride emissions in Iowa that is not a designated facility subject to section 111(d).

A public hearing on the proposed rules will be held at 1:00 p.m. on December 14, 1978, in the Fifth Floor Conference Room of the Henry A. Wallace Building, 900 E. Grand Avenue, Des Moines, Iowa. Any interested person may make an oral presentation on the proposed rules at that time. Any interested person may also submit written comments on the proposed rules to the Executive Director, Department of Environmental Quality, Henry A. Wallace Building, Des Moines, Iowa 50319 on or before December 26, 1978.

Pursuant to the authority of section 455B.12(2), and 455B.12(4) of the Code, the rules of the Air Quality Commission relating to emission standards for contaminants, appearing in Environmental Quality[400] chapter 4 of the Iowa Administrative Code, are hereby amended.

ITEM 1. Subrule 4.4(10) is rescinded and the following adopted in lieu thereof.

4.4(10) Phosphate processing plants.

a. Phosphoric acid manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of phosphoric acid that was in existence on October 22, 1974, in a manner that produces more than 0.02 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

b. Diammonium phosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of diammonium phosphate that was in existence on October 22, 1974, in a manner that produces more than 0.06 pound of fluoride per ton of phosphorous pentoxide or equivalent input.

c. Nitrophosphate manufacture. No person shall allow, cause or permit the operation of equipment for the manufacture of nitrophosphate in a manner that produces more than 0.06 pound of fluoride per ton of phosphorus pentoxide or equivalent input.

d. No person shall allow, cause or permit the operation of equipment for the processing of phosphate ore, rock or other phosphatic material (other than equipment used for the manufacture of phosphroic acid, diammonium phosphate or nitrophosphate) in a manner that the unit emissions of fluoride exceed 0.4 pound of fluoride per ton of phosphrous pentoxide or its equivalent input.

e. Notwithstanding "a" through "d", no person shall allow, cause or permit the operation of equipment for the processing of phosphorous ore, rock or other phosphatic material including, but not limited to, phosphoric acid, in a manner that emissions of fluorides exceeds 100 pounds per day.

f. "Fluoride" means elemental fluorine and all fluoride compounds as measured by reference methods specified in appendix A to 40 CFR part 60.

g. Calculation. The allowable total emission of fluoride shall be calculated by multiplying the unit emission specified above by the expressed design production capacity of the process equipment.

ENVIRONMENTAL QUALITY DEPARTMENT[400]

SOLID WASTE DISPOSAL COMMISSION

NOTICE OF INTENDED ACTION

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

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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

The Solid Waste Disposal Commission intends to adopt rules necessary to carry out the provisions of the Acts of the Sixty-seventh General Assembly House File 187, which establishes a refundable mandatory deposit on beverage containers sold in Iowa. [Chapter 34]

The commission will hold a public hearing on the rules proposed below at 1:00 p.m. on October 11, 1978, in the auditorium of the Henry A. Wallace Building, 900 E. Grand Ave., Des Moines, Iowa. Any interested person may make an oral presentation at that time. Written comments may be submitted on or before October 23, 1978 to the Executive Director, Department of Environmental Quality, Henry A. Wallace Building, Des Moines, Iowa 50319. However, the commission encourages persons to submit written comments at or in advance of the pubic hearing.

The principal objectives of the Act are the reduction of litter, the conservation of energy, and the conservation of natural resources. The commission intends to exercise its authority under the Act in a manner that will achieve the objectives.

The commission also believes that the free market system is capable of inventing mechanisms that will fulfill the requirements and objectives of the Act. To that end, the proposed rules minimize intrusion into the free market system. Many provisions recommend action rather than require it. The commission, however, recognizes that some mandatory requirements may be necessary to prevent overreaching practices or to standardize implementation and is pepared to adopt mandatory provisions if necessary to implement the Act. Thus the commission solicits suggestions as to mandatory provisions that might be included or modified.

The commission has proposed some interpretive rules that are intended to provide guidance in problem areas that have been called to the attention of the staff. (Interpretive rules are statements issued by an agency to advise the public of the agency's construction of the law it administers. See, Schwartz, Administrative Law §58 (Little, Brown 1976).) The commission feels that such rules, while not binding in enforcement proceedings, may be of great weight if adopted by the commission after notice and public participation. Such rules will also encourage statewide uniformity. Thus the commission

ENVIRONMENTAL QUALITY[400] *(cont'd)*

solicits comments as to perceived problems in interpretation of the Act and suggested interpretive rules. The commission also points out that both the Iowa Administrative Procedure Act and the department of environmental quality's rules establish two mechanisms for obtaining official agency action, i.e., a petition for adoption of a rule, and a petition for a declaratory ruling. See sections 17A.7 and 17A.9 of the Iowa Code and rules of the Environmental Quality Department[400], chapters 53 and 54, Iowa Administrative Code.

The commission has received informal requests to adopt rules that would authorize dealers or distributors to phase-in the labeling and refund requirements of the law. The effective dates of the mandatory labeling and deposit requirements are clear. The commission does not have the power to delay them. All beer, mineral water, soda water and carbonated soft drink containers sold in Iowa on July 1, 1979, must be in conformance with labeling requirements and must be subject to at least a five cent deposit, as must alcoholic liquor containers sold on or after May 1, 1979. However, the commission is sensitive to the problem created by lack of a statutory phase-in mechanism. The commission therefore takes this opportunity to point out that nothing prohibits a dealer, distributor or manufacturer from labeling and collecting a deposit prior to the effective dates of the Act. The staff of the department can give information on possible phase-in mechanisms to affected dealers, distributors or manufacturers.

The commission has been informally requested to adopt rules that would explicitly deal with fraud, e.g., counterfeiting of labels or double redemption of containers. The commission hopes that this is adequately handled in the fraud or theft provisions of the Iowa Criminal Code. See, for example, section 714.8(8), 1977 Code Supplement. The commission is working with the state department of justice in examining this problem and will be informing the public and prosecutors of the information obtained. The commission will encourage vigorous enforcement of fraud and theft laws in connection with this Act, but thinks it idle to adopt rules to prevent fraud when there is no penalty established by the Act for violation of a rule of the commission.

The commission solicits suggestions on the factors that should be considered in determining whether a proposed approved redemption center is a convenience to the public. The commission also solicits comments from consumers on proposed rules 34.7(HF 187) and 34.8(2) that would require that, in order to be redeemed, beverage containers must be reasonably intact and clean.

Pursuant to the authority of Acts of the Sixty-seventh General Assembly, House File 187, the rules of the Solid Waste Disposal Commission appearing in the Iowa Administrative Code are hereby amended.

ITEM 1. Adopt a new chapter 34 as follows:

CHAPTER 34
BEVERAGE CONTAINER DEPOSITS

400—34.1(HF187) Scope. This chapter is intended to implement the provisions of Acts of the Sixty-seventh General Assembly, House File 187. The Act requires that on or after May 1, 1979, every alcoholic liquor container, and that on or after July 1, 1979, every beer, mineral water, soda water or carbonated soft drink container sold in Iowa for consumption off the premises of the dealer be subject to a deposit of five cents or more. Such container must have indicated on it that the container is subject to a minimum refund of five cents or must be exempt from the requirement of having the refund value indicated on it. An empty container on which a deposit was made may be returned to any dealer in the state who sells the kind, brand and size of container or may be returned to a redemption center. The dealer or redemption center must accept the empty container and refund the deposit.

The Act also prohibits the sale at retail of any metal beverage container so designed and constructed that a part of the container is detachable in opening, the so-called "pop-top can".

The chapter contains rules specifying the minimum size of type to be used for indicating the minimum refund value on beverage containers, rules relating to approval of redemption centers for beverage containers and rules relating to exemptions from labeling the refund value on beverage containers. This chapter also contains interpretive rules that clarify or interpret the statute, or apply the statute to specific factual situations.

400—34.2(HF187) Definitions. As used in this chapter:

34.2(1) "Act" means Acts of the Sixty-seventh General Assembly, 1978 Session, House File 187.

34.2(2) "Alcoholic liquor" includes alcohol, spirits and wine, except beer as defined in 34.2(4) but including all beverages made as described in 34.2(4) which contain more than four percent of alcohol by weight, and every liquid or solid patented or not, containing alcohol, spirits or wine, and susceptible of being consumed by a human being for beverage purposes.

a. "Alcohol" means the product of distillation of any fermented liquor rectified one or more times, whatever may be the origin thereof, and includes synthetic ethyl alcohol.

b. "Spirits" means any beverage which contains alcohol obtained by distillation mixed with drinkable water and other substances in solution, including, but not limited to, brandy, rum, whisky, and gin.

c. "Wine" means any beverage containing alcohol obtained by the fermentation of the natural sugar contents of fruits or other agricultural products.

34.2(3) "Approved redemption center" means a redemption center that has been approved by the department pursuant to 34.4(HF187).

34.2(4) "Beer" means any liquid capable of being used for beverage purposes made by the fermentation of an infusion in potable water of barley, malt and hops, with or without unmalted grains containing not more than four percent of alcohol by weight.

34.2(5) "Beverage" means alcoholic liquor, beer, mineral water, soda water or similar carbonated soft drinks in liquid form intended for human consumption.

34.2(6) "Beverage container" means any sealed glass, plastic, or metal bottle, can, jar or carton containing a beverage.

34.2(7) "Carbonated" means charged under pressure with carbon dioxide.

34.2(8) A "class 'A' liquor control license" may be issued to a club and shall authorize the holder to purchase alcoholic liquors from the Iowa beer and liquor control department only, and to sell such liquors, and beer, to bona fide members and their guests by the individual drink for consumption on the premises only.

"Club" means any nonprofit corporation or association of individuals, which is the owner, lesse, or occupant of a permanent building or part thereof, membership in which entails the prepayment of regular dues and is not operated for a profit other than such profits as would accrue to the entire membership.

34.2(9) A "class 'B' liquor control license" may be issued to a hotel or motel and shall authorize the holder to

ENVIRONMENTAL QUALITY[400] *(cont'd)*

purchase alcoholic liquors from the Iowa beer and liquor control department only, and to sell such liquors, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises. Each such license shall be effective throughout the premises described in the application.

"Hotel" or "motel" means a premise licensed by the state department of agriculture and regularly or seasonally kept open in a bona fide manner for the lodging of transient guests, and with twenty or more sleeping rooms.

34.2(10) A "class 'C' liquor control license" may be issued to a commercial establishment but must be issued in the name of the individual or individuals who actually own the entire business and shall authorize the holder or holders to purchase alcoholic liquors from the Iowa beer and liquor control department only, and to sell such liquors, and beer, to patrons by the individual drink for consumption on the premises only, however, beer may also be sold for consumption off the premises.

"Commercial establishment" means a place of business which is at all times equipped with sufficient tables and seats to accommodate twenty-five persons at one time, and the licensed premises of which conform to the standards and specifications of the Iowa beer and liquor control department.

34.2(11) "Commission" means the solid waste disposal commission of the department of environmental quality.

34.2(12) "Consumer" means any person who purchases a beverage in a beverage container for use or consumption.

34.2(13) "Dealer" means any person who engages in the sale of beverages in beverage containers to a consumer.

34.2(14) "Department" means the department of environmental quality.

34.2(15) "Distributor" means any person who engages in the sale of beverages in beverage containers to a dealer in this state, including any manufacturer who engages in such sales.

34.2(16) "Executive director" means the executive director of the department of environmental quality.

34.2(17) "Exempt beverage container" means a beverage container that is not marked with the words "Iowa Refund 5¢" because it is a refillable glass beverage container having a brand name permanently marked on it and having a refund value of five or more cents or because it is a refillable metal or plastic beverage container that has been exempted, in accordance with the procedure of 34.3(8), from the requirement of having the refund value marked on the container. An exempt beverage container is exempt from having the words "Iowa Refund 5¢" indicated on the container, but is not necessarily exempt from the minimum deposit.

34.2(18) "Manufacturer" means any person who bottles, cans, or otherwise fills beverage containers for sale to distributors or dealers.

34.2(19) "Mineral water" means water naturally or artificially infused with mineral salts or gases. Mineral water may be carbonated or uncarbonated.

34.2(20) "Redemption center" means any establishment other than a dealer's premises at which consumers may return empty beverage containers and receive payment of the refund value of the containers. A redemption center is either an approved redemption center or an unapproved redemption center.

34.2(21) "Soda water" means water that has been carbonated.

34.2(22) "Soft drink" means any nonalcoholic liquid other than mineral water or soda water intended for human consumption.

34.2(23) "Unapproved redemption center" means a redemption center that has not been approved by the department pursuant to 34.4(HF187).

400—34.3(HF187) Labeling requirements.

34.3(1) All beer, mineral water, soda water and carbonated soft drink containers (other than exempt containers) sold or offered for sale on or after July 1, 1979 in Iowa by a dealer shall have the words "Iowa Refund 5¢" clearly and legibly indicated on the container.

34.3(2) The minimum size of the words "Iowa Refund 5¢" shall be in 18 point type (approximately .25 inch or 6 millimeters).

34.3(3) The words "Iowa Refund 5¢" shall be indicated by embossing (raised letters) or by a stamp, label or other method securely and permanently affixed to the container.

34.3(4) The print on a stamp, label or other method used to indicate the words "Iowa Refund 5¢" should be in a high contrast color.

34.3(5) The words "Iowa Refund 5¢" should be on the top of a metal beverage container or on the brand label or neck of a glass or plastic beverage container.

34.3(6) An exemplar of the label or labeled container may, but need not, be submitted to the executive director for informal approval.

34.3(7) Kegs, half-kegs, quarter kegs or pony kegs containing beer may be exempted from having the words "Iowa Refund 5¢" indicated on the kegs if a deposit of five or more cents is paid by the consumer and if application is made to the executive director in accordance with 34.3(8).

34.3(8) An application for exemption from the requirement of having the words "Iowa Refund 5¢" indicated on the container shall be on form _____ or on 8½ × 11 inch paper and contain:

a. The name, address and phone number of the applicant;
b. The kind of container, i.e., glass, metal or plastic;
c. The refund value of the container; and
d. A statement of why the container can be readily and permanently identified by consumers as subject to a deposit.

34.3(9) The executive director may exempt the container if the executive director determines that the container is subject to a deposit of five or more cents and that consumers can readily and permanently identify the container as one subject to a deposit.

34.3(10) The executive director shall maintain and, from time to time, distribute a list of all brands, kinds and sizes of beverage containers that have been exempted from the requirement of having the words "Iowa Refund 5¢" indicated on the container.

400—34.4(HF187) Approval of redemption centers.

34.4(1) Approved and unapproved redemption centers explained. The Act provides for both approved and unapproved redemption centers. Both approved and unapproved redemption centers perform the same activity, that is, redemption of empty beverage containers; and both are lawful. However, an approved redemption center relieves any dealer, covered in the order approving the redemption center from the obligation of redeeming those empty beverage containers covered in the order under 34.4(4). Thus the difference between an approved and unapproved redemption

center, is in the effect on the obligation of dealers to redeem certain empty beverage containers rather than in the activity performed by the redemption center.

34.4(2) Nothing in the Act or this chapter prevents a person from establishing a redemption center that has not been approved by the executive director. However, an unapproved redemption center does not relieve any dealer of the responsibility to refund the deposit to the consumer upon presentation of an empty beverage container.

34.4(3) Contents of application for approval. An application for approval of a redemption center shall be on form _____, or on 8½ × 11 inch paper that contains the following information:

a. Name, address and phone number of the person or persons responsible for the establishment and operation of the redemption center;

b. The address and phone number, if in service, of the redemption center;

c. The kind, sizes, and brand names of the beverage containers which will be accepted at the redemption center;

d. The names and addresses of the dealers to be served by the redemption center and the written consent of those dealers to be served by the redemption center.

e. Distance, in blocks or other appropriate measure, from the redemption center to each dealer to be served by the redemption center.

f. The names and addresses of the distributors whose beverage containers will be redeemed.

g. The hours the redemption center is to be open.

h. Whether metal or glass beverage containers will be crushed or broken and, if so, the written consent of the distributor or manufacturer to the crushing or breaking.

i. Reasons why the dealer and redemption center believe that the center will provide a convenient service to consumers.

34.4(4) An order of the executive director approving a redemption center shall not authorize a redemption center to accept and pay the refund value of beverage containers purchased from Iowa state liquor stores.

34.4(5) A dealer served by an approved redemption center must prominently post on the premises of the dealer the location and hours of the redemption center.

400—34.5(HF187) Redeemed containers—use. Distributors are requested to inform the executive director of the intended ultimate use or disposal of redeemed beverage containers. The commission encourages the reuse or recycling of empty beverage containers and the department will assist distributors in finding and examining alternatives to burial of empty containers in sanitary landfills.

400—34.6(HF187) Alcoholic liquor containers purchased from state-owned liquor stores.

34.6(1) Labeling. Effective May 1, 1979, all alcoholic liquor containers (except alcoholic liquor containers sold to holders of class "A", "B" or "C" liquor control licenses) sold by state-owned liquor stores will have the following label affixed to the container:

[Label being designed for publication in the final rules]

34.6(2) Mandatory deposit. Effective May 1, 1979, the consumer (other than the holder of a class "A", "B" or "C" liquor control license) will be charged a five cent deposit on each alcoholic liquor container sold at a state-owned liquor store.

34.6(3) Refund. Alcoholic liquor containers bearing the label described in 34.6(1) may be redeemed only at state-owned liquor stores. Alcoholic liquor containers bearing the label described in 34.6(1) shall not be redeemed by an approved or unapproved redemption center or by a dealer other than the Iowa beer and liquor control department.

400—34.7(HF187) Redeemed containers must be reasonably clean. Consumers should take care to return containers in a reasonably clean condition. In order to be redeemed, an empty beverage container shall be free of materials, such as paper, sticks and cigarette butts, other than the residue of the beverage.

400—34.8(HF187) Interpretive rules.

34.8(1) Beverage containers "sold" on planes. It is common practice for air carriers to provide soft drinks and to sell beer, spirits or wine to passengers for consumption on planes. The refund value of five cents need not be charged by the air carrier because such transaction is a sale for consumption on the premises within the exception of section 2(1) of the Act. If the beverage container is "sold" in Iowa, it must be labeled or be an exempt container, regardless of where the air carrier purchases the container. If the container also has indicated on it that it is for airline use only, a dealer, redemption center or distributor is relieved of the obligation of redeeming the container.

34.8(2) Beverage containers must be reasonably intact. In order to be redeemed, an empty beverage container must be returned reasonably intact. For a refillable beverage container, the container must hold liquid, be able to be resealed and be in its original shape. A nonrefillable glass container may be chipped, but it may not have the bottom broken-out or the neck broken-off. A nonrefillable metal container may be dented or partially crushed, but may not be crushed flat. A returned beverage container should be able to stand on its own base. (Reason: Section 2(2) of the Act provides in part: "A dealer or person operating a redemption center may compact empty metal beverage containers with the approval of the distributor required to accept such containers." So far as metal beverage containers are concerned, such right of approval in the distributor would be meaningless if the dealer were required to accept and redeem crushed metal beverage containers from consumers. Since there appears to be no reason to treat distributors of nonrefillable glass beverage containers different than distributors of metal beverage containers, there is presumably a corresponding right in the distributors of nonrefillable glass beverage containers to approve the destruction of the containers.)

34.8(3) Vending machines.

a. When a beverage container is dispensed from a vending machine in exchange for money, there is presumed to be a "sale of a beverage in a beverage container to a consumer" within the meaning of 34.2(13). Therefore some person must be the "dealer" who is responsible for collecting the deposit at the time of sale and for refunding the deposit upon return of the empty beverage container. Because of the variety of contractual relationships surrounding operation of a vending machine, the person who is the "dealer" might be the owner of the vending machine, the lessee of the vending machine, the owner of the premises on which the vending machine is located, or the person who stocks the vending machine. It is incumbent upon the parties involved in the

ENVIRONMENTAL QUALITY[400] *(cont'd)*

operation of a vending machine to determine the person who is the "dealer" and to indicate prominently on the vending machine the name, location and normal operating hours of the dealer (or an approved redemption center) if the dealer does not have personnel on the premises.

b. If the vending machine is located on premises where personnel of the dealer are not normally working, there is no obligation to provide personnel to redeem beverage containers at the site of the vending machine. However, the "dealer" must provide for redemption of beverage containers at the dealer's usual working place.

HEALTH DEPARTMENT[470]

NOTICE OF INTENDED ACTION

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

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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

The Health Department, pursuant to the authority of chapter 17A and chapter 135C.14 of the Code of Iowa (1977), proposes to amend chapters 57, 58, 59, 63, and 64 of the rules for health care facilities as follows.

Any interested person may submit written comments which should be addressed to Rick L. Middleton, Chief, Division of Health Facilities, State Department of Health, Lucas State Office Building, Des Moines, Iowa 50319. Written comments should include the name and address of the party filing the comment, as well as a specific reference to the rules upon which a comment is submitted. All relevant comments received by October 11, 1978, will be considered.

CHAPTER 57
RULES FOR RESIDENTIAL CARE FACILITIES

ITEM 1. Paragraph 470—57.19(3)"c" is amended to read as follows:

c. ~~Controlled drugs, as defined in chapter 204 of the Code, and injectable~~ *Injectable* medications shall not be administered by anyone other than a qualified nurse or physician. Variance may be granted if the resident's physician designates someone other than a licensed nurse to administer insulin and certifies the resident does not need nursing care. (II)

CHAPTER 58
RULES FOR INTERMEDIATE CARE FACILITIES

ITEM 1. Paragraph 470—58.21(15)"a" is amended to read as follows:

a. ~~Controlled drugs, as defined in chapter 204 of the Code and injectable~~ *Injectable* medications shall not be administered by anyone other than a qualified nurse or physician. (II)

CHAPTER 59
RULES FOR SKILLED NURSING FACILITIES

ITEM 1. Paragraph 470—59.26(17)"a" is amended to read as follows:

a. ~~Controlled drugs, as defined in chapter 204 of the Code, and injectable~~ *Injectable* medications shall not be administered by anyone other than a qualified nurse or physician. (II)

CHAPTER 63
RULES FOR RESIDENTIAL CARE FACILITIES FOR THE MENTALLY RETARDED

ITEM 1. Paragraph 470—63.18(3)"c" is amended to read as follows:

c. ~~Controlled drugs, as defined in chapter 204 of the Code, and injectable~~ *Injectable* medications shall not be administered by anyone other than a qualified nurse or physician. Variance may be granted if the resident's physician designates someone other than a licensed nurse to administer insulin and certifies the resident does not need nursing care. (II)

CHAPTER 64
RULES FOR INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

ITEM 1. Paragraph 470—64.27(13)"a" is amended to read as follows:

a. ~~Controlled drugs, as defined in chapter 204 of the Code and injectable~~ *Injectable* medications shall not be administered by anyone other than a qualified nurse or physician.

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION[610]

NOTICE OF TERMINATION OF INTENDED ACTION

The Iowa Occupational Safety and Health Review Commission, pursuant to the authority of section 88.10(6) of the Code, proposed to amend chapter 1, Rules of Procedure for hearings Before Review Commission, found in the Iowa Administrative Code, as set forth in "Notice of Intended Action" appearing in the Iowa Administrative Bulletin of July 12, 1978.

Notice is now given of withdrawal of said "Notice of Intended Action" after hearing objections thereto on date of August 4, 1978, pending further study by the review commission and staff, after which a new Notice of Intended Action will be published.

PHARMACY EXAMINERS[620]

NOTICE OF INTENDED ACTION

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

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 §17A.8(6) at a regular or special meeting where the public or interested persons may be heard.

Pursuant to the authority of 204.306 of the Code, chapter 8, Controlled Substances (Drugs), of the Administrative Code is proposed to be amended as follows:

Any interested person may submit data, views, and arguments in writing on these proposed rules on or before September 30, 1978, to Norman C. Johnson, Executive Secretary, Board of Pharmacy Examiners, 217 Jewett Bldg., Des Moines, Iowa.

ITEM 1. Amend chapter 8 by adding the following new rule:

620—8.18(204) Controlled substance inventory. It shall be the responsibility of the pharmacy owner to take an inventory of all controlled substances whenever there is a change in ownership or a change in pharmacist/manager of any establishment licensed by the board as defined in section 155.10.

SOCIAL SERVICES DEPARTMENT[770]

AMENDMENT TO NOTICE OF INTENDED ACTION

The notice of intended action appearing in the IAB June 28, 1978, proposing rules relating to sheltered work/work activity services (chapter 155) under authority of sections 217.6 and 234.6 of the Code is amended by adding the following paragraph:

Oral presentations on the proposed rules may be made on September 27, 1978, at 1:00 p.m. to 4:30 p.m., Iowa Des Moines National Bank, 8301 Douglas, Des Moines, Iowa. Persons attending the meeting should park in the rear far east lot. Do not use the back parking.

BANKING DEPARTMENT[140]

Pursuant to authority of section 17A.4(2) of the Code and Acts of the Sixty-seventh General Assembly, 1978, rules of the Department of Banking appearing in the Iowa Administrative Code [140] are hereby amended by adding the following new chapter:

ITEM 1. Amend rules of the department of banking by adding chapter 27 as follows:

CHAPTER 27
CREDIT UNION SHARE DRAFTS

140—27.1(533) Definitions. As used in these rules the following definitions shall apply:

27.1(1) "Share draft" means a draft used by credit union members to withdraw funds from a credit union for payment to nonmembers.

27.1(2) "Share draft legal reserve account" means an allocation of cash redeemable on call and recorded on the credit union's records as an asset account.

140—27.2(533) Reserve requirements. Each credit union participating in a share draft program shall establish and maintain, on a daily basis, a share draft legal reserve account in the Corporate Central Credit Union with the reserve amount to be determined as follows:

27.2(1) One hundred and twenty-five percent of the aggregate amount of share drafts actually paid by the credit union during the preceding month divided by the number of days in that calendar month, excluding Saturdays, Sundays and legal holidays.

27.2(2) After the initial reserve is established, the reserve requirement shall be calculated on the first business day of each subsequent month and adjusted according to the formula set out in subrule 27.2(1).

140—27.3(533) Corporate Central Credit Union. The Corporate Central Credit Union shall maintain the funds received under subrule 27.2(1) and 27.2(2) in a share draft legal reserve account.

140—27.4(533) Discontinuance of the use of share drafts. Credit unions offering share drafts to members shall give written notice by first-class mail to all participants no later than November 3, 1978 substantially as follows:

27.4(1) The practice of writing share drafts by members for the payment of funds to nonmembers shall terminate February 2, 1979.

27.4(2) Share drafts entering the clearing system after the termination date of February 2, 1979 may continue to be processed until April 15, 1979.

27.4(3) Share drafts presented to the credit union for payment after April 15, 1979 must be dishonored and returned to the payee.

[Filed emergency effective 8/10/78]

The superintendent of banking finds that notice and public participation would be contrary to the public interest in view of a provision in Acts of the Sixty-seventh General Assembly, House File 2467 which provides for the immediate formulation of rules establishing reserve requirements for those credit unions offering share draft privileges to their members as of June 28, 1978, and an additional provision requiring the superintendent to provide for the orderly discontinuance of the use of share drafts between February 1 and April 15 of 1979. Information available to the superintendent indicates that the orderly termination of the share draft business by Iowa credit unions could take up to six months and it is impossible to develop a permanent rule for the discontinuance of such accounts in sufficient time to abide by the legislative mandate that such termination be in accordance with procedures that would protect the financial integrity of credit unions and their members. Therefore, this rule is filed without notice and public participation pursuant to chapter 17A.4(2) of the 1977 Code of Iowa as amended, and shall be effective only until February 10, 1979.

This rule which the superintendent of banking finds to be a requirement of the law shall become effective as provided in section 17A.5(2)"b"(2), of the 1977 Code of Iowa as amended, immediately upon filing in the office of the Administrative Rules Co-ordinator.

These changes are intended to implement Acts of the Sixty-seventh General Assembly, 1978, House File 2467, section 23, and section 17A.3 of the Code of Iowa.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

CIVIL RIGHTS COMMISSION[240]

Pursuant to the authority of section 601A.5(10) of the Code of Iowa the Civil Rights Commission hereby amends chapter 2 of its administrative rules by adopting the following temporary rule pursuant to section 17A.4(2) and 17A.5(2)"b"(2) of the Code of Iowa as amended by Acts of the Sixty-seventh General Assembly, Second Session, Senate File 244. The rule shall become effective on August 18, 1978, upon filing it with the office of the administrative rules co-ordinator.

ITEM 1. Rule 240—2.14(601A) is amended to read as follows:

240—2.14(601A) Remedial and/or affirmative action.

2.14(1) Policy statement. Employers and other persons subject to the Iowa Civil Rights Act (Chapter 601A of the Code of Iowa) are required to maintain nondiscriminatory employment and personnel systems and therefore are obligated to comply with the statute without awaiting the action of any governmental agency. Thus, employers and other persons subject to the Act who, after a self-analysis, have concluded that there is a likelihood that they may be found in violation of the Act because of some aspect of their employment and personnel system, are required by the statute to take remedial and/or affirmative action to correct the situation. An employer or other person subject to the Act who has a reasonable basis for concluding that it might be held in violation of the Act and who take remedial and/or affirmative action reasonably calculated to avoid that result on the basis of such self-analysis does not, *in the opinion of the commission*, thereby violate the Act with respect to any employee or applicant for employment who is denied an employment opportunity as a result of such action. *In the opinion of the commission,* ~~T~~the lawfulness of such remedial and/or affirmative action program is not dependent upon an admission, or a finding, or evidence sufficient to prove that the employer or other person subject to the Act taking such action has violated the Act.

2.14(2) Type of affirmative action covered. *In the opinion of the commission,* ~~A~~an employer or other person subject to Executive Order #15 who has adopted an Affirmative Action Program pursuant to and in conformity with Executive Order #15 and federal and state regulations does not violate the Act by reason of its adherence to its Affirmative Action Program. Furthermore, for purposes of demonstrating *to the commission* that an employer or other person has reasonably concluded that it might be held in violation of the Act and that the remedial and/or affirmative action it has taken is reasonably calculated to avoid that result, the employer or other person may rely on an analysis which has been conducted in order to comply with Revised Order 4 or related orders issued by the Office of Federal Contract Compliance Programs under Executive Order 11246, as amended, or similar analysis required under federal, state, and local laws prohibiting employment discrimination.

2.14(3) Use of goals and numerical remedies. The remedial and/or affirmative action programs contemplated by these rules, whether taken by private employers or governmental employers or other persons covered by the Act, include the use of race, color, creed, sex, age, religion, disability, and ethnic-conscious goals and timetables, ratios, or other numerical remedies intended to remedy the prior discrimination against or exclusion of protected classes or to ensure that the employer's practices presently operate in a non-discriminatory manner. Employers or other persons subject to the Act must be attentive to the effect of their employment practices in light of past discrimination by others. Griggs v. Duke Power, 401 U.S. 424 (1971). Such numerical remedies must be reasonable under the facts and circumstances which include any discrimination to be remedied and the relevant work force. Benefits under such remedial and/or affirmative action programs need not be restricted to identifiable victims of past discrimination by the employer or other persons subject to the Act. Specific remedial and/or affirmative measures may include, but are not limited to, those described in the Equal Employment Opportunity Coordinating Council's "Policy Statement on Affirmative Action Programs for State and Local Government Agencies." (41 Federal Register 38814, September 13, 1976), which reads, in relevant part:

"2. Voluntary affirmative action to assure equal employment opportunity is appropriate at any stage of the employment process. The first step in the construction of any affirmative action plan should be an analysis of the employer's work force to determine whether percentages of sex, race, or ethnic groups in individual job classifications are substantially similar to the percentages of those groups available in the work force in the relevant job market who possess the basic job related qualifications.

"When substantial disparities are found through such analysis, each element of the overall selection process should be examined to determine which elements operate to exclude persons on the basis of sex, race, or ethnic group. Such elements include, but are not limited to, recruitment, testing, ranking, certification, interview, recommendations for selection, hiring, promotion, etc. The examination of each element of the selection process should at a minimum include a determination of its validity in predicting job performance.

"3. When an employer has reason to believe that its selection procedures have the exclusionary effect described in paragraph 2 above, it should initiate affirmative steps to remedy the situation. Such steps, which in design and execution may be race, color, sex or ethnic "conscious," include, but are not limited to, the following:

"The establishment of a long term goal and short range, interim goals and timetables for the specific job classifications, all of which should take into account the availability of basically qualified persons in the relevant job market;

"A recruitment program designed to attract qualified members of the group in question;

"A systematic effort to organize work and re-design jobs in ways that provide opportunities for persons lacking "journeyman" level knowledge or skills to enter and, with appropriate training, to progress in a career field;

"Revamping selection instruments or procedures which have not yet been validated in order to reduce or eliminate exclusionary effects on particular groups in particular job classifications;

"The initiation of measures designed to assure that members of the affected group who are qualified to perform the job are included within the pool of persons from which the selecting official makes the selection;

"A systematic effort to provide career advancement training, both classroom and on-the-job, to employees locked into dead end jobs; and

"The establishment of a system for regularly monitoring the effectiveness of the particular affirmative action program, and procedures for making timely adjustments in this program where effectiveness is not demonstrated."

2.14(4) Written opinions. If during the investigation of a charge an employer or other person asserts that the action complained of was taken pursuant to a program such as those described in these rules, the investigating official shall determine whether such program conformed to the requirements stated in these rules for

CIVIL RIGHTS[240] *(cont'd)*

such a program. If the investigating official so finds, he or she will set forth the facts on which the findings are based and will issue a no probable cause finding on the complaint. If such employer or other person also asserts that the action complained of was taken in good faith, in conformity with and in reliance upon these rules, the investigating official shall determine whether such assertion is true. If the investigating official so finds, he or she will set forth the facts on which this finding is based and include such finding with the other findings described in this section in the no probable cause finding.

2.14(5) Reliance. The *commission shall apply the* foregoing principles ~~shall apply~~ where the challenged person's action is taken pursuant to any attempt to comply with the antidiscrimination requirements of any federal, state, or local government laws.

2.14(6) Limitations of standards. The specification of remedial and/or affirmative action in these rules is intended only to identify certain types of actions which an employer or other person may take consistent with the Act to comply voluntarily but does not attempt to provide standards for determining whether such attempts to eliminate discrimination against minorities and women have been successful. Whether, in any given case, the employer who takes such remedial and/or affirmative action will have done enough to remedy discrimination against those protected by the Act will be a question of fact in each case.

[Filed emergency 8/18/78, effective 8/18/78]

The commission believes the adoption of the above amendment meets the objection filed by the Administrative Rules Review Committee August 15, 1978. The commission further believes the rule confers a benefit to the public in that it clarifies the rule previously adopted which became effective August 3, 1978. In order to provide a rule which meets the approval of the commission and the governmental bodies exercising oversight at the earliest possible time, the commission has adopted the amendment without a notice of intended action and without publication prior to its effective date. The commission notes in taking this action that the amendment merely clarifies the rule previously adopted and that that rule, the essence and purpose of which remains unaltered, was published in a Notice of Intended Action May 3, 1978, in the IAC Supplement, was adopted after fully considering public comments on the rule, and did not become effective until thirty-five days after being filed and published in the Iowa Administrative Bulletin.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

CONSERVATION COMMISSION[290]

Pursuant to the authority of sections 107.24 and 17A.4 of the Code, chapter 100 of the Iowa Administrative Code relating to hunting seasons for racoon, opossum, fox, and coyote, is hereby amended as follows.

DIVISION OF FISH AND GAME

Rule 100.1(109) is amended as follows:

290—100.1(109) Red and gray fox hunting season. Open season for red and gray fox, hunting only, shall be from 6:00 a.m. November 25, 1978, through January ~~21~~ *14*, 1979. Entire state open. No bag or possession limit.

[Filed emergency 8/9/78, effective 8/9/78]

The notice of intended action relative to chapter 100 was published in the IAC on 3/8/78. A public hearing was held on 4/14/78. Comments and objections were received on the proposal at, and prior to, the hearing. Several persons requested shorter seasons, while most wanted the same, or more liberal seasons compared to the notice and the 1977 season. Specific dates were added by the commission at the time the rule was adopted. The commission believes that this amendment will provide added protection for the species. This conclusion is the result of additional public comment after the rule was adopted by the commission. A public hearing is unnecessary because of the previous public hearing.

Since the commission has complied with all of the rules of chapter 17A in formulating the rule, this amendment shall become effective immediately upon filing with the office of administrative rules co-ordinator as provided for in section 17A.5(2)"b" of the Code of Iowa 1977, as amended by Sixty-seventh General Assembly, Senate File 244.

[Pubished 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

CONSERVATION COMMISSION[290]

Pursuant to the authority of sections 107.24 and 17A.4 of the Code, chapter 104 of the Iowa Administrative Code relating to the trapping of fur-bearing animals, is hereby amended as follows.

DIVISION OF FISH AND GAME

Paragraph 104.3(109) is amended as follows:

290—104.3(109) Red and gray fox. Open season for the trapping of red and gray fox shall be from 6:00 a.m., November 25, 1978, through January ~~21~~ *14*, 1979. Entire state open. No bag or possession limit.

[Filed emergency 8/9/78, effective 8/9/78]

The notice of intended action relative to chapter 104 was published in the IAC on 3/8/78. A public hearing was held on 4/14/78. Comments and objections were received on the proposal at, and prior to, the hearing. Several persons requested shorter seasons, while most wanted the same, or more liberal seasons compared to the notice and the 1977 season. Specific dates were added by the commission at the time the rule was adopted. The commission believes that this amendment will provide added protection for the species. This conclusion is the result of additional public comment after the rule was adopted by the commission. A public hearing is unnecessary because of the previous public hearing.

Since the commission has complied with all of the rules of chapter 17A in formulating the rule, this amendment shall become effective immediately upon filing with the office of administrative rules co-ordinator as provided for in section 17A.5(2)"b" of the Code of Iowa 1977, as amended by Sixty-seventh General Assembly, Senate File 244.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOIL CONSERVATION DEPARTMENT [780]

The state soil conservation committee pursuant to Acts 67 G.A., House File 2354, proposes to strike chapter 4 of its rules published in IAC and adopt in lieu thereof the following rules relating to surface coal mines.

CHAPTER 4
MINES AND MINERALS DIVISION
COAL MINES

780—4.1(17A,83A) Initial regulatory program. The following sets forth the rules and procedures through which the department of soil conservation will implement the initial regulatory program pursuant to chapter 83A of the Code of Iowa and the Federal Surface Mining Control and Reclamation Act of 1977.

4.1(1) Scope.

a. This part provides general introductory and applicability material for the initial regulatory program required by section 502 and other sections of the Act which require early implementation. The initial regulatory program is effective until permanent programs are approved in accordance with section 503 of the Acts.

b. The initial regulatory program which this part introduces includes:

(1) Environmental performance standards of parts 715-718 of 30 Code of Federal Regulations.

(2) Inspection and enforcement procedures of parts 720 of 30 Code of Federal Regulations.

4.1(2) Objectives.

a. The objectives of the initial regulatory program are to:

(1) Protect the health and safety of the public and minimize the damage to the environment resulting from surface coal mining operations during the interval between enactment of the Act and adoption of a permanent state or federal regulatory program; and

(2) Co-ordinate the state and federal regulatory programs to accomplish the purposes of the Act.

4.1(3) Applicability.

a. General obligations.

(1) A person conducting coal mining operations shall have a permit and shall comply with state laws and regulations.

(2) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that creates an imminent danger to the health or safety of the public.

(3) A person conducting coal mining operations shall not engage in any operations which result in a condition or constitute a practice that causes or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources.

b. Performance standards obligations. A person who conducts any coal mining operations under an initial permit issued by the department shall comply with the requirements of the initial regulatory program. Such permits shall contain terms that comply with the relevant performance standards of the initial regulatory program.

c. Structures in existence prior to May 3, 1978 (except those built by operators permitted since February 2, 1978), need not meet the design criteria of these rules, but must comply with all applicable performance standards.

4.1(4) Definitions. As used throughout the initial regulatory program the following terms have the specified meanings unless otherwise indicated:

a. "Acid drainage" means water with a pH of less than 6.0 discharged from active or abandoned mines and from areas affected by coal mining operations.

b. "Acid-forming materials" means earth materials that contain sulfide mineral or other materials which, if exposed to air, water, or weathering processes, will cause acids that may create acid drainage.

c. "Alluvial valley floors" means unconsolidated stream-laid deposits holding streams where water availability is sufficient for subirrigation or flood irrigation agricultural activities but does not include upland areas which are generally overlain by a thin veneer of colluvial deposits composed chiefly of debris from sheet erosion, deposits by unconcentrated runoff or slope wash, together with talus, other mass movement accumulation and windblown deposits.

d. "Approximate original contour" means that surface configuration achieved by backfilling and grading of the mined area so that the reclaimed area, including any terracing or access roads, closely resembles the general surface configuration of the land prior to mining and blends into and complements the drainage pattern of the surrounding terrain, with all highwalls and spoil piles eliminated; water impoundments may be permitted where the department determines that they are in compliance with 4.2(7).

e. "Aquifer" means a zone, stratum, or group of strata that can store and transmit water in sufficient quantities for a specific use.

f. "Combustible material" means organic material that is capable of burning either by fire or through a chemical process (oxidation) accompanied by the evolution of heat and a significant temperature rise.

g. "Compaction" means the reduction of pore spaces among the particles of soil or rock, generally done by running heavy equipment over the earth materials.

h. "Disturbed area" means those lands that have been affected by surface coal mining and reclamation operations.

i. "Diversion" means a channel, embankment, or other manmade structure constructed for the purpose of diverting water from one area to another.

j. "Downslope" means the land surface between a valley floor and the projected outcrop of the lowest coal bed being mined along each highwall.

k. "Embankment" means an artificial deposit of material that is raised above the natural surface of the land and used to contain, divert, or store water, support roads or railways, or other similar purposes.

l. "Essential hydrologic functions" means, with respect to alluvial valley floors, the role of the valley floor in collecting, storing, and regulating the natural flow of surface water and ground water, and in providing a place for irrigated and subirrigated farming, by reason of its position in the landscape and the characteristics of its underlying material.

m. "Flood irrigation" means irrigation through natural overflow or the temporary diversion of high flows in which the entire surface of the soil is covered by a sheet of water.

n. "Ground water" means subsurface water that fills available openings in rock or soil materials such that they may be considered water-saturated.

o. "Highwall" means the face of exposed overburden and coal in an open cut of a surface or for entry to an underground coal mine.

p. "Hydrologic balance" means the relationship between the quality and quantity of inflow to, outflow from, and

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storage in a hydrologic unit such as a drainage basin, aquifer, soil zone, lake, or reservoir. It encompasses the quantity and quality relationships between precipitation, runoff, evaporation, and the change in ground and surface water storage.

q. "Hydrologic regime" means the entire state of water movement in a given area. It is a function of the climate, and includes the phenomena by which water first occurs as atmospheric water vapor, passes into a liquid or solid form and falls as precipitation, moves thence along or into the ground surface, and returns to the atmosphere as vapor by means of evaporation and transpiration.

r. "Impoundment" means a closed basin formed naturally or artificially built, which is dammed or excavated for the retention of water, sediment, or waste.

s. "Intermittent or perennial stream" means a stream or part of a stream that flows continuously during all (perennial) or for at least one month (intermittent) of the calendar year as a result of groundwater discharge or surface runoff. The term does not include an emphemeral stream which is one that flows for less than one month of a calendar year and only in direct response to precipitation in the immediate watershed and whose channel bottom is always above the local water table.

t. "Leachate" means a liquid that has percolated through soil, rock, or waste and has extracted dissolved or suspended materials.

u. "Noxious plants" means species that have been included on official state lists of noxious plants.

v. "Overburden" means material of any nature, consolidated or unconsolidated, that overlies a coal deposit, excluding topsoil.

w. "Outslope" means the exposed area sloping away from a bench or terrace being constructed as a part of a surface coal mining and reclamation operation.

x. "Productivity" means the vegetative yield produced by a unit area for a unit of time.

y. "Recharge capacity" means the ability of the soils and underlying materials to allow precipitation and runoff to infiltrate and reach the zone of saturation.

z. "Roads" means access and haul roads constructed, used, reconstructed, improved, or maintained for use in surface coal mining and reclamation operations, including use by coal-hauling vehicles leading to transfer, processing, or storage areas. The term includes any such road used and not graded to approximate original contour within forty-five days of construction other than temporary roads used for topsoil removal and coal haulage roads within the pit area. Roads maintained with public funds such as all federal, state, county, or local roads are excluded.

aa. "Recurrence interval" means the precipitation event expected to occur, on the average, once in a specified interval. For example, the ten-year twenty-four-hour precipitation event would be that twenty-four-hour precipitation event expected to be exceeded on the average once in ten years. Magnitude of such events are as defined by the National Weather Service Technical Paper No. 40, "Rainfall Frequency Atlas of the U.S.," May, 1961, and subsequent amendments or equivalent regional or rainfall probability information developed therefrom.

ab. "Runoff" means precipitation that flows overland before entering a defined stream channel and becoming streamflow.

ac. "Safety factor" means the ratio of the available shear strength to the developed shear stress on a potential surface of sliding determined by accepted engineering practice.

ad. "Sediment" means undissolved organic and inorganic material transported or deposited by water.

ae. "Sedimentation pond" means any natural or artificial structure or depression used to remove sediment from water and store sediment or other debris.

af. "Slope" means average inclination of a surface, measured from the horizontal. Normally expressed as a unit of vertical distance to a given number of units of horizontal distance (e.g., lv to 5h = 20 percent = 11.3 degrees).

ag. "Soil horizons" means contrasting layers of soil lying one below the other, parallel or nearly parallel to the land surface. Soil horizons are differentiated on the basis of field characteristics and laboratory data. The three major soil horizons are:

(1) "A horizon." The uppermost layer in the soil profile often called the surface soil. It is the part of the soil in which organic matter is most abundant, and where leaching of soluble or suspended particles is the greatest.

(2) "B horizon." The layer immediately beneath the A horizon and often called the subsoil. This middle layer commonly contains more clay, iron, or aluminum than the A or C horizons.

(3) "C horizon." The deepest layer of the soil profile. It consists of loose material or weathered rock that is relatively unaffected by biologic activity.

ah. "Spoil" means overburden that has been removed during the surface mining.

ai. "Stabilize" means any method used to control movement of soil, spoil piles, or areas of disturbed earth and includes increasing bearing capacity, increasing shear strength, draining, compacting, or revegetating.

aj. "Subirrigation" means irrigation of plants with water delivered to the roots from underneath.

ak. "Surface water" means water, either flowing or standing, on the surface of the earth.

al. "Suspended solids" means organic or inorganic materials carried or held in suspension in water that will remain on a 0.45 micron filter.

am. "Toxic-forming materials" means earth materials or wastes which, if acted upon by air, water, weathering, or microbiological processes, are likely to produce chemical or physical conditions in soils or water that are detrimental to biota or uses of water.

an. "Toxic-mine drainage" means water that is discharged from active or abandoned mines and other areas affected by coal mining operations and which contains a substance which through chemical action or physical effects is likely to kill, injure, or impair biota commonly present in the area that might be exposed to it.

ao. "Valley fill and head-of-hollow fill" means a structure consisting of any materials other than waste placed so as to encroach upon or obstruct to any degree any natural stream channel other than those minor channels located on highland areas where overland flow in natural rills and gullies is the predominant form of runoff. Such fills are normally constructed in the uppermost portion of a V-shaped valley in order to reduce the upstream drainage area (head-of-hollow fills). Fills located farther downstream (valley fills) must have larger diversion structures to minimize infiltration. Both fills are characterized by rock underdrains and are constructed in compacted lifts from the toe to the upper surface in a manner to promote stability.

ap. "Waste" means earth materials, which are combustible, physically unstable, or acid-forming or toxic-forming, wasted or otherwise separated from product coal and are slurried or otherwise transported from coal processing facilities or preparation plants after physical or chemical processing, cleaning, or concentrating of coal.

aq. "Water table" means upper surface of a zone of saturation, where the body of ground water is not confined by an overlying impermeable zone.

780—4.2(17A,83A) General performance standards.

4.2(1) General obligations.

a. Compliance. All surface coal mining and reclamation operations shall comply with the initial performance standards of this part. Rule 4.4(17A,83A) establishes performance standards for surface effects of underground coal mines. Initial regulations regarding the special initial performance standards are established by rule 4.3(17A,83A) for:

(1) Surface coal mining operations on steep slopes.

(2) Surface coal mining involving ridge or hilltop removal.

(3) Surface coal mining operations on prime farmlands.

b. Authorizations to operate. A copy of all current permits, licenses, approved plans, or other authorizations to operate the mine shall be available for inspection at or near the mine site.

4.2(2) Signs and markers.

a. Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material. The signs and other markers shall be maintained during all operations to which they pertain and shall conform to local ordinances and codes.

b. Mine and permit identification signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public roads and highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

c. Perimeter markers. The perimeter of the permit area shall be clearly marked by durable and easily recognized markers, or by other means approved by the department.

d. Buffer zone markers. Buffer zones as defined in 4.2(7) shall be marked in a manner consistent with the perimeter markers along the interior boundary of the buffer zone.

e. Blasting signs. If blasting is necessary to conduct surface coal mining operations, signs reading "Blasting Area" shall be displayed conspicuously at the edge of blasting areas along access and haul roads within the mine property. Signs reading "Blasting Area" and explaining the blasting warning and all-clear signals shall be posted at all entrances to the permit area.

f. Topsoil markers. Where topsoil or other vegetation-supporting material is segregated and stockpiled according to 4.2(6) "c", the stockpiled material shall be marked. Markers shall remain in place until the material is removed.

4.2(3) Postmining use of land.

a. General. All disturbed areas shall be restored in a timely manner (1) to conditions that are capable of supporting the uses which they were capable of supporting before any mining, or (2) to higher or better uses achievable under criteria and procedures of paragraph "d" of this subrule.

b. Determining premining use of land. The premining uses of land to which the postmining land use is compared shall be those uses which the land previously supported if the land had not been previously mined and had been properly managed.

(1) The postmining land use for land that has been previously mined and not reclaimed shall be judged on the basis of the highest and best use that can be achieved and is compatible with surrounding areas.

(2) The postmining land use for land that has received improper management shall be judged on the basis of the premining use of surrounding lands that have received proper management.

(3) If the premining use of the land was changed within five years of the beginning of mining, the comparison of postmining use to premining use shall include a comparison with the historic use of the land as well as its use immediately preceding mining.

c. Land-use categories. Land use is categorized in the following groups. Change from one to another land use category in premining to postmining constitutes an alternate land use and the permittee shall meet the requirements of paragraph "d" of this subrule and all other applicable environmental protection performance standards of this chapter.

(1) Heavy industry. Manufacturing facilities, power plants, airports or similar facilities.

(2) Light industry and commercial services. Office buildings, stores, parking facilities, apartment houses, motels, hotels, or similar facilities.

(3) Public services. Schools, hospitals, churches, libraries, water-treatment facilities, solid-waste disposal facilities, public parks and recreation facilities, major transmission lines, major pipelines, highways, underground and surface utilities, and other servicing structures and appurtenances.

(4) Residential. Single- and multiple-family housing (other than apartment houses) with necessary support facilities. Support facilities may include commercial services incorporated in and comprising less than five percent of the total land area of housing capacity, associated open space, and minor vehicle parking and recreation facilities supporting the housing.

(5) Cropland. Land used primarily for the production of cultivated and closegrowing crops for harvest along or in association with sod crops. Land used for facilities in support of farming operations are included.

(6) Rangeland. Includes rangelands and forest lands which support a cover of herbaceous or scrubby vegetation suitable for grazing or browsing use.

(7) Hayland or pasture. Land used primarily for the long-term production of adapted, domesticated forage plants to be grazed by livestock or cut and cured for livestock feed.

(8) Forest land. Land with at least a twenty-five percent tree canopy or land at least ten percent stocked by forest trees of any size, including land formerly having had such tree cover and that will be naturally or artificially reforested.

(9) Impoundments of water. Land used for storing water for beneficial uses such as stock ponds, irrigation, fire protection, recreation, or water supply.

(10) Fish and wildlife habitat and recreation lands. Wetlands, fish and wildlife habitat, and areas managed primarily for fish and wildlife or recreation.

(11) Combined uses. Any appropriate combination of land uses where one land use is designated as the primary land use and one or more other land uses are designated as secondary land uses.

d. Criteria for approving alternative postmining use of land. An alternative postmining land use shall be approved by the department, after consultation with the landowner or the land-management agency having jurisdiction over state or federal lands, if the following criteria are met. Proposals to remove an entire coal seam running through the upper part of a ridge or hill must also meet these criteria in addition to the requirements of 4.3(3).

(1) The proposed land use is compatible with adjacent land use and, where applicable, with existing local, state or federal land use policies and plans. A written statement of the views of the authorities with statutory responsibilities for land use policies and plans shall accompany the request for approval. The permittee shall obtain any required approval of local, state or federal land management agencies, including any necessary zoning or other changes necessarily required for the final land use.

(2) Specific plans have been prepared which show the feasibility of the proposed land use as related to needs, project land use trends, and markets and that include a schedule showing how the proposed use will be developed and achieved

within a reasonable time after mining and be sustained. The department may require appropriate demonstrations to show that the planned procedures are feasible, reasonable, and integrated with mining and reclamation, and that the plans will result in successful reclamation.

(3) Provision of any necessary public facilities is assured as evidenced by letters of commitment from parties other than the permittee, as appropriate, to provide them in a manner compatible with the permittee's plans.

(4) Specific and feasible plans for financing attainment and maintenance of the postmining land use including letters of commitment from parties other than the permittee as appropriate, if the postmining land use is to be developed by such parties.

(5) The plans are designed under the general supervision of a registered professional engineer, or other appropriate professional, who will ensure that the plans conform to applicable accepted standards for adequate land stability, drainage, and vegetative cover, and aesthetic design appropriate for the postmining use of the site.

(6) The proposed use or uses will neither present actual or probable hazard to public health or safety nor will they pose any actual or probable threat of water flow diminution or pollution.

(7) The use or uses will not involve unreasonable delays in reclamation.

(8) Necessary approval of measures to prevent or mitigate adverse effects on fish and wildlife has been obtained from the department and appropriate state and federal fish and wildlife management agencies.

(9) Proposals to change premining land uses of range, fish and wildlife habitat, forest land, hayland, or pasture to a postmining cropland use, where the cropland would require continuous maintenance such as seeding, plowing, cultivation, fertilization, or other similar practices to be practicable or to comply with applicable federal, state, and local laws, shall be reviewed by the department to assure that:

1. There is a firm written commitment by the permittee or by the landowner or land manager to provide sufficient crop management after release of applicable performance bonds to assure that the proposed postmining cropland use remains practical and reasonable;

2. There is sufficient water available and committed to maintain crop production; and

3. Topsoil quality and depth are shown to be sufficient to support the proposed use.

(10) The department has provided by public notice not less than forty-five days nor more than sixty days for interested citizens and local, state and federal agencies to review and comment on the proposed land use.

4.2(4) Backfilling and grading. In order to achieve the approximate original contour, the permittee shall, except as provided in this section, transport, backfill, compact (where advisable to ensure stability or to prevent leaching of toxic materials), and grade all spoil material to eliminate all highwalls, spoil piles, and depressions. Cut-and-fill terraces may be used only in those situations expressly identified in this subrule. The postmining graded slopes must approximate the premining natural slopes in the area as defined in paragraph "a" below.

a. Slope measurements.

(1) To determine the natural slopes to the area before mining, sufficient slopes to adequately represent the land surface configuration, and as approved by the department in accordance with site conditions, must be accurately measured and recorded. Each measurement shall consist of an angle of inclination along the prevailing slope extending one hundred linear feet above and below or beyond the coal outcrop or the area to be disturbed; or, where this is impractical, at locations specified by the department. Where the area has been previously mined, the measurements shall extend at least one hundred feet beyond the limits of mining disturbances as determined by the department to be representative of the premining configuration of the land. Slope measurements shall take into account natural variations in slope so as to provide accurate representation of the range of natural slopes and shall reflect geomorphic differences of the area to be disturbed. Slope measurements may be made from topographic maps showing contour lines, having sufficient detail and accuracy consistent with the submitted mining and reclamation plan.

(2) After the disturbed area has been graded, the final graded slopes shall be measured at the beginning and end of lines established on the prevailing slope at locations representative of premining slope conditions and approved by the department. These measurements must not be made so as to allow unacceptably steep slopes to be constructed.

b. Final graded slopes.

(1) The final graded slopes shall not exceed either the approximate premining slopes as determined according to "a" (1) and approved by the department or any lesser slope specified by the department based on consideration of soil, climate, or other characteristics of the surrounding area. Postmining final graded slopes need not be uniform. The requirements of this paragraph may be modified by the department where the mining is reaffecting previously mined lands that have not been restored to the standards of this subrule and sufficient spoil is not available to return to the slope determined according to "a" (1). Where such modifications are approved, the permittee shall, as a minimum, be required to:

1. Retain all overburden and spoil on the solid portion of existing or new benches; and

2. Backfill and grade to the most moderate slope possible to eliminate the highwall which does not exceed the angle of repose or such lesser slopes as is necessary to assure stability.

(2) On approval by the department and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are compatible with the postmining land use approved under 4.2(3), and are appropriate substitutes for construction of lower grades of the reclaimed lands. The terraces shall meet the following requirements:

1. The width of the individual terrace bench shall not exceed twenty feet unless specifically approved by the department as necessry for stability, erosion control, or roads included in the approved postmining land use plan.

2. The vertical distance between terraces shall be as specified by the department to prevent excessive erosion and to provide long-term stability.

3. The slope of the terrace outslope shall not exceed 1v:2h (50 percent). Outslopes which exceed 1v:2h (50 percent) may be approved if they have a minimum static safety factor of more than 1.5 and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

4. Culverts and underground rock drains shall be used on the terrace only when approved by the department.

(3) All operations on steep slopes of twenty degrees or more or on such lesser slopes as the department defines as a steep slope shall meet the provisions of 4.3(2).

c. Hilltop removal. The requirements of this paragraph and of 4.3(3) shall apply to surface mining operations which remove entire coal seams in the upper part of a ridge, or hill by removing all of the overburden, and where the requirements for achieving the approximate original contour of this subrule

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cannot be met. Final graded top plateau slopes on the mined area shall be less than 1v:5h so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed 1v:2h, except where engineering data substantiates and the department finds that a minimum static safety factor of 1.5 (or higher factors specified by the department) will be attained. Although the area need not be restored to approximate original contour, all highwalls, spoil piles, and depressions except as provided in paragraphs "d" and "e" of this subrule shall be eliminated.

d. Small depressions. The requirement of this subrule to achieve approximate original contour does not prohibit construction of small depressions if they are approved by the department to minimize erosion, conserve soil moisture or promote revegetation. These depressions shall be compatible with the approved postmining land use and shall not be inappropriate substitutes for construction of lower grades on the reclaimed lands. Depressions approved under this subrule shall have a holding capacity of less than one cubic yard of water or, if it is necessary that they be larger, shall not restrict normal access throughout the area or constitute a hazard. Large, permanent impoundments shall be governed by paragraph "e" of this subrule and by 4.2(7).

e. Permanent impoundments. Permanent impoundments may be retained in mined and reclaimed areas provided all highwalls are eliminated by grading to appropriate contour and the provisions for postmining land use 4.2(3) and protection of the hydrologic balance 4.2(7) are met. No impoundments shall be constructed on top of areas in which excess materials are deposited pursuant to 4.2(5) of this part. Impoundments shall not be used to meet the requirements of paragraph "j" of this subrule.

f. Definition of thin and thick restored overburden. The thin overburden provisions of paragraph "g" of this subrule may apply only where the final thickness is less than 0.8 of the initial thickness. The thick overburden provisions of paragraph "h" of this subrule may apply only where the final thickness is greater than 1.2 of the initial thickness. Initial thickness is the sum of the overburden thickness and coal thickness. Final thickness is the product of the overburden thickness times the bulking factor to be determined for each mine area. The provisions of paragraphs "g" and "h" apply only when operations cannot be carried out to comply with the requirements of paragraph "a" of this subrule to achieve the approximate original contour.

g. Thin overburden. In surface coal mining operations carried out continuously in the same limited pit area for more than one year from the day coal-removal operations begin and where the volume of all available spoil and suitable waste materials is demonstrated to be insufficient to achieve approximate original contour, surface coal mining operations shall be conducted to meet, at a minimum, the following standards:

(1) Transport, backfill, and grade, using all available spoil and suitable waste materials from the entire mine area, to attain the lowest practicable stable grade, which may not exceed the angle of repose, and to provide adequate drainage and long-term stability of the regraded areas.

(2) Eliminate highwalls by grading or backfilling to stable slopes not exceeding 1v:2h (50 percent), or such lesser slopes as the department may specify to reduce erosion, maintain the hydrologic balance, or allow the approved postmining land use.

(3) Transport, backfill, grade, and revegetate to achieve an ecologically sound land use compatible with the prevailing land use in unmined areas surrounding the permit area.

(4) Transport, backfill, and grade to ensure the impoundments are constructed only where it has been demonstrated to the department's satisfaction that all requirements of 4.2(7) have been met and that the impoundments have been approved by the department as meeting the requirements of this part and all other applicable federal and state regulations.

h. Thick overburden. In surface coal mining operations where the volume of spoil is demonstrated to be more than sufficient to achieve the approximate original contour surface coal mining operations shall be conducted to meet at a minimum the following standards:

(1) Transport, backfill, and grade all spoil and wastes not required to achieve approximate original contour in the surface mining area to the lowest practicable grade.

(2) Deposit, backfill, and grade excess spoil and wastes only within the permit area and dispose of such materials in conformance with this part.

(3) Transport, backfill, and grade excess spoil and wastes to maintain the hydrologic balance in accordance with this part and to provide long-term stability.

(4) Transport, backfill, grade, and revegetate wastes and excess spoil to achieve an ecologically sound land use compatible with the prevailing land uses in unmined areas surrounding the permit area.

(5) Eliminate all highwalls and depressions except as stated in paragraph "e" of this subrule by backfilling with spoil and suitable waste materials.

i. Regrading or stabilizing rills and gullies. When rills or gullies deeper than nine inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to 4.2(10). The department shall specify that rills or gullies of lesser size be stabilized if the rills or gullies will be disruptive to the approved postmining land use or may result in additional erosion and sedimentation.

j. Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill.

(1) Cover. All exposed coal seams remaining after mining and any acid-forming, toxic-forming, combustible materials, or any other waste materials identified by the department that are exposed, used, or produced during mining shall be covered with a minimum of four feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant growth, or to otherwise meet local conditions, the department shall specify thicker amounts of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of 4.2(7).

(2) Stabilization. Backfilled materials shall be selectively placed and compacted wherever necessary to prevent leaching of toxic-forming materials into surface or subsurface waters in accordance with 4.2(7) and wherever necessary to ensure the stability of the backfilled materials. The method of compacting material and the design specifications shall be approved by the department before the toxic materials are covered.

(3) Use of waste materials as fill. Before waste materials from a coal preparation or conversion facility or from other activities conducted outside the permit area such as municipal wastes are used for fill material, it must be demonstrated to the department by hydrogeological means and chemical and physical analyses that use of these materials will not adversely affect water quality, water flow, and vegetation; will not present hazards to public health and safety; and will not cause instability in the backfilled area.

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k. Grading along the contour. All final grading, preparation of overburden before replacement of topsoil, and placement of topsoil, in accordance with 4.2(6), shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators then grading preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation, or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

4.2(5) Disposal of spoil and waste materials in areas other than the mine workings or excavations.

a. Disposal of spoil in other than valley or head-of-hollow fills. Spoil not required to achieve the approximate original contour shall be transported to and placed in a controlled (engineered) manner in disposal areas other than the mine workings or excavations only if all the following conditions, in addition to the other requirements of this part, are met:

(1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of this paragraph.

(2) The disposal areas shall be located on the most moderate sloping and naturally stable areas available as approved by the department. Where possible, fill materials suitable for disposal shall be placed upon or above a natural terrace, bench, or berm if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer, and approved by the department.

(4) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(5) The disposal area does not contain springs, natural water courses, or wet weather seeps unless lateral drains are constructed from the wet areas to the underdrains in such a manner that infiltration of the water into the spoil pile will be prevented.

(6) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to 4.2(6) before the material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(7) The spoil shall be transported and placed in a controlled manner, concurrently compacted as necessary to ensure mass stability and prevent mass movement, covered, and graded to allow surface and subsurface drainage to be compatible with the natural surroundings, and to ensure long-term stability. The final configuration of the fill must be suitable for postmining land uses approved in accordance with 4.2(3). Terraces shall not be constructed unless approved by the department.

(8) If any portion of the fill interrupts, obstructs, or encroaches upon any natural drainage channel, the entire fill is classified as a valley or head-of-hollow fill and must be designed and constructed in accordance with the requirements of paragraph "b" of this subrule.

(9) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods to assure removal of all organic material and topsoil, placement of under-drainage systems, and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

b. Disposal of spoil in valley or head-of-hollow fills. Waste material must not be disposed of in valley or head-of-hollow fills. Spoil to be disposed of in natural valleys must be placed in accordance with the following requirements.

(1) The disposal areas shall be within the permit area, and they must be approved by the department as suitable for construction of fills in accordance with the requirements of paragraph "b".

(2) The disposal site shall be near the ridge top of a valley selected to increase the stability of the fill and to reduce the drainage area above the fill. Where possible, spoil shall be placed above a natural terrace, bench, or berm, if such placement provides additional stability and prevents mass movement.

(3) The fill shall be designed using recognized professional standards, certified by a registered professional engineer and approved by the department.

(4) All organic material shall be removed from the disposal area and the topsoil must be removed and segregated pursuant to 4.2(6) before the material is placed in the disposal area. However, if approved by the department, organic material may be used as mulch or may be included in the topsoil.

(5) Where the slope in the disposal area exceeds 1v:2.8h (36 percent), or such lesser slope designated by the department based on local conditions, measures such as keyway cuts (excavations to stable bedrock) or rock toe buttresses shall be constructed to stabilize the fill.

(6) A system of underdrains constructed of durable rock shall be installed along the natural drainage system, shall extend from the toe to the head of the fill and contain lateral drains to each area of potential drainage or seepage. In constructing the underdrains, no more than ten percent of the rock may be less than twelve inches in size and no single rock may be larger than twenty-five percent of the width of the drain. No rock shall be used in underdrains if it tends to easily disintegrate and thereby clog the drain or if it is acid-forming. The minimum size of the main underdrain shall be:

Total amount of fill material	Predominant type of fill material	Minimum size of drain in feet	
		Width	Height
Less than 1 million yd³	Sandstone	10	4
Do	Shale	16	8
More than 1 million yd³	Sandstone	16	8
Do	Shale	16	8

(7) Spoil shall be transported and placed in a controlled manner and concurrently compacted as specified by the department in lifts that are less than four feet thick in order to achieve the densities designed to ensure mass stability, to prevent mass movement, to avoid contamination of the rock underdrain and to prevent formation of voids. The final configuration of the fill must be suitable for postmining land uses approved in accordance with 4.2(3).

(8) Terraces shall be constructed to stabilize the face of the fill. The outslope of each terrace shall not exceed fifty feet in height and the width of the terrace shall not be less than twenty feet.

(9) The tops of the fill and each terrace shall be graded no steeper than 1v:20h (5 percent) and shall be constructed to drain surface water to the sides of the fill where stabilized surface channels shall be established off the fill to carry drainage away from the fill. Drainage shall not be directed over the outslope of the fill unless approved by the department.

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(10) All surface drainage from the undisturbed area above the fill shall be diverted away from the fill by approved structures leading into water courses.

(11) The outslope of the fill shall not exceed 1v:2h (50 percent). The department may require a flatter slope.

(12) The fill shall be inspected for stability by a registered engineer or other qualified professional specialist during critical construction periods and at least quarterly throughout construction to assure removal of all organic material and topsoil, placement of underdrainage systems, and proper construction of terraces according to the approved plan. The registered engineer or other qualified professional specialist shall provide a certified report after each inspection that the fill has been constructed as specified in the design approved by the department.

4.2(6) Topsoil handling. To prevent topsoil from being contaminated by spoil or waste materials, the permittee shall remove the topsoil as a separate operation from areas to be disturbed. Topsoil shall be immediately redistributed according to the requirements of paragraph "b" of this subrule on areas graded to the approved postmining configuration. The topsoil shall be segregated, stockpiled, and protected from the wind and water erosion and from contaminants which lessen its capability to support vegetation if sufficient graded areas are not immediately available for redistribution.

a. Topsoil removal. All topsoil to be salvaged shall be removed before any drilling for blasting, mining, or other surface disturbance.

(1) All topsoil shall be removed unless use of alternative materials is approved by the department in accordance with subparagraph (4). Where the removal of topsoil results in erosion that may cause air or water pollution, the department shall limit the size of the area from which topsoil may be removed at any one time and specify methods of treatment to control erosion of exposed overburden.

(2) All of the A horizon of the topsoil as identified by soil surveys shall be removed according to paragraph "a" and then replaced on disturbed areas as the surface soil layers. Where the A horizon is less than six inches, a six-inch layer that includes the A horizon and the unconsolidated material immediately below the A horizon (or all unconsolidated material if the total available is less than six inches) shall be removed and the mixture segregated and replaced as the surface soil layer.

(3) Where necessary to obtain soil productivity consistent with postmining land use, the department may require that the B horizon or portions of the C horizon or other underlying layers demonstrated to have comparable quality for root development be segregated and replaced as subsoil.

(4) Selected overburden materials may be used instead of, or as a supplement to, topsoil where the resulting soil medium is equal to or more suitable for vegetation, and if all the following requirements are met:

1. The permittee demonstrates that the selected overburden materials or an overburden-topsoil mixture is more suitable for restoring land capability and productivity by the results of chemical and physical analyses. These analyses shall include determinations of pH, percent organic material, nitrogen, phosphorus, potassium, texture class, and water-holding capacity, and such other analyses as required by the department. The department also may require that results of field-site trials or greenhouse tests be used to demonstrate the feasibility of using such overburden materials.

2. The chemical and physical analyses and the results of field-site trials and greenhouse tests are accompanied by a certification from a qualified soil scientist or agronomist.

3. The alternative material is removed, segregated, and replaced in conformance with this subrule.

b. Topsoil redistribution.

(1) After final grading and before the topsoil is replaced, regraded land shall be scarified or otherwise treated to eliminate slippage surfaces and to promote root penetration.

(2) Topsoil shall be redistributed in a manner that:

1. Achieves an approximate uniform thickness consistent with the postmining land uses;

2. Prevents excess compaction of the spoil and topsoil; and

3. Protects the topsoil from wind and water erosion before it is seeded and planted.

c. Topsoil storage. If the permit allows storage of topsoil, the stockpiled topsoil shall be placed on a stable area within the permit area where it will not be disturbed or be exposed to excessive water, wind erosion, or contaminants which lessen its capability to support vegetation before it can be redistributed on terrain graded to final contour. Stockpiles shall be selectively placed and protected from wind and water erosion, unnecessary compaction, and contamination by undesirable materials either by a vegetative cover as defined in 4.2(10) or by other methods demonstrated to provide equal protection such as snow fences, chemical binders, and mulching. Unless approved by the department, stockpiled topsoil shall not be moved until required for redistribution on a disturbed area.

d. Nutrients and soil amendments. Nutrients and soil amendments in the amounts and analyses as determined by soil tests shall be applied to the surface soil layer so that it will support the postmining requirements of 4.2(3) and the revegetation requirements of 4.2(10).

4.2(7) Protection of the hydrologic system. The permittee shall plan and conduct coal mining and reclamation operations to minimize disturbance to the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from surface coal mining and reclamation operations, both on- and off-site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized such that the postmining land use of the disturbed land is not adversely affected and applicable federal and state statutes and regulations are not violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize surface coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities. Practices to control and minimize pollution include, but are not limited to, stabilizing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, lining drainage channels with rock or vegetation, mulching, sealing acid-forming and toxic-forming materials, and selectively placing waste materials in backfill areas. If pollution can be controlled only by treatment, the permittee shall operate and maintain the necessary water-treatment facilities for as long as treatment is required.

a. Water quality standards and effluent limitations. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded, or planted, shall be passed through a sedimentation pond or a series of sedimentation ponds before leaving the permit area. Sedimentation ponds shall be retained until drainage from the disturbed area has met the water quality requirements of this subrule and the revegetation requirements of 4.2(10) have been met. The department may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet the effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. For purpose of this subrule only, disturbed

area shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this subrule and the upstream area is not otherwise disturbed by the permittee. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph "c" of this subrule in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by surface coal mining and reclamation operations must meet all applicable federal and state laws and regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER, mg/1, EXCEPT FOR pH

Effluent characteristics	Maximum allowable[1]	Average of daily values for 30 consecutive discharge days
Iron, total	7.0	3.5
Manganese, total[2]	4.0	2.0
Total suspended solids	70.0	35.0
pH	Within the range 6.0 to 9.0.	

[1]Based on representative sampling.

[2]These standards apply only in acid water (water below 6.0).

(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than a ten-year, twenty-four-hour frequency event will not be subject to the effluent limitations of paragraph "a".

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state laws or regulations or the limitations of paragraph "a". If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the department shall be installed, operated, and maintained. If the department finds (1) that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and (2) that the mine normally produces less than five hundred tons of coal per day, then the department may approve the use of a manual system if the permittee ensures consistent and timely treatment.

b. Surface-water monitoring.

(1) The permittee shall submit for approval by the department a surface-water monitoring program which meets the following requirements:

1. Provides adequate monitoring of all discharge from the disturbed area.

2. Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of water flow, pH, total iron, total manganese, and total suspended solids and, if requested by the department any other parameter characteristic of the discharge.

3. Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

4. Provides an analytical quality control system including standard methods of anyalysis such as those specified in 40 CFR 136, July 1, 1977.

5. Provides a regular report of all measurements to the department within sixty days of sample collection unless violations of permit conditions occur in which case the department shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. §§1251-1378), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the department to satisfy the reporting requirements if the data meet the sampling frequency and other requirements of this paragraph.

(2) After disturbed areas have been regraded and stabilized in accordance with this part, the permittee shall monitor surface water flow and quality. Data from this monitoring shall be used to demonstrate that the quality and quantity of runoff without treatment will be consistent with the requirement of this subrule to minimize disturbance to the prevailing hydrologic balance and with the requirements of this part to attain the approved postmining land use. These data shall provide a basis for approval by the department for removal of water quality or flow control systems and for determining when the requirements of this subrule are met. The department shall determine the nature of data, frequency of collection, and reporting requirements.

(3) Equipment, structures, and other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained, and operated and shall be removed when no longer required.

c. Diversion and conveyance of overland flow away from disturbed areas. In order to minimize erosion and to prevent or remove water from contacting toxic-producing deposits, overland flow from undisturbed areas may, if required or approved by the department, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met:

(1) Temporary diversion structures are those used during mining and reclamation. When no longer needed, these structures shall be removed and the area reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one-year recurrence interval, or a larger event as specified by the department.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the department and other appropriate state and federal agencies. To protect fills and property and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one hundred year recurrence interval, or a larger event as specified by the department. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and are approved by the department.

(3) Diversions shall be designed, constructed, and maintained in a manner to prevent additional contributions of suspended solids to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable state or federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenances of appropriate gradients, channel lining, revegetation, roughness structures, and detention basins.

d. Stream channel diversions.

(1) Flow from perennial and intermittent streams within the permit area may be diverted only when the diversions are approved by the department and they are in compliance with

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local, state, and federal statutes and regulations. When streamflow is allowed to be diverted, the new stream channel shall be designed and constructed to meet the following requirements:

1. The average stream gradient shall be maintained and the channel designed, constructed, and maintained to remain stable and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable state or federal law. Erosion control structures such as channel lining structures, retention basins, and artificial channel roughness structures shall be used only when approved by the department for temporary diversions where they are stable and will require only infrequent maintenance.

2. Channel, bank, and flood-plain configurations shall be adequate to safely pass the peak runoff of a precipitation event with a ten-year recurrence interval for temporary diversions and a one hundred year recurrence interval for permanent diversions, or larger events as specified by the department.

3. Fish and wildlife habitat and water and vegetation of significant value for wildlife shall be protected in consultation with appropriate state and federal fish and wildlife management agencies.

(2) All temporary diversion structures shall be removed and the affected land regraded and revegetated consistent with the requirements of 4.2(4) and 4.2(10). At the time such diversions are removed, the permittee shall ensure that downstream water treatment facilities previously protected by the diversion are modified or removed to prevent overtopping or failure of the facilities.

(3) Buffer zone. No land within one hundred feet of an intermittent or perennial stream shall be disturbed by surface coal mining and reclamation operations unless the department specifically authorizes surface coal mining and reclamation operations through such a stream. The area not to be disturbed shall be designated a buffer zone and marked as specified in 4.2(2).

e. Sediment control measures.

(1) Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. Sediment control measures may include, but are not limited to, sedimentation ponds, diversion structures, sediment traps, straw dikes, riprap, check dams, vegetative filters, dugout, ponds, and chemical treatment. Sedimentation ponds may be used individually or in a series.

(2) All discharges from sediment control structures built under 4.2(7)"e"(1) shall meet the water quality standards and effluent limitations of "a" and all other applicable state or federal performance standards. All such structures shall be designed and constructed so as to not violate the obligations imposed under subrule 4.1(3)"a"(2) and (3).

(3) All ponds shall be designed and inspected under the supervision of, and certified after construction by a registered professional engineer.

(4) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), July 1, 1977, shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216—3, July 1, 1977.

(5) All ponds shall be removed and the affected land regraded and revegetated consistent with the requirements of 4.2(4) and 4.2(10), unless the department approves retention of the ponds pursuant to paragraph "k" of this subrule.

f. Discharge structures. Discharges from sedimentation ponds and diversions shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

g. Acid and toxic materials. Drainage from acid-forming and toxic-forming mine waste materials and soils into ground and surface water shall be avoided by:

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the department, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed of in accordance with the provision of 4.2(4)"j";

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within thirty days, if such materials are subject to wind and water erosion, or within a lesser period designated by the department. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to 4.2(7)"g"(4) and 4.2(8) shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than ninety days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with 4.2(4)"j";

(5) Casing, sealing or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water bearing strata shall be plugged permanently in a manner approved by the department, unless the boreholes have been approved for use in monitoring.

(6) Taking such other actions as required by the department.

h. Ground water.

(1) Recharge capacity of reclaimed lands. The disturbed area shall be reclaimed to restore approximate premining recharge capacity through restoration of the capability of the reclaimed areas as a whole to transmit water to the ground water system. The recharge capacity should be restored to support the approved postmining land use and to minimize disturbances to the prevailing hydrologic balance at the mined area and in associated offsite areas. The permittee shall be responsible for monitoring according to "h" (3) of this subrule to ensure operations conform to this requirement.

(2) Ground water systems. Backfilled materials shall be placed to minimize adverse effects on ground water flow and quality, to minimize offset effects, and to support the approved postmining land use. The permittee shall be responsible for performing monitoring according to "h" (3) of this subrule to ensure operations conform to this requirement.

(3) Monitoring. Ground water levels, infiltration rates, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department to determine the effects of surface coal mining and reclamation operations on the recharge capacity of reclaimed lands and on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells that can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must

be used by the permittee. The department may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the department, additional hydrologic tests, such as infiltration tests and aquifer tests, must be undertaken by the permittee to demonstrate compliance with subparagraphs (1) and (2) of this paragraph.

i. Water rights and replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

j. Permanent impoundments. The permittee may construct, if authorized by the department pursuant to this paragraph and 4.2(3), permanent water impoundments on mining sites as a part of reclamation activities only when they are adequately demonstrated to be in compliance with 4.2(3) and 4.2(4) in addition to the following requirements:

(1) The size of the impoundment is adequate for its intended purposes.

(2) The impoundment dam construction is designed to achieve necessary stability with an adequate margin of safety compatible with that of structures constructed under Pub. L. 83-566, August 4, 1956, (16 U.S.C. 1006).

(3) The quality of the impounded water will be suitable on a permanent basis for its intended use and discharges from the impoundment will not degrade the quality of receiving waters below the water quality standards established pursuant to applicable federal and state law.

(4) The level of water will be reasonably stable.

(5) Final grading will comply with the provisions of 4.2(4) and will provide adequate safety and access for proposed water users.

(6) Water impoundments will not result in the diminution of the quality or quantity of water used by adjacent or surrounding landowners for agricultural, industrial, recreational, or domestic uses.

k. Hydrologic impact of roads.

(1) General. Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable state or federal law. All access and haul roads shall be removed and the land affected regraded and revegetated consistent with the requirements of 4.2(4) and 4.2(10), unless retention of a road is approved as part of a postmining land use under 4.2(3) as being necessary to support the postmining land use or necessary to adequately control erosion and the necessary maintenance is assured.

(2) Construction.

1. All roads, insofar as possible, shall be located on ridges or on the available flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossing shall be made using bridges, culverts or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph "d" of this subrule.

2. In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the department to be necessary to control erosion: The overall sustained grade shall not exceed lv:10h (ten percent); the maximum grade greater than ten percent shall not exceed lv:6.5h (fifteen percent) for more than three hundred feet; there shall not be more than three hundred feet of grade exceeding ten percent within each one thousand feet.

3. All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than one year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten-year, twenty-four-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph "a" of this subrule shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this subrule unless otherwise specified by the department.

4. Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic needs.

(3) Maintenance.

1. Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping or surfacing.

2. Ditches, culverts, drains, trash racks, debris basins and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impeded drainage or adversely affects the intended purpose of the structure.

l. Hydrologic impacts of other transport facilities. Railroad loops, spurs, sidings and other transport facilities shall be constructed, maintained and reclaimed to control diminution or degradation of water quality and quantity and to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall contributions be in excess of requirements set by applicable state or federal law.

m. Discharge of waters into underground mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

4.2(8) Dams constructed of waste material.

a. General. No waste material shall be used in existing or new dams without the approval of the department. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this subrule.

b. Construction of dams.

(1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

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(2) Plans for dams subject to this subrule, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216(a), July 1, 1975, shall be approved by the department before construction and shall contain the minimum plan requirements established by the mining enforcement and safety administration pursuant to 30 CFR 77.216-2, July 1, 1977.

(3) Construction requirements are as follows:

1. Design shall be based on the flood from the probable maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on site conditions, a design based on a precipitation event of no less than one hundred-year frequency may be approved by the department.

2. The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least three feet to avoid overtopping by wind and wave action.

3. Dams shall have minimum safety factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction	1.3
II	Partial pool with steady seepage saturation	1.5
III	Steady seepage from spillway or decant crest.	1.5
IV	Earthquake (cases II and III with seismic loading).	1.0

4. The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in "b"(3), 3., of this subrule and for all increments of construction.

5. Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, previous drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

6. Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

7. Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of ninety percent of the volume of water stored during the design precipitation event within ten days.

8. During construction of dams subject to this subrule, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer, experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

9. A permanent identification marker, at least six feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1, July 1, 1977, and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within thirty days of certification of design pursuant to this subrule.

(4) All dams, including those not meeting the size or other criteria of 30 CFR 77.216(a), July 1, 1977, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with mining enforcement and safety administration regulations pursuant to 30 CFR 77.216-3, July 1, 1977.

(5) All dams shall be routinely maintained. Vegetative growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this subrule shall be recertified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual recertification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the department before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the department approves retention of such dams as being compatible with an approved postmining land use 4.2(3).

4.2(9) Use of explosives.

a. General.

(1) The permittee shall comply with all applicable local, state, and federal laws and regulations and the requirements of this subrule in the storage, handling, preparation, and use of explosives.

(2) Blasting operations that use more than the equivalent of five pounds of TNT shall be conducted according to a time schedule approved by the department.

(3) All blasting operations shall be conducted by experienced, trained, and competent persons who understand the hazards involved. Persons working with explosive materials shall:

1. Have demonstrated a knowledge of, and a willingness to comply with, safety and security requirements;

2. Be capable of using mature judgment in all situations;

3. Be in good physical condition and not addicted to intoxicants, narcotics, or other similar types of drugs;

4. Possess current knowledge of the local, state and federal laws and regulations applicable to his work; and

5. Have obtained a certificate of completion of training and qualification from the department.

b. Preblasting survey.

(1) On the request to the department of a resident or owner of a manmade dwelling or structure that is located within one-half mile of any part of the permit area, the permittee shall conduct a preblasting survey of the dwelling or structure and submit a report of the survey to the department.

(2) Personnel approved by the department shall conduct the survey to determine the condition of the dwelling or structure and to document any preblasting damage and other physical factors that could reasonably be affected by the blasting. Assessments of structures such as pipes, cables, transmission lines, and wells and other water systems shall be limited to surface condition and other readily available data. Special atten-

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tion shall be given to the preblasting condition of wells and other water systems used for human, animal, or agricultural purposes and to the quantity and quality of the water.

(3) A written report of the survey shall be prepared and signed by the person or persons who conducted the survey and prepared the written report. The report shall include recommendations of any special conditions or proposed adjustments to the blasting procedures outlined in paragraph "e" of this subrule which should be incorporated into the blasting plan to prevent damage. Copies of the report shall be provided to the person requesting the survey and to the department.

c. Public notice of blasting schedule. At least ten days, but not more than twenty days before beginning a blasting program in which explosives that use more than the equivalent of five pounds of TNT are detonated, the permittee shall publish a blasting schedule in a newspaper of general circulation in the locality of the proposed site. Copies of the schedule shall be distributed by mail to local governments and public utilities and to each residence within one-half mile of the blasting sites described in the schedule. The permittee shall republish and redistribute the schedule by mail at least every three months. Blasting schedules shall not be so general as to cover all working hours but shall identify as accurately as possible the location of the blasting sites and the time periods when blasting will occur. The blasting schedule shall contain at a minimum:

(1) Identification of the specific areas in which blasting will take place. The specific blasting areas described shall not be larger than three hundred acres with a generally contiguous border;

(2) Dates and times when explosives are to be detonated expressed in not more than four-hour increments;

(3) Methods to be used to control access to the blasting area;

(4) Types of audible warnings and all-clear signals to be used before and after blasting; and

(5) A description of possible emergency situations (defined in "e" (1), 2., of this subrule), which have been approved by the department, when it may be necessary to blast at times other than those described in the schedule.

d. Public notice of changes to blasting schedules. Before blasting in areas not covered by a previous schedule or whenever the proposed frequency of individual detonations are materially changed, the permittee shall prepare a revised blasting schedule in accordance with the procedures in paragraph "c" of this subrule. If the changes involve only a temporary adjustment of the frequency of blasts, the permittee may use alternate methods to notify the governmental bodies and individuals to whom the original schedule was sent.

e. Blasting procedures.

(1) General.

1. All blasting shall be conducted only during the daytime hours, defined as sunrise until sunset. Based on public requests or other considerations, including the proximity to residential areas, the department may specify more restrictive time periods.

2. Blasting may not be conducted at times different from those announced in the blasting schedule except in emergency situations where rain, lightning, other atmospheric conditions, or operator or public safety requires unscheduled detonation.

3. Warning and all-clear signals of different character that are audible within a range of one-half mile from the point of the blast shall be given. All persons within the permit area shall be notified of the meaning of the signals through appropriate instructions and signs posted as required by 4.2(2).

4. Access to the blasting area shall be regulated to protect the public and livestock from the effects of blasting. Access to the blasting area shall be controlled to prevent unauthorized entry at least ten minutes before each blast and until the permittee's authorized representative has determined that no unusual circumstances such as imminent slides or undetonated charges exist and access to and travel in or through the area can safely resume.

5. Areas in which charged holes are awaiting firing shall be guarded, barricaded and posted, or flagged against unauthorized entry.

6. Airblast shall be controlled such that it does not exceed one hundred twenty-eight decibel linear-peak at any manmade dwelling or structure located within one-half mile of the permit area.

7. Except where lesser distances are approved by the department (based upon a preblasting survey or other appropriate investigations) blasting shall not be conducted within: One thousand feet of any building used as a dwelling, school, church, hospital, or nursing facility; five hundred feet of facilities including, but not limited to, disposal wells, petroleum or gas-storage facilities, municipal water-storage facilities, fluid-transmission pipelines, gas or oil-collection lines, or water and sewage lines; and five hundred feet of an underground mine not totally abandoned except with the concurrence of the mining enforcement and safety administration.

(2) Blasting standards.

1. Blasting shall be conducted to prevent injury to persons, damage to public or private property outside the permit area, adverse impacts on any underground mine and change in the course, channel, or availability of ground or surface waters outside the permit area.

2. In all blasting operations, except as otherwise stated, the maximum peak particle-velocity of the ground motion in any direction shall not exceed one inch per second at the immediate location of any dwelling, public building, school, church, or commercial or institutional building. The department may reduce the maximum peak particle velocity allowed if it determines that a lower standard is required because of density of population or land use, age or type of structure, geology or hydrology of the area, frequency of blasts or other factors.

3. The maximum peak particle velocity of ground motion does not apply to property inside the permit area that is owned or leased by the permittee.

4. An equation for determining the maximum weight of explosives that can be detonated within any eight millisecond period is given in paragraph 5 below. If the blasting is conducted in accordance with this equation, the department will consider the vibrations to be within the one inch per second limit.

5. The maximum weight of explosives to be detonated within any eight millisecond period shall be determined by the formula

$$W = \left(\frac{D}{60}\right)^2$$

where W = the maximum weight of explosives, in pounds, that can be detonated in any eight millisecond period, and D = the distance, in feet, to the nearest dwelling, school, church, or commercial or institutional building.

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For distances between three hundred fifty and five thousand feet, solution of the equation results in the following maximum weight:

Distance in feet (D):	Maximum weight, in pounds (W)
350	34
400	44
500	69
600	100
700	136
800	178
900	225
1,000	273
1,100	336
1,200	400
1,300	469
1,400	544
1,500	625
1,600	711
1,700	803
1,800	900
1,900	1,002
2,000	1,111
2,500	1,736
3,000	2,500
3,500	3,402
4,000	4,444
4,500	5,625
5,000	6,944

6. If on a particular site the peak particle velocity continuously exceeds one-half inch per second after a period of one second following the maximum ground particle velocity, the department shall require the blasting procedures to be revised to limit the ground motion.

(3) Seismograph measurements.

1. Where a seismograph is used to monitor the velocity of ground motion and the peak particle velocity limit of one inch per second is not exceeded, the equation in paragraph "v" need not be used. However, if the equation is not being used, a seismograph record shall be obtained for every shot.

2. The use of a modified equation to determine maximum weight of explosives for blasting operations at a particular site may be approved by the department on receipt of a petition accompanied by reports including seismograph records of test blasting on the site. However, in no case shall the department approve the use of a modified equation where the peak particle velocity limit of one inch per second required in "e" (2), 2., of this subrule would be exceeded.

3. The department may require a seismograph recording of any or all blasts.

(4) Records of blasting operations. A record of each blast, including seismograph reports, shall be retained for at least three years and shall be available for inspection by the department and the public on request. The record shall contain the following data:

1. Name of permittee, operator, or other person conducting the blast;
2. Location, date, and time of blast;
3. Name, signature, and license number of blaster-in-charge;
4. Direction and distance, in feet, to nearest dwelling, school, church, or commercial or institutional building neither owned nor leased by the permittee;
5. Weather conditions;
6. Type of material blasted;
7. Number of holes, burden, and spacing;
8. Diameter and depth of holes;
9. Types of explosives used;
10. Total weight of explosives used;
11. Maximum weight of explosives detonated within any eight millisecond period;
12. Maximum number of holes detonated within any eight millisecond period;
13. Methods of firing and type of circuit;
14. Tape and length of stemming;
15. If mats or other protections were used;
16. Type of delay detonator used, and delay periods used;
17. Seismograph records, where required, including: seismograph reading, including exact location of seismograph and its distance from the blast; name of person taking the seismograph reading; and name of person and firm analyzing the seismograph record.

4.2(10) Revegetation.

a. General.

(1) The permittee shall establish on all land that has been disturbed, a diverse, effective, and permanent vegetative cover of species native to the area of disturbed land or species that will support the planned postmining uses of the land approved according to 4.2(3). For areas designated as prime farmland, the reclamation procedures of 4.3(7) shall apply.

(2) Revegetation shall be carried out in a manner that encourages a prompt vegetative cover and recovery of productivity levels compatible with approved land uses. The vegetative cover shall be capable of stabilizing the soil surface with respect to erosion. All disturbed lands, except water areas and surface areas of roads that are approved as a part of the postmining land use, shall be seeded or planted to achieve a vegetative cover of the same seasonal variety native to the area of disturbed land. If both the pre- and postmining land use is intensive agriculture, planting of the crops normally grown will meet the requirement. Vegetative cover will be considered of the same seasonal variety when it consists of a mixture of species of equal or superior utility for the intended land use when compared with the utility of naturally occurring vegetation during each season of the year.

b. Use of introduced species. Introduced species may be substituted for native species only if appropriate field trials have demonstrated that the introduced species are of equal or superior utility for the approved postmining land use, or are necessary to achieve a quick, temporary, and stabilizing cover. Such species substitution shall be approved by the department. Introduced species shall meet applicable state and federal seed or introduced species statutes, and shall not include poisonous or potentially toxic species.

c. Timing of revegetation. Seeding and planting of disturbed areas shall be conducted during the first normal period for favorable planting conditions after final preparation. The normal period for favorable planting shall be that planting time generally accepted locally for the type of plant materials selected to meet specific site conditions and climate. Any disturbed areas, except water areas and surface areas of roads that are approved under 4.2(3) as part of the postmining land use, which have been graded shall be seeded with a temporary cover of small grains, grasses, or legumes to control erosion until an adequate permanent cover is established. When rills or gullies, that would preclude the successful establishment of vegetation or the achievement of the postmining land use, form in regraded topsoil and overburden materials as specified in 4.2(4), additional regrading or other stabilization practices will be required before seeding and planting.

d. Mulching. Mulch shall be used on all regraded and topsoiled areas to control erosion, to promote germination of seeds, and to increase the moisture retention of the soil. Mulch shall be anchored to the soil surface where appropriate, to ensure effective protection of the soil and vegetation. Mulch means vegetation residues or other suitable materials that aid

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in soil stabilization and soil moisture conservation, thus providing microclimate conditions suitable for germination and growth, and do not interfere with the postmining use of the land. Annual grains such as oats, rye and wheat may be used instead of mulch when it is shown to the satisfaction of the department that the substituted grains will provide adequate stability and that they will later be replaced by species approved for the postmining use.

e. Methods of revegetation.

(1) The permittee shall use technical publications or the results of laboratory and field tests approved by the department to determine the varieties, species, seeding rates, and soil amendment practices essential for establishment and selfregeneration of vegetation. The department shall approve species selection and planting plans.

(2) Where hayland, pasture, or range is to be the postmining land use, the species of grasses, legumes, browse, trees, or forbs for seeding or planting and their pattern of distribution shall be selected by the permittee to provide a diverse, effective, and permanent vegetative cover with the seasonal variety, succession, distribution, and regenerative capabilities native to the area. Livestock grazing will not be allowed on reclaimed land until the seedings are established and can sustain managed grazing. The department, in consultation with the permittee and the landowner or in concurrence with the governmental land-managing agency having jurisdiction over the surface, shall determine when the revegetated area is ready for livestock grazing.

(3) Where forest is to be the postmining land use, the permittee shall plant trees adapted for local site conditions and climate. Trees shall be planted in combination with an herbaceous cover of grains, grasses, legumes, forbs, or woody plants to provide a diverse, effective, and permanent vegetation cover with the seasonal variety, succession, and regeneration capabilities native to the area.

(4) Where wildlife habitat is to be included in the postmining land use, the permittee shall consult with appropriate state and federal wildlife and land management agencies and shall select those species that will fulfill the needs of wildlife, including food, water, cover, and space. Plant groupings and water resources shall be spaced and distributed to fulfill the requirements of wildlife.

f. Standards for measuring success of revegetation.

(1) Success of revegetation shall be measured on the basis of reference areas approved by the department. Reference areas mean land units of varying size and shape identified and maintained under appropriate management for the purpose of measuring ground cover, productivity and species diversity that are produced naturally. The reference areas must be representative of geology, soils, slope, aspect, and vegetation in the permit area. Management of the reference area shall be comparable to that which will be required for the approved postmining land use of the area to be mined. The department shall approve the estimating techniques that will be used to determine the degree of success in the revegetated area.

(2) The ground cover of living plants on the revegetated area shall be equal to the ground cover of living plants of the approved reference area for a minimum of two growing seasons. The ground cover shall not be considered equal if it is less than ninety percent of the ground cover of the reference area for any significant portion of the mined area. Exceptions may be authorized by the department for:

1. Previously mined areas that were not reclaimed to the standards required by this chapter prior to the effective date of the rules. The ground cover of living plants for such areas shall not be less than required to control erosion, and in no case less than that existing before redisturbance.

2. Areas to be developed immediately for industrial or residential use. The ground cover of living plants shall not be less than required to control erosion. As used in this paragraph, immediately means less than two years after regrading has been completed for the area to be used; and

3. Areas to be used for agricultural cropland purposes. Success in revegetation of cropland shall be determined on the basis of crop production from the mined area compared to the reference area. Crop production from the mined area shall be equal to that of the approved reference area for a minimum of two growing seasons. Production shall not be considered equal if it is less than ninety percent of the production of the reference area for any significant portion of the mined area.

(3) Species diversity distribution, seasonal variety, and vigor shall be evaluated on the basis of the results which could reasonably be expected using the methods of revegetation approved under paragraph "e" of this subrule.

g. Seeding of stockpiled topsoil. Topsoil stockpiled in compliance with 4.2(6) must be seeded or planted with an effective cover of nonnoxious, quick growing annual and perennial plants during the first normal period for favorable planting conditions or protected by other approved measures as specified in 4.2(6).

780—4.3(17A,83A) Special performance standards.

4.3(1) General obligations.

a. This rule establishes special initial performance standards that apply in the following special circumstances:

(1) 4.3(2) applies to surface coal mining operations on steep slopes.

(2) 4.3(3) applies to surface coal mining operations involving removal of ridges and hilltops.

(3) 4.3(4) applies to surface coal mining operations on prime farmlands.

b. All surface coal mining and reclamation operations subject to this part shall comply with the applicable special performance standards in this rule. Such operations shall also comply with all general performance standards in part 4.2 of this chapter unless specifically exempted in this rule from the requirements of rule 4.2(17A,83A).

4.3(2) Steep-slope mining.

a. The permittee conducting surface coal mining and reclamation operations on natural slopes that exceed twenty degrees, or on lesser slopes that require measures to protect the area from disturbance, as determined by the department after consideration of soils, climate, the method of operation, geology, and other regional characteristics, shall meet the following performance standards. The standards of this subrule do not apply where mining is done on a flat or gently rolling terrain with an occasional steep slope through which the mining proceeds and leaves a plain or predominantly flat area; or where the mining is governed by 4.3(3).

(1) Spoil, waste materials or debris, including that from clearing and grubbing, and abandoned or disabled equipment, shall not be placed or allowed to remain on the downslope.

(2) The highwall shall be completely covered with spoil and the disturbed area graded to comply with the provisions of 4.2(4). Land above the highwall shall not be disturbed unless the department finds that the disturbance will facilitate compliance with the requirements of this subrule.

(3) Material in excess of that required to meet the provisions of 4.2(4) shall be disposed of in accordance with the requirements of 4.2(5).

(4) Woody materials may be buried in the backfilled area only when burial does not cause, or add to, instability of the backfill. Woody materials may be chipped and distributed through the backfill when approved by the department.

4.3(3) Hilltop removal.

a. Surface coal mining and reclamation operations that remove entire coal seams running through the upper fraction

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of a ridge or hill by removing all of the overburden and creating a level plateau or gently rolling contour with no highwalls remaining are exempt from the requirements of 4.2(4) for achieving approximate original contour, if the following requirements are met:

(1) An industrial, commercial, agricultural, residential, or public facility (including recreational facilities) use is proposed for the affected land.

(2) The alternative land use criteria in 4.2(3) are met and the proposal is approved by the department.

(3) All other applicable requirements of rule 4.2(17A,83A) can be met.

b. Surface coal mining and reclamation operations conducted under this subrule shall comply with the following standards:

(1) An outcrop barrier of sufficient width, consisting of the toe of the lowest coal seam, and its associated overburden shall be retained to prevent slides and erosion.

(2) The final graded top plateau slopes on the mined area shall be less than lv:5h so as to create a level plateau or gently rolling configuration and the outslopes of the plateau shall not exceed lv:2h, except where engineering data substantiates and the department finds that a minimum static safety factor of 1:5 will be attained.

(3) The resulting level or gently rolling contour shall be graded to drain inward from the outslope except at specific points where it drains over the outslope in protected stable channels.

(4) Damage to natural watercourses below the area to be mined shall be prevented.

(5) Spoil shall be placed on the hilltop bench as is necessary to achieve the postmining land use approved under 4.2(3). All excess spoil material not retained on the hilltop shall be placed in accordance with the standards of 4.2(5).

c. (1) All permits giving approval for hilltop removal shall be reviewed not more than three years from the date of issuance of the permit, unless the permittee affirmatively demonstrates and the department finds that all operations are proceeding in accordance with the terms of the permit and applicable requirements of the Act and these rules. The terms of the permit shall be in accordance with the requirements of the Act and these rules.

(2) The terms of a permit for hilltop removal may be modified by the department if it determines that more stringent measures are necessary to prevent or control slides and erosion, prevent damage to natural watercourse, avoid water pollution, or to assure successful revegetation.

4.3(4) Prime farmland.

a. Applicability.

(1) Permittees of surface coal mining and reclamation operations conducted on prime farmland shall comply with the general performance standards of rule 4.2(17A,83A) in addition to the special requirements of this subrule. Prime farmlands are those lands defined in paragraph "b" of this subrule that have been used for the production of cultivated crops, including nurseries, orchards, and other specialty crops, and small grains for at least five years out of the twenty years preceding the date of the permit application.

(2) The requirements of this subrule are applicable to any permit issued on or after August 3, 1977. Permits issued before that date and revisions or renewals of those permits need not conform to the provisions of this subrule. Permit renewals or revisions shall include only those areas that:

1. Were in the original permit area or in a mining plan approved prior to August 3, 1977; or

2. Are contiguous and under state regulation or practice would have normally been considered as a renewal or revision of a previously approved plan.

b. Definition. Prime farmland means those lands that meet the applicability requirements in paragraph "a" of this subrule and the specific technical criteria prescribed by the secretary of agriculture as published in the FEDERAL REGISTER on January 31, 1978 (43 FR pp. 4030-4032). These criteria are included here for convenience. Terms used in this subrule are defined in U.S. Department of Agriculture publications: Soil, Taxonomy, Agriculture Handbook 436; Soil Survey Manual, Agriculture Handbook 18; Rainfall-Erosion Losses from Cropland, Agriculture Handbook 282; and Saline and Alkali Soils, Agriculture Handbook 60. To be considered prime farmland soils must meet all of the following criteria:

(1) The soils have:

1. Aquic, udic, ustic, or xeric moisture regimes and sufficient available water capacity within a depth of forty inches or in the root zone, if the root zone is less than forty inches deep, to produce the commonly grown crops in seven or more years out of ten; or

2. Xeric or ustic moisture regimes in which the available water capacity is limited but the area has a developed irrigation water supply that is dependable and of adequate quality (a dependable water supply is one in which enough water is available for irrigation in eight out of ten years for the crops commonly grown); or

3. Aridic or torric moisture regimes and the area has a developed irrigation water supply that is dependable and of adequate quality.

(2) The soils have a temperature regime that is frigid, mesic, thermic, or hyperthermic (pergelic and cryic regimes are excluded). These are soils that at a depth of twenty inches have a mean annual temperature higher than 32 degrees F. In addition, the mean summer temperature at this depth in soils with an 0 horizon is higher than 47 degrees F.; in soils that have no 0 horizon the mean summer temperature is higher than 59 degrees F.

(3) The soils have a pH between 4.5 and 8.4 in all horizons within a depth of forty inches or in the root zone if the root zone is less than forty inches deep.

(4) The soils either have no water table or have a water table that is maintained at a sufficient depth during the cropping season to allow food, feed, fiber, forage, and oilseed crops common to the area to be grown.

(5) The soils can be managed so that, in all horizons within a depth of forty inches or in the root zone if the root zone is less than forty inches deep, during part of each year the conductivity of saturation extract is less than 4 mmhos/cm and the exchangeable sodium percentage (ESP) is less than fifteen.

(6) The soils are not flooded frequently during the growing season (less often than once in two years).

(7) The soils have a product of K (erodibility factor) "X" percent slope of less than 2.0 and a product of I (soil erodibility) "X" C (climatic factor) not exceeding 60.

(8) The soils have a permeability rate of at least 0.06 inch per hour in the upper twenty inches and the mean annual soil temperature at a depth of twenty inches is less than 59 degrees F.; the permeability rate is not a limiting factor if the mean annual soil temperature is 59 degrees F. or higher.

(9) Less than ten percent of the surface layer (upper six inches) in these soils consists of rock fragments coarser than three inches.

c. Identification of prime farmland. Prime farmland shall be identified on the basis of soil surveys submitted by the applicant. The department also may require data on irrigation, drainage, flood control, and subsurface water management. The requirement for submission of soil surveys may be waived by the department if the applicant can demonstrate according to the procedures in paragraph "d" of this subrule that no prime farmlands are involved. Soil surveys shall be conducted

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according to standards of the National Cooperative Soil Survey, which include the procedures set forth in U.S. Department of Agriculture Handbooks 436 (Soil Taxonomy) and 18 (Soil Survey Manual), and shall include:

(1) Data on moisture availability, temperature regime, flooding, water table, erosion characteristics, permeability, or other information that is needed to determine prime farmland in accordance with paragraph "b" of this subrule;

(2) A map designating the exact location and extent of the prime farmland; and

(3) A description of each soil mapping unit.

d. Negative determination of prime farmland. The land shall not be considered as prime farmland where the applicant can demonstrate one or more of the following situations:

(1) Lands within the proposed permit boundaries have been used for the production of cultivated crops for less than five years out of twenty years preceding the date of the permit application.

(2) The slope of all land within the permit area is ten percent or greater.

(3) Land within the permit area is not irrigated or naturally subirrigated, has no developed water supply that is dependable and of adequate quality, and the average annual precipitation is fourteen inches or less.

(4) Other factors exist, such as a very rocky surface, or the land is frequently flooded, which clearly place all land within the area outside the purview of prime farmland.

(5) A written notification based on scientific findings and soil surveys that land within the proposed mining area does not meet the applicability requirements in paragraph "a" of this subrule is submitted to the department by a qualified person other than the applicant, and is approved by the department.

e. Plan for restoration of prime farmland. The applicant shall submit to the department a plan for the mining and restoration of any prime farmland within the proposed permit boundaries. This plan shall be used by the department in judging the technological capability of the applicant to restore prime farmlands. The plan shall include:

(1) A description of the original undisturbed soil profile, as determined from a soil survey, showing the depth and thickness of each of the soil horizons that collectively constitute the root zone of the locally adapted crops and are to be removed, stored, and replaced.

(2) The proposed method and type of equipment to be used for removal, storage, and replacement of the soil in accordance with paragraph "g" of this subrule;

(3) The location of areas to be used for the separate stockpiling of the soil and plans for soil stabilization before redistribution;

(4) If applicable, documentation such as agricultural school studies or other scientific data from comparable areas that supports the use of other suitable material, instead of the A, B or C soil horizon, to obtain on the restored area equivalent or higher levels of yield as non-mined prime farmlands in the surrounding area under equivalent levels of management; and

(5) Plans for seeding or cropping the final graded mine land and the conservation practices to control erosion and sedimentation during the first twelve months after regrading is completed. Proper adjustments for seasons must be made so that final graded land is not exposed to erosion during seasons when vegetation or conservation practices cannot be established due to weather conditions; and

(6) Available agricultural school studies, company data, or other scientific data for comparable areas that demonstrate that the applicant using this proposed method of reclamation will achieve, within a reasonable time, equivalent or higher levels of yield after mining as existed before mining.

f. Consultation with secretary of agriculture and issuance of permit.

(1) The department may grant a permit which shall incorporate the plan submitted under paragraph "e" of this subrule if it finds in writing that the applicant:

1. Has the technological capability to restore the prime farmland within the proposed permit area, within a reasonable time, to equivalent or higher levels of yield as nonmined prime farmland in the surrounding area under equivalent levels of management; and

2. Will achieve compliance with the standards of paragraph "g" of this subrule.

(2) Before any permit is issued for areas that include prime farmlands the department shall consult with the U.S. secretary of agriculture. The U.S. secretary of agriculture will provide a review of the proposed method of soil reconstruction and comment on possible revisions that will result in a more complete and adequate restoration. The U.S. secretary of agriculture has assigned his responsibilities under this paragraph to the administrator of the U.S. soil conservation service and the U.S. soil conservation service will carry out the consultation and review through their state conservationist.

g. Special requirements. For all prime farmlands to be mined and reclaimed, the applicant shall meet the following special requirements:

(1) All soil horizons to be used in the reconstruction of the soil shall be removed before drilling, blasting, or mining to prevent contaminating the soil horizons with undesirable materials. Where removal of soil horizons result in erosion that may cause air and water pollution, the department shall specify methods of treatment to control erosion of exposed overburden. The permittee shall:

1. Remove separately the entire A horizon or other suitable soil materials which will create a final soil having an equal or greater productive capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material before replacement;

2. Remove separately the B horizon of the natural soil or a combination of B horizon and underlying C horizon or other suitable soil material that will create a reconstructed root zone of equal or greater productivity capacity than that which existed prior to mining in a manner that prevents mixing or contamination with other material; and

3. Remove separately the underlying C horizons or other strata, or a combination of such horizons or other strata, to be used instead of the B horizon that are of equal or greater thickness and that can be shown to be equal or more favorable for plant growth than the B horizon, and that when replaced will create in the reconstructed soil a final root zone of comparable depth and quality to that which existed in the natural soil.

(2) If stockpiling of soil horizons is allowed by the department in lieu of immediate replacement, the A horizon and B horizon must be stored separately from each other. The stockpiles must be placed within the permit area and where they will not be disturbed or exposed to excessive erosion by water or wind before the stockpiled horizons can be redistributed on terrain graded to final contour. Stockpiles in place for more than thirty days must meet the requirements of 4.2(6) "c".

(3) Scarify the final graded land before the soil horizons are replaced.

(4) Replace the material from the B horizon, or other suitable material specified in "g" (1, 2., or "g" (1), 3., of this subrule in such a manner as to avoid excessive compaction of overburden and to a thickness comparable to the root zone that existed in the soil before mining.

(5) Replace the A horizon or other suitable soil materials, which will create a final soil having an equal or greater productive capacity than existed prior to mining, as the final surface

soil layer to the thickness of the original soil as determined in "g" (1), 1., of this subrule in a manner that:

1. Prevents excess compaction of both the surface layer and underlying material and reduction of permeability to less than 0.06 inch per hour in the upper twenty inches of the reconstructed soil profile; and

2. Protects the surface layer from wind and water erosion before it is seeded or planted.

(6) Apply nutrients and soil amendments as needed to establish quick vegetative growth.

780—4.4(17A,83A) Underground mining general performance standards.

4.4(1) General obligations.

a. Compliance. All underground coal mining and associated reclamation operations conducted on lands where any element of the operations is regulated shall comply with the initial performance standards of this part according to the time schedule specified in 4.1(3).

(1) For the purposes of this part, underground coal mining and associated reclamation operations mean a combination of surface operations and underground operations. Surface operations include construction, use, and reclamation of new and existing access and haul roads, above ground repair areas, storage areas, processing areas, shipping areas, and areas upon which are sited support facilities including hoist and ventilating ducts, and on which materials incident to underground mining operations are placed. Underground operations include underground construction, operation, and reclamation of shafts, adits, underground support facilities, underground mining, hauling, storage, and blasting.

(2) For the purpose of this part the term permittee means the person permitted to conduct underground mining operations by the department.

(3) For the purpose of this part, disturbed areas means surface work areas and lands affected by surface operations including, but not limited to, roads, mine entry excavations, above ground (surface) work areas, such as tipples, coal processing facilities and other operating facilities, waste work and spoil disposal areas, and mine waste impoundments or embankments.

b. Authorizations to operate. A copy of all current permits, licenses, approved plans or other authorizations to operate the mine shall be available for inspection at or near the mine site.

4.4(2) Signs and markers.

a. Specifications. All signs required to be posted shall be of a standard design that can be seen and read easily and shall be made of durable material, and shall conform to local ordinances and codes. The signs and other markers shall be maintained during all operations to which they pertain.

b. Mine and permit identification signs. Signs identifying the mine area shall be displayed at all points of access to the permit area from public highways. Signs shall show the name, business address, and telephone number of the permittee and identification numbers of current mining and reclamation permits or other authorizations to operate. Such signs shall not be removed until after release of all bonds.

4.4(3) Backfilling and grading of road cuts, mine entry area cuts, and other surface work areas.

a. Upon completion of underground mining, surface work areas which are involved in excavation, disposal of materials, or otherwise affected, shall be regraded to approximate original contour. The permittee shall transport, backfill and compact fill material to assure stability or to prevent leaching of toxic pollutants. Barren rock or similar materials excess to the mining operations and which are disposed on the land surface shall be subject to the provision of 4.4(4) of this rule. Roads and support facility areas existing prior to the effective date of this part and used in support of underground mining operations which are subject to this part shall be regraded to the extent deemed feasible by the department based on the availability of backfill material and resulting stability of the affected lands after reclamation. As a minimum, the permittee shall be required to:

(1) Retain all earth, rock and other mineral nonwaste materials on the solid portion of existing or new benches, except that the department may permit placement of such material at the site of the faceup as a means of disposing of excavated spoil when additional working space is needed to facilitate operations. Such placement of material shall be limited to minimize disturbance of land and to the hydrologic balance. Such fills shall be stabilized with vegetation and shall achieve a minimum static safety factor of 1.5. In no case shall the outslope exceed the angle of repose.

(2) Backfill and grade to the most moderate slope possible to eliminate any highwall along roads, mine entry faces or other areas. Slopes shall not exceed the angle of repose or such lesser slopes as required by the department to maintain stability.

b. On approval by the department and in order to conserve soil moisture, ensure stability, and control erosion on final graded slopes, cut-and-fill terraces may be allowed if the terraces are appropriate substitutes for construction of lower grades on the reclaimed lands. The terraces shall meet the following requirements:

(1) The width of the individual terrace bench shall not exceed twenty feet unless specifically approved by the department as necessary for stability erosion control, or roads.

(2) The vertical distance between terraces shall be as specified by the department to prevent excessive erosion and to provide long-term stability.

(3) The slope of the terrace outslope shall not exceed 1v:2h (50 percent) may be approved if they have a minimum static safety factor of 1.5 or more and provide adequate control over erosion and closely resemble the surface configuration of the land prior to mining. In no case may highwalls be left as part of terraces.

(4) Culverts and underground rock drains shall be used on the terrace only when approved by the department.

c. All surface operations on steep slopes of twenty degrees or more or on such lesser slopes as the department defines as a steep slope shall be conducted so as not to place any material on the downslope below road cuts, mine working or other benches, other than in conformance with 4.4(3)"a"(1).

d. Regrading or stabilizing rills and gullies. When rills or gullies deeper than nine inches form in areas that have been regraded and the topsoil replaced but vegetation has not yet been established, the permittee shall fill, grade, or otherwise stabilize the rills and gullies and reseed or replant the areas according to 4.4(7). The department shall specify that erosional features of lesser size be stabilized if they result in additional erosion and sedimentation.

e. Covering coal and acid-forming, toxic-forming, combustible, and other waste materials; stabilizing backfilled materials; and using waste material for fill. Any acid-forming, toxic-forming, combustible materials, or any other waste materials as identified by the department that are exposed, used, or produced during underground mining and which are deposited on the land surface shall, after placement in accordance with 4.4(4) of this rule, be covered with a minimum of four feet of nontoxic and noncombustible material; or, if necessary, treated to neutralize toxicity, in order to prevent water pollution and sustained combustion, and to minimize adverse effects on plant growth and land uses. Where necessary to protect against upward migration of salts, exposure by erosion, to provide an adequate depth for plant

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growth, or to otherwise meet local conditions, the department shall specify thicker amount of cover using nontoxic material. Acid-forming or toxic-forming material shall not be buried or stored in proximity to a drainage course so as to cause or pose a threat of water pollution or otherwise violate the provisions of 4.4(5) of this rule.

f. Grading along the contour. All final grading, preparation of earth, rock and other nonwaste materials before replacement of topsoil, and placement of topsoil in accordance with 4.4(7), shall be done along the contour to minimize subsequent erosion and instability. If such grading, preparation or placement along the contour would be hazardous to equipment operators, grading, preparation or placement in a direction other than generally parallel to the contour may be used. In all cases, grading, preparation or placement shall be conducted in a manner which minimizes erosion and provides a surface for replacement of topsoil which will minimize slippage.

4.4(4) Disposal of excess rock and earth materials on surface areas. Excess rock and earth materials produced from an underground mine and not disposed in underground workings or used in backfilling and grading operations shall be placed in surface disposal areas in accordance with requirements of 4.2(5). Where the volume of such material is small and its chemical and physical characteristics do not pose a threat to either public safety or the environment the department may modify the requirements of 4.2(5) in accordance with 4.4(3)"a"(1).

4.4(5) Protection of the hydrologic system. The permittee shall plan and conduct underground coal mining and reclamation operations to minimize disturbance of the prevailing hydrologic balance in order to prevent long-term adverse changes in the hydrologic balance that could result from underground coal mining operations, both on and off site. Changes in water quality and quantity, in the depth to ground water, and in the location of surface water drainage channels shall be minimized and applicable federal and state statutes and regulations shall not be violated. The permittee shall conduct operations so as to minimize water pollution and shall, where necessary, use treatment methods to control water pollution. The permittee shall emphasize underground coal mining and reclamation practices that will prevent or minimize water pollution and changes in flows in preference to the use of water treatment facilities prior to discharge to surface waters. Practices to control and minimize pollution include, but are not limited to, diverting water from underground workings or preventing water contact with acid- or toxic-forming materials, and minimizing water contact time with waste materials, maintaining mine barriers to enhance postmining inundation and sealing, establishing disturbed areas through grading, diverting runoff, achieving quick growing stands of temporary vegetation, and lining drainage channels. If treatment is required to eliminate pollution of surface or ground waters, the permittee shall operate and maintain the necessary water treatment facilities as set forth in this subrule.

a. Water quality standards and effluent limitations. All surface drainage from the disturbed area, including disturbed areas that have been graded, seeded or planted and which remain subject to the requirements of this subrule, except for drainage from disturbed areas that have met the requirements of 4.4(7) shall be passed through a sedimentation pond or a series of sedimentation ponds prior to leaving the permit area. All waters which flow or are removed from underground operations or underground waters which are removed from other areas to facilitate mining and which discharge to surface waters must be passed through appropriate treatment facilities prior to discharge where necessary to meet effluent limitations.

For purposes of this subrule only, disturbed areas shall include areas of surface operations but shall not include those areas in which only diversion ditches, sedimentation ponds, or roads are installed in accordance with this subrule and the upstream area is not otherwise disturbed by the permittee. Disturbed areas shall not include those surface areas overlying the underground working unless those areas are also disturbed by surface operations such as fill (disposal) areas, support facilities areas, or other major activities which create a risk of pollution.

The department may grant exemptions from this requirement only when the disturbed drainage area within the total disturbed area is small and if the permittee shows that sedimentation ponds are not necessary to meet effluent limitations of this paragraph and to maintain water quality in downstream receiving waters. Sedimentation ponds required by this paragraph shall be constructed in accordance with paragraph "e" of this subrule in appropriate locations prior to any mining in the affected drainage area in order to control sedimentation or otherwise treat water in accordance with this paragraph. Discharges from areas disturbed by underground operation and by surface operation and reclamation activities conducted thereon, must meet all applicable federal and state regulations and, at a minimum, the following numerical effluent limitations:

EFFLUENT LIMITATIONS, IN MILLIGRAMS PER LITER,
mg/l EXCEPT FOR pH

Effluent characteristics	Maximum allowable[1]	Average of daily values for 20 consecutive discharge days[1]
Iron, total	7.0	3.5
Manganese, total[2]	4.0	2.0
Total suspended solids	70.0	35.0
pH	Within the range 6.0 to 9.0.	

[1]Based on representative sampling.
[2]These standards apply only in acid water (water below 6.0).

(1) Any overflow or other discharge of surface water from the disturbed area within the permit area demonstrated by the permittee to result from a precipitation event larger than the ten-year twenty-four-hour frequency event will not be subject to the effluent limitations of paragraph "a".

(2) The permittee shall install, operate, and maintain adequate facilities to treat any water discharged from the disturbed area that violates applicable federal or state regulations or the limitations of paragraph "a". If the pH of waters to be discharged from the disturbed area is normally less than 6.0, an automatic lime feeder or other neutralization process approved by the department shall be installed, operated, and maintained. If the department finds that small and infrequent treatment requirements to meet applicable standards do not necessitate use of an automatic neutralization process, and the mine normally produces less than five hundred tons of coal per day, the department can approve the use of a manual system if the permittee agrees to ensure that consistent and timely treatment is carried out.

b. Surface water monitoring.

(1) The permittee shall submit for approval by the department a surface water monitoring program which meets the following requirements:

1. Provides adequate monitoring of all discharge from the disturbed area and from the underground operations.

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2. Provides adequate data to describe the likely daily and seasonal variation in discharges from the disturbed area in terms of flow, pH, total iron, total manganese, and total suspended solids and, as requested by the department, any other parameter characteristic of the discharge.

3. Provides monitoring at appropriate frequencies to measure normal and abnormal variations in concentrations.

4. Provides an analytical quality control system including standard methods of analysis such as those specified in 40 CFR 136, July 1, 1977.

5. Provides regular reports of all measurements to the department within sixty days of sample collection unless violations of permit conditions occur in which case the department shall be notified immediately after receipt of analytical results by the permittee. If the discharge is subject to regulation by a federal or state permit issued in compliance with section 301 of the Federal Water Pollution Control Act Amendment of 1972 (33 U.S.C. §1311), a copy of the completed reporting form supplied to meet the permit requirements may be submitted to the department to satisfy the reporting requirements if the data meet the frequency and other requirements of this paragraph.

(2) Equipment, structures, or other measures necessary to accurately measure and sample the quality and quantity of surface water discharges from the disturbed area of the permit area shall be properly installed, maintained and operated and shall be removed when no longer required.

c. Diversion and conveyance of overland flow away from disturbed areas. In order to minimize erosion and to prevent or remove water from contacting, toxic-producing deposits, overland flow from undisturbed areas may, as required or approved by the department, be diverted away from disturbed areas by means of temporary or permanent diversion structures. The following requirements shall be met for such diversions:

(1) Temporary diversion structures are those used during mining and reclamation. When no longer needed, these structures shall be removed and the area reclaimed. Temporary diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one-year recurrence interval, or a larger event as specified by the department.

(2) Permanent diversion structures are those remaining after mining and reclamation and approved for retention by the department and other appropriate state and federal agencies. To protect fills and property, to prevent water from contacting toxic-producing deposits, and to avoid danger to public health and safety, permanent diversion structures shall be constructed to safely pass the peak runoff from a precipitation event with a one hundred year recurrence interval or a larger event as specified by the department. Permanent diversion structures shall be constructed with gently sloping banks that are stabilized by vegetation. Asphalt, concrete, or other similar linings shall not be used unless specifically required to prevent seepage or to provide stability and they are approved by the department.

(3) Diversions shall be designed, constructed, and maintained in a manner so as to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall such contributions be in excess of requirements set by applicable State or Federal law. Appropriate sediment control measures for these diversions shall include, but not be limited to, maintenance of appropriate gradients, channel lining, vegetation, and roughness structures and detention basins.

d. Stream channel diversions. In the event that the department permits diversion of streams, the regulations of 4.2(7)"d" shall apply.

e. Sediment control measures.

(1) Appropriate sediment control measures shall be designed, constructed, and maintained to prevent additional contributions of sediment to streamflow or to runoff outside the permit area to the extent possible, using the best technology currently available. Sediment control measures may include, but are not limited to, sedimentation ponds, diversion structures, sediment traps, straw dikes, riprap, check dams, vegetative filters, dugout ponds, and chemical treatment. All ponds shall be designed and constructed to take into account any discharges into the pond from underground operations. Sedimentation ponds may be used individually or in a series.

(2) All discharges from sediment control structures built under (1) shall meet the water quality standards and effluent limitations of "a" and all other applicable state or federal performance standards. All such structures shall be designed and constructed so as to not violate the obligations imposed under subrule 4.1(3) "a" (2) and (3).

(3) All ponds shall be designed and inspected under the supervision of, and certified after construction by, a registered professional engineer.

(4) All ponds, including those not meeting the size or other criteria of 30 CFR 77.216(a), July 1, 1977, shall be examined for structural weakness, erosion, and other hazardous conditions in accordance with the inspection requirements contained in 30 CFR 77.216—3, July 1, 1977.

(5) All ponds shall be removed and the land affected regraded and revegetated consistent with the requirements of 4.4(3) and 4.4(7).

f. Discharge structures. Discharges from sedimentation ponds and diversion structures shall be controlled, where necessary, using energy dissipators, surge ponds, and other devices to reduce erosion and prevent deepening or enlargement of stream channels and to minimize disturbances to the hydrologic balance.

g. Acid and toxic materials. Drainage to ground and surface waters which emanates from acid-forming or toxic-forming mine waste materials and spoils placed on the land surface shall be avoided by:

(1) Identifying, burying, and treating where necessary, spoil or other materials that, in the judgment of the department, will be toxic to vegetation or that will adversely affect water quality if not treated or buried. Such material shall be disposed in accordance with the provision of 4.4(3)"e";

(2) Preventing or removing water from contact with toxic-producing deposits;

(3) Burying or otherwise treating all toxic or harmful materials within thirty days if such materials are subject to wind and water erosion, or within a lesser period designated by the department. If storage of such materials is approved, the materials shall be placed on impermeable material and protected from erosion and contact with surface water. Coal waste ponds and other coal waste materials shall be maintained according to 4.4(3)"g"(4) and 4.4(7) shall apply;

(4) Burying or otherwise treating waste materials from coal preparation plants no later than ninety days after the cessation of the filling of the disposal area. Burial or treatment shall be in accordance with 4.4(3)"e" of this rule;

(5) Casing, sealing, or otherwise managing boreholes, shafts, wells, and auger holes or other more or less horizontal holes to prevent pollution of surface or ground water and to prevent mixing of ground waters of significantly different quality. All boreholes that are within the permit area but are outside the surface coal mining area or which extend beneath the coal to be mined and into water-bearing strata shall be plugged permanently in a manner approved by the depart-

ment, unless boreholes have been approved for use in monitoring.

h. Ground water systems.

(1) Underground operations shall be conducted to minimize adverse effects on ground water flow and quality, and to minimize offsite effects. The permittee will be responsible for performing monitoring according to subparagraph (2) of this paragraph to ensure operations conform to this requirement.

(2) Ground water levels, subsurface flow and storage characteristics, and the quality of ground water shall be monitored in a manner approved by the department to determine the effects of underground coal mining operations on the quantity and quality of water in ground water systems at the mine area and in associated offsite areas. When operations are conducted in such a manner that may affect the ground water system, ground water levels and ground water quality shall be periodically monitored using wells which can adequately reflect changes in ground water quantity and quality resulting from such operations. Sufficient water wells must be used by the permittee. The department may require drilling and development of additional wells if needed to adequately monitor the ground water system. As specified and approved by the department, additional hydrologic tests, such as aquifer tests, must be undertaken by the permittee to demonstrate compliance with subparagraph (1) of this paragraph.

i. Water rights and replacement. The permittee shall replace the water supply of an owner of interest in real property who obtains all or part of his supply of water for domestic, agricultural, industrial, or other legitimate use from an underground or surface source where such supply has been affected by contamination, diminution, or interruption proximately resulting from surface coal mine operation by the permittee.

j. Hydrologic impact of roads.

(1) General. Access and haul roads and associated bridges, culverts, ditches, and road rights-of-way shall be constructed, maintained, and reclaimed so as to the extent possible, using the best technology currently available, prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available. In no event shall the contributions be in excess of requirements set by applicable state or federal law. All haul and access roads shall be removed and the land affected shall be regraded and revegetated consistent with the requirements of 4.4(3) and 4.4(7), unless retention of a road is approved and assured of necessary maintenance to adequately control erosion.

(2) Construction.

1. All roads, insofar as possible, shall be located on ridges or on flatter and more stable slopes to minimize erosion. Stream fords are prohibited unless they are specifically approved by the department as temporary routes across dry streams that will not adversely affect sedimentation and that will not be used for coal haulage. Other stream crossing shall be made using bridges, culverts, or other structures designed and constructed to meet the requirements of this paragraph. Roads shall not be located in active stream channels nor shall they be constructed or maintained in a manner that increases erosion or causes significant sedimentation or flooding. However, nothing in this paragraph will be construed to prohibit relocation of stream channels in accordance with paragraph "d" of this subrule.

2. In order to minimize erosion and subsequent disturbances of the hydrologic balance, roads shall be constructed in compliance with the following grade restrictions or other grades determined by the department to be necessary to control erosion: the overall sustained grade shall not exceed lv:10h (ten percent); the maximum grade greater than ten percent shall not exceed lv:6.5h (fifteen percent) for more than three hundred feet; and there shall not be more than three hundred feet of grade exceeding ten percent within each one thousand feet.

3. All access and haul roads shall be adequately drained using structures such as, but not limited to, ditches, water barriers, cross drains, and ditch relief drains. For access and haul roads that are to be maintained for more than one year, water-control structures shall be designed with a discharge capacity capable of passing the peak runoff from a ten-year, twenty-four-hour precipitation event. Drainage pipes and culverts shall be constructed to avoid plugging or collapse and erosion at inlets and outlets. Drainage ditches shall be provided at the toe of all cut slopes formed by construction of roads. Trash racks and debris basins shall be installed in the drainage ditches wherever debris from the drainage area could impair the functions of drainage and sediment control structures. Ditch relief and cross drains shall be spaced according to grade. Effluent limitations of paragraph "a" of this subrule shall not apply to drainage from access and haul roads located outside the disturbed area as defined in this subrule unless otherwise specified by the department.

4. Access and haul roads shall be surfaced with durable material. Toxic- or acid-forming substances shall not be used. Vegetation may be cleared only for the essential width necessary for road and associated ditch construction and to serve traffic roads.

(3) Maintenance.

1. Access and haul roads shall be routinely maintained by means such as, but not limited to, wetting, scraping, or surfacing.

2. Ditches, culverts, drains, trash racks, debris basins, and other structures serving to drain access and haul roads shall not be restricted or blocked in any manner that impedes drainage or adversely affects the intended purpose of the structure.

(4) Access roads constructed for and used only to provide infrequent service to surface facilities, such as ventilators or monitoring devices shall be exempt from the requirements of subparagraph (2) of this paragraph provided adequate stabilization to control erosion is achieved through use of alternative measures.

k. Hydrologic impacts of other transport facilities. Railroad loops, spurs, conveyors, or other transport facilities shall be constructed, maintained, and reclaimed to prevent additional contributions of suspended solids to streamflow, or to runoff outside the permit area to the extent possible, using the best technology currently available and to control other diminution or degradation of water quality and quantity. In no event shall contributions be in excess of requirements set by applicable state or federal law.

l. Discharge of waters into underground mines. Surface and ground waters shall not be discharged or diverted into underground mine workings.

4.4(6) Dams constructed of waste material.

a. General. No waste material shall be used in existing or new dams without the approval of the department. The permittee shall design, locate, construct, operate, maintain, modify, and abandon or remove all dams (used either temporarily or permanently) constructed of waste materials, in accordance with the requirements of this subrule.

b. Construction of dams.

(1) Waste shall not be used in the construction of dams unless demonstrated through appropriate engineering analysis, to have no adverse effect on stability.

(2) Plans for dams subject to this subrule, and also including those dams that do not meet the size or other criteria of 30 CFR 77.216(a), July 1, 1977, shall be approved by the department before construction and shall contain the minimum plan requirements established by the mining enforcement and safety administration pursuant to 30 CFR 77.216-2, July 1, 1977.

(3) Construction requirements are as follows:

1. Design shall be based on the flood from the probably maximum precipitation event unless the permittee shows that the failure of the impounding structure would not cause loss of life or severely damage property or the environment, in which case, depending on, site conditions, a design based on a precipitation event of no less than one hundred-year frequency may be approved by the department.

2. The design freeboard distance between the lowest point on the embankment crest and the maximum water elevation shall be at least three feet to avoid overtopping by wind and wave action.

3. Dams shall have minimum safety factors as follows:

Case	Loading condition	Minimum safety factor
I	End of construction.	1.3
II	Partial pool with steady seepage saturation.	1.5
III	Steady seepage from spillway or decant crest.	1.5
IV	Earthquake (cases II and III with seismic loading).	1.0

4. The dam, foundation, and abutments shall be stable under all conditions of construction and operation of the impoundment. Sufficient foundation investigations and laboratory testing shall be performed to determine the factors of safety of the dam for all loading conditions in paragraph "b" (3), 3., of this subrule and for all increments of construction.

5. Seepage through the dam, foundation, and abutments shall be controlled to prevent excessive uplift pressures, internal erosion, sloughing, removal of material by solution, or erosion of material by loss into cracks, joints, and cavities. This may require the use of impervious blankets, previous drainage zones or blankets, toe drains, relief wells, or dental concreting of jointed rock surface in contact with embankment materials.

6. Allowances shall be made for settlement of the dams and the foundation so that the freeboard will be maintained.

7. Impoundments created by dams of waste materials shall be subject to a minimum drawdown criteria that allows the facility to be evacuated by spillways or decants of ninety percent of the volume of water stored during the design precipitation event within ten days.

8. During construction of dams subject to this subrule, the structures shall be periodically inspected by a registered professional engineer to ensure construction according to the approved design. On completion of construction, the structure shall be certified by a registered professional engineer experienced in the field of dam construction as having been constructed in accordance with accepted professional practice and the approved design.

9. A permanent identification marker, at least six feet high that shows the dam number assigned pursuant to 30 CFR 77.216-1, July 1, 1977, and the name of the person operating or controlling the dam, shall be located on or immediately adjacent to each dam within thirty days of certification of design pursuant to this subrule.

(4) All dams, including those not meeting the size or other criteria of 30 CFR 77.216(a), July 1, 1977, shall be routinely inspected by a registered professional engineer, or someone under the supervision of a registered professional engineer, in accordance with mining enforcement and safety administration regulations pursuant to 30 CFR 77.216-3, July 1, 1977.

(5) All dams shall be routinely maintained. Vegetation growth shall be cut where necessary to facilitate inspection and repairs. Ditches and spillways shall be cleaned. Any combustible materials present on the surface, other than that used for surface stability such as mulch or dry vegetation, shall be removed and any other appropriate maintenance procedures followed.

(6) All dams subject to this subrule shall be recertified annually as having been constructed and modified in accordance with current prudent engineering practices to minimize the possibility of failures. Any changes in the geometry of the impounding structure shall be highlighted and included in the annual recertification report. These certifications shall include a report on existing and required monitoring procedures and instrumentation, the average and maximum depths and elevations of any impounded waters over the past year, existing storage capacity of impounding structures, any fires occurring in the material over the past year and any other aspects of the structures affecting their stability.

(7) Any enlargements, reductions in size, reconstruction or other modification of the dams shall be approved by the department before construction begins.

(8) All dams shall be removed and the disturbed areas regraded, revegetated, and stabilized before the release of bond unless the department approves retention of such dams as being compatible with an approved postmining land use 4.2(3).

4.4(7) Topsoil handling and revegetation.

a. Topsoil shall be removed as a separate operation from areas to be disturbed by surface operations, such as roads and areas upon which support facilities are to be sites. Selected overburden materials may be used instead of, or as a substitute for topsoil where the resulting soil medium is determined by the department to be equal to or more suitable for revegetation. Topsoil shall be segregated, stockpiled, and protected from wind and water erosion, or contaminants. Disturbed areas no longer required for the conduct of mining operations shall be regraded, topsoil distributed, and revegetated.

b. The permittee shall establish on all land that has been disturbed by mining operations a diverse, effective, and permanent vegetative cover capable of self-regeneration and plant succession, and adequate to control soil erosion. Introduced species may be substituted for native species if approved by the department. Introduced species shall meet applicable state and federal seed or introduced species statutes, and may not include poisonous or potentially toxic species.

780—4.5(17A,83A) Registration permit of surface coal mines. A permit to mine coal will be issued by the department for a period not to exceed five years. Sixty days prior to the time of expiration, the permit may be reissued for one additional five-year period following a written request by the operator. All drilling logs, geophysical records, samples, isopach maps, cross section diagrams, and mine plans shall be considered a closed file, according to 68A.7, for a period of five years after mining is completed. The department shall release to the Iowa geological survey all drilling logs and geophysical records after mining is completed, provided that the survey will also hold the data as a closed file for five years.

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4.5(1) Basic information. The mine operator shall submit to the department the following basic information on a permit form provided by the department:

a. Date of application for registration permit.

b. Company name and address.

c. Name or number of proposed operation and mailing address.

d. Name of mining superintendent and corporate officers or owner-operator.

e. Legal description of operation location—quarter, section, township, range, county.

f. Owners of surface land and addresses.

g. Owners of mineral rights and addresses.

h. Source of applicant's legal right to conduct surface mining on the land. The operator is not required to submit a copy of the lease or other legal document as proof of his right to mine the site, but legal proof shall be available for inspection by the department upon its request.

i. Applicant's signature and title.

j. Such other information as the department may require to assure compliance with these rules.

4.5(2) Fee. The mine operator shall submit to the department a permit fee of five dollars per acre to be registered. The fee shall not be less than one hundred dollars. Checks shall be made payable to the treasurer of the state of Iowa.

4.5(3) Samples. The operator shall submit to the department samples of overburden.

a. Samples shall be generated with rotary, core, cable, or other adequate techniques which will generate samples suitable for accurately characterizing the overburden.

b. Samples shall be generated from at least five drillholes or other techniques for every forty acres registered or fraction thereof. Each of these five drillholes or other techniques shall generate samples from the surface down through at least the lowest coal seam to be mined. At least one drillhole or other technique shall generate samples through the thickest area of the site to be mined; that is, from the top of the highest point to be removed through at least the lowest seam to be mined. Each sample shall be packaged and labeled as to specific drillhole or highwall obtained, depth obtained, type of material, and then submitted to the department.

c. Cumulative samples shall be collected of each five-foot interval and of each major break in lithology. Samples need only be submitted from the minimum five drillholes or other techniques so long as at least one sample is submitted for every major type of overburden encountered.

d. Such other information as the department may require to assure compliance with these rules.

4.5(4) Logs. The operator shall submit to the department comprehensive, legible logs of all drillholes and geophysical data taken for the site being registered.

a. Each drillhole and place where data is taken shall be sequentially numbered and their locations with corresponding numbers plotted on the contour map. The type, color, texture, order of appearance, and thickness of each layer of overburden shall be recorded. The logs shall be signed by the supervising driller.

b. Logs of all additional exploratory drilling carried out on the site while mining is in progress shall also be submitted. Logs need not be kept of holes drilled for shooting.

c. Additional data. In areas of questionable overburden where additional or more refined data is required to adequately compute the amounts and types of overburden, the department may require additional data and samples from not more than one core drilled hole for each twenty acres registered or fraction thereof and not more than ten rotary drilled holes for each forty acres registered or fraction thereof.

d. Such other information as the department may require to assure compliance with these rules.

4.5(5) Maps and plans. The operator shall submit to the department the following maps and plans. They shall pertain only to coal seams that will be extracted for sale, consumption, or processing. Thin or low quality seams that will not be utilized shall be considered as overburden. Maps shall be prepared by qualified engineers, soil scientists, geologists, and other similarly qualified and competent persons.

a. All maps shall contain the following basic information:

(1) Name of company and operation.

(2) Title of map.

(3) Date prepared.

(4) Name and title of person who prepared map.

(5) North arrows indicating both true and magnetic north.

(6) Key—explanation of symbols and colors.

(7) Scale—the scale shall be of reasonable size so that the department may effectively view the details of the site. The minimum horizontal scale shall be one inch equals one hundred feet. In the case of cross sections, the minimum vertical scale shall be one inch equals twenty-five feet.

b. One or more maps shall be submitted showing the present topography of the site in two foot contour intervals; the location and area covered by each coal seam; and the location of drillholes and other places where overburden data was obtained.

c. One map showing soils as mapping units consistent with Iowa county soil survey reports shall be submitted. The mapping units shall indicate soil series, type, slope, and degree of erosion where significant erosion has occurred. Iowa county soil survey reports or advance worksheets shall meet this requirement. In counties where mapping has not been completed, a qualified soil scientist shall map the proposed site and prepare a soils map using the same mapping units employed by the Iowa soil survey reports.

d. Either on the soils map or on a separate map, the operator shall show the location of lease or property lines of the site being registered; the acres covered by existing land-uses; the location of any streams, springs, wells, ponds, buildings, and roads on the site or within two hundred feet; and the location of any cemeteries or archaeological sites on the site.

e. The operator shall submit a mining plan based on the submitted data. Control of water discharge and of sediment loss during mining activities shall be incorporated within this plan. The plan shall include details on any specific practices intended to be engaged in which require prior approval by the department under these rules. The plan shall consist of at a minimum:

(1) A map or maps that show the approximate location and order of cuts to be made; the location, size, and composition of overburden stockpiles; and the location and size of water impoundments.

(2) A brief statement that describes the mining methods and equipment to be used.

f. The operator shall submit a rehabilitation plan that shall consist of:

(1) A map of the proposed appearance of the site after mining and reclamation are accomplished. The general configuration of the land in ten foot contour intervals, water impoundments, location of terraces, types and location of final land-uses; roads, streams, and other landscape features shall be shown on this map.

(2) A brief description of the species, methods, and approximate timetable that shall be utilized for the revegetation of the reclaimed land. Liming, fertilizing, and mulching programs shall also be described.

g. The above plans may be subject to change as the operation progresses due to but not limited to such factors as changes in weather or addition of adjacent lands to be mined.

(1) The operator shall submit any plan changes to the department on a form supplied by the department and obtain the department's approval before the operation may change from the original plan.

(2) The department shall notify the operator in writing of the department's approval or disapproval within fifteen working days of receipt of the proposed change.

(3) In certain cases where the plan change is clearly insignificant or clearly will not cause pollution or degrade the final reclamation product, the inspector may give on-site, immediate written approval of the change. This preliminary approval shall be subject to final review by the department within the fifteen-day period.

h. Such other information as the department may require to assure compliance with these rules.

4.5(6) Archaeological study. The operator shall provide a written report concerning possible significant damage to important historical, archaeological or cultural systems present on the site. Such information shall be provided by a person qualified in a field such as history or archaeology.

a. The operator shall provide the state archaeologist access to the site for the purpose of study and salvage of cultural materials. The right of access shall be maintained from the date of application for registration permit of a mine site through final release of the site by the department, provided the activities of the state archaeologist do not cause economic loss or pose a safety problem for the mine operator.

b. The department shall be reponsible for sending notification to the state archaeologist of the operator's intent to mine on a specific site within two days of receipt of the application for registration permit.

4.5(7) Overburden for cover. The operator shall submit to the department the following information concerning suitability of overburden for cover:

a. A report prepared by a qualified soil scientist determining the suitability of material available for a four-foot cover on the reclaimed land surface. Evidence to be provided shall be one of two types:

(1) Where certain layers within the overburden to be disturbed are known to be adequate soil formers based on their natural occurrence at the surface within the region, such demonstrable occurrences shall be acceptable as evidence of suitability for cover. A soil scientist or geologists shall determine and submit a report that the material has been shown by previous experience to be suitable for soil formation and seedbed preparation, does not possess an acidity below pH 5.5 or above 8.5, and is not composed of more than seventy percent sand or forty-five percent clay.

(2) Where known suitable material is not present in sufficient quantities to provide the minimum four-feet cover, inclusion of other layers within the overburden shall be permitted as cover upon presentation of additional analysis proving their suitability as soil forming materials. The operator shall submit at least one core drilled sample and provide the following information for each layer to be utilized as cover: pH and the method used for determination; textural analysis and the method used for determination; determination of the pyritic sulfur and carbonate content and the methods used for determination; and determination of the weatherability of the consolidated materials and the method used for determination.

b. A report prepared by a qualified soil scientist stating whether or not the top eighteen inches of the original surface is suitable for replacement as the top eighteen inches in the reclaimed surface.

c. A report determining the number of cubic yards of nontoxic material present on the site suitable for cover and the supporting computation based on field data. Amounts shall be computed from nontoxic material present on the site suitable for cover and the supporting computation based on field data. Amounts shall be computed from nontoxic overburden isopach maps, cross section diagrams, computer programs, or other method approved by the department. If the operator plans to mix several layers of material for use as nontoxic cover, he shall also submit a description of the method of mixing and the amounts of each type of overburden to be mixed and the justifications required by subrule 4.2(6).

This rule is intended to implement section 83A.13 of the Code.

780—4.6(17A,83A) Examination of proposed site. The department shall examine the proposed site and the submitted permit application.

4.6(1) Assistance. The department may draw upon technical assistance from outside sources, such as state and federal agencies and consultants in evaluating the registration permit application and site.

4.6(2) Notification. After the examination is completed, the department shall notify the operator in writing of its approval and the amount of the required bond, or of its disapproval and the reasons for disapproval. The operator may appeal any disapproval to the state soil conservation committee.

4.6(3) Submittal of bond. If approved, the operator shall submit the required bond before he may begin operation. The minimum bond shall be not less than $10,000.

This rule is intended to implement section 83A.14 of the Code.

780—4.7(17A,83A) Variances of regulations. A variance is permission to engage in an alternative mining practice where authorized by these rules and upon proper justification.

4.7(1) Petition for variance. An operator shall petition the department in writing for a variance of a regulation.

4.7(2) Examination of petition. The department may grant a variance of the regulation only if it would enable the site to be reclaimed to an equal or more valuable land-use than existed originally. If the department approves of the variance, the request shall then be submitted to the state soil conservation committee for final approval at its following regular monthly meeting before the operator may proceed. If the department disapproves, the operator may appeal to the state soil conservation committee.

This rule is intended to implement section 83A.19 of the Code.

SOIL CONSERVATION[780] *(cont'd)*

780—4.8(17A,83A) Inspection for compliance with regulations.

4.8(1) Inspection procedure. The department representative may enter upon the site at any time. The department representative shall always attempt to contact the operator, superintendent, or foreman upon entering.

4.8(2) Noncompliance. The department representative shall immediately notify the operator in writing of any item of noncompliance with the regulations or of failure to follow the approved mine plan.

a. If the department considers the violation to be due to willful negligence, the operator may be referred by the department to the county attorney for prosecution. Proceedings may also be initiated for either license suspension or bond forfeiture or both.

b. The operator shall submit a schedule for correcting the compliance order within five days of notice of noncompliance.

c. If the department does not approve of the submitted schedule, the department shall convene the land rehabilitation advisory board as soon as possible. The operator shall be notified of the meeting at least twenty-four hours before the meeting and may present his schedule. The department shall again rule upon the schedule giving consideration to the board's opinion. If the department again disapproves, then procedures for license suspension or bond forfeiture or both shall be initiated.

4.8(3) Imminent dangers and harms.

a. If an authorized representative of the department finds conditions or practices, or violations of applicable performance standards, which create an imminent danger to the health or safety of the public, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice, or violation.

b. If an authorized representative of the department finds conditions or practices, or violations of applicable performance standards, which are causing or can reasonably be expected to cause significant, imminent environmental harm to land, air, or water resources, the authorized representative shall immediately order a cessation of surface coal mining and reclamation operations or that portion of the operation relevant to the condition, practice or violation.

c. An authorized representative of the department shall impose affirmative obligations on an operator which the authorized representative deems necessary to abate the condition, practice, or violation if:

1. A cessation order is issued under paragraph "a" or "b" of this subrule; and

2. The cessation of mining or reclamation activities will not completely abate the imminent danger or harm or eliminate the practices or conditions that contributed to the imminent danger or harm.

d. When imposing affirmative obligations under this subrule, the authorized representative of the department shall require abatement of the imminent danger or harm in the most expeditious manner physically possible. The affirmative obligation shall include a time by which abatement shall be accomplished and may include, among other things, the use of existing or additional personnel and equipment.

e. Reclamation operations not directly the subject of the order or affirmative obligation shall continue during any cessation order.

f. An authorized representative of the department shall terminate a cessation order issued under paragraph "a" or "b" of this subrule by written notice when the authorized representative determines that the conditions or practices or violations that contributed to the imminent danger to life or the environment have been eliminated.

This rule is intended to implement 83A.8 of the Code and Acts of the Sixty-seventh General Assembly, H.F. 2354.

[Filed Emergency after Notice 8/11/78]

The notice of intended action regarding these rules was published in IAB, June 28, 1978. Certain nonsubstantive corrections have been made to the rules as they appeared under notice. The following substantive modifications have been made as a result of the public hearing.

1. Sediment control measures 4.2(7) "e" (1) and (6) (iv) and 4.5(5) "e" (1) through (6) (iv) as proposed were deleted. This is a result of a federal court decision which enjoined the federal government from enforcing these sections of their regulations. The proposed rules were reconsidered and modified in light of the court decision.

2. Pre-existing structures such as roads, ponds, valley fills, and waste dams were held by the federal court to meet the federal performance standards but need not be arbitrarily rebuilt. The following was added as subrule 4.1(3)"c" to reflect the court decision: "Structures in existence prior to May 3, 1978, (except those built by operators permitted since February 2, 1978), need not meet the design criteria of these rules but must comply with all applicable performance standards."

3. Subrule 4.8(2), d., regarding liability release was deleted as it was found to be inconsistent with the federal regulations.

In that the rules will confer a benefit on the public by maintaining state control of the coal resources, the rules will become effective upon filing pursuant to section 17A.5(2)"b"(2) of the Code. The department has been notified by the Office of Surface Mining Reclamation and Enforcement of the U.S. Department of the Interior that the two grants submitted to them by Iowa could not be considered under this federal fiscal year unless Iowa had the ability to enforce and administer the initial regulatory program before October of 1978. This is due to the federal fiscal year budgeting requirements. The grants, totaling $63,135, would allow the state to:

(1) Develop a permanent state program.

(2) Provide necessary equipment and services to implement the initial regulatory program.

Public participation and legislative review have been provided while the rules were under notice.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

ARCHAEOLOGISTS[70]

Pursuant to the authority of section 17A.3 of the Code, and Acts of the Sixty-seventh General Assembly, Senate File 2200 (section 26 and 50) the state archaeologist proposes to rescind chapters 1, 2, 5, 7 and 8 and adopt in lieu thereof, the following to implement chapter 305A.

CHAPTER 1
PURPOSE OF THE AGENCY

70—1.1(305A) Mission. The office of state archaeologist, hereafter referred to as OSA, was organized in 1959 to provide for the location, recovery, restoration and preservation of archaeological materials for the state, and to co-ordinate these activities with other state agencies. The OSA publishes both educational and scientific reports related to these duties and responsibilities.

1.1(1) In order to meet these statutory objectives under section 305A.2, and Acts of the Sixty-seventh General Assembly, Senate File 2200, sections 26 and 50, the OSA is defined as the primary state interagency service organization for archaeological survey and evaluation. In this capacity, the OSA is notified of projects funded by the state, and projects, organizations or other entities requiring state permits, or receiving state funding for archaeological salvage and for adverse impact upon such sites.

1.1(2) In instances where an agency lacks an archaeological program, the OSA will contact appropriate institutions and/or professional archaeologists to determine their interest in participating in a state funded project.

1.1(3) If an organization or individual other than the OSA agrees to conduct archaeological investigations, the OSA will establish a direct contact between the pertinent state agency and the institution or professional archaeologist. In such projects the OSA acts primarily to co-ordinate archaeological studies on state projects and insures that such studies deemed necessary are completed.

1.1(4) The goal of utilizing the above mentioned procedures, as they apply to the department of transportation and to any other state agency, is to assure that neither the state nor any of its legal subdivisions is responsible for the needless destruction of historical objects. If such destruction occurs, or cannot be avoided, the OSA will take proper reasonable action to obtain all possible information concerning such materials prior to destruction.

1.1(5) OSA performs other duties such as expansion and development of professional and public input into the operation of the office via communication with professional organizations, state and federal agencies and private societies.

1.1(6) OSA provides assistance to local and regional groups or individuals throughout the state in the areas of lectures, general assistance on public or private projects, curation of artifacts and offers programs of assistance to public schools.

1.1(7) OSA maintains an archaeological repository for the state and bears the related responsibility of development and maintenance of an archaeological documents collection related to material in the repository.

1.1(8) OSA may perform archaeological contract services for agencies utilizing federal, state-federal, or state funds.

This rule is intended to implement sections 305A.2 and 305A.6 of the Code and Senate File 2200, sections 26 and 50.

70—1.2(305A) Divisions. OSA is divided into five divisions: General services, research, contract services, field services and publication.

1.2(1) The state archaeologist carries the overall responsibility of OSA and for all activities developed from or associated with OSA. State archaeologist shall be the director of the office.

1.2(2) The assistant director is responsible for administration of the office, maintenance of the state repository and documents collection, has functional supervision over the staff and acts in the absence of the director.

1.2(3) The research archaeologist has the responsibility, in part, for producing scientific reports and articles pursuant to section 305A.2 in co-ordination with the specific requests of the director and submitting said reports and articles to the director according to a specific annual timetable developed by the director.

1.2(4) Contract archaeologists working on OSA projects are considered to be members of the OSA staff. They have the responsibility for meeting the terms of contracts in which they are engaged. Reports prepared for each project undertaken are subject to professional guidelines, federal statutes and the director's approval.

1.2(5) Publication and field services are handled by the staff as assigned.

This rule is intended to implement sections 305A.2 and 305A.5 of the Code.

70—1.3(305A) Further information. The general public may obtain further information on the rules contained in this section and other information concerning the function and operation of OSA either in writing or calling: Director, OSA, Eastlawn, The University of Iowa, Iowa City, Iowa 52242. (319) 353-5175.

This rule is intended to implement section 17A.3 of the Code.

CHAPTER 2
PROCEDURES FOR PETITIONING FOR ADOPTION OF NEW RULES

70—2.1(17A) Procedures.

2.1(1) Petitions requesting the promulgation, amendment or repeal of a rule are made to the director in writing and include the following information:

a. Name and address of petitioner.

b. The text of the rule as is, and as proposed.

c. A concise statement of the reasons for the adoption, amendment or repeal of the rule.

d. The statutes, rules, or orders applicable to the question presented in the petition.

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2.1(2) Within sixty days OSA will notify the petitioner of its disposition of the petition.

This rule is intended to implement section 17A.4 of the Code

CHAPTER 5
PROCEDURES WITH OTHER STATE AND FEDERAL AGENCIES CONCERNING THE RECOVERY AND SALVAGE OF HISTORICAL OBJECTS

70—5.1(305A) Assumed responsibility. Pursuant to chapter 305A, OSA assumes that any state agency has the responsibility of notifying OSA should any proposed action of said agency endanger or have the potential of endangering historical objects under its direct or indirect responsibility.

5.1(1) OSA is the appropriate authority for state and such federal agencies as are required by their agency rules to contact regarding actions such agencies may take that have the potential of affecting archaeological remains.

5.1(2) OSA, acting in its capacity as the state's principal agent in the co-ordination of archaeological matters, shall be advised of such projects early in the planning process in order to facilitate the conduct of any exploratory or salvage work as may be necessary.

5.1(3) OSA is authorized to enter into agreements and co-operative efforts with federal or state agencies concerned with archaeological salvage or the preservation of antiquities.

This rule is intended to implement section 305A.3 of the Code.

CHAPTER 7
STATE ARCHAEOLOGICAL REPOSITORY

70—7.1(305A) Definition. The state archaeological repository is a working collection of materials related to Iowa archaeology.

7.1(1) Individuals shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

7.1(2) Research involving the use of materials in the state archaeological respository by qualified individuals is encouraged by the OSA in recognition of the potential contribution of such scholarly activities.

7.1(3) The teaching collection is the artifact collection in the respository developed by OSA to be used for instructional or display purposes. These materials will be loaned upon written request to individuals or institutions. The requester should state in a letter the nature of the project, and the time the materials will be needed. Loans do not exceed one calendar year, unless other arrangements are made. Any materials not returned or damaged, will result in appropriate charges for replacement or repair.

7.1(4) OSA accepts donations of artifacts or artifact collections provided that explanatory materials accompany collections such as site sheets, site records and all pertinent locational information. Donated specimens are required to be washed and reasonably identified. OSA will not determine the monetary value of artifacts.

7.1(5) OSA is the agent to decide which category donations fall into and which are accepted or rejected. OSA serves a similar function for any other state agency wishing to donate artifacts or information on sites. Donations will be accepted given the following categories listed in order of decreasing priority.

a. In state new site.
b. In state previously reported site, new collections.
c. Out of state-midwest or essemblages directly relevant to Iowa archaeology.
d. North American-general.
e. Mesoamerica-general.
f. South American-general.
g. Old World-general.

Where applicable, specimens must be accompanied by documentation of their legal acquisition and exportation from the state or country of origin.

This rule is intended to implement section 305A.2 of the Code.

CHAPTER 8
ARCHAEOLOGICAL DOCUMENT COLLECTION

70—8.1(305A) Definition. The archaeological document collection is part of the repository. It contains records of this agency, supporting notes and written information pertaining to the artifact collections in the repository as well as research materials on Iowa prehistory which are utilized on a regular basis by members of the staff. The archaeological document collection is a working collection.

8.1(1) Individuals shall have access to the collections upon request, providing that necessary staff is available. Users are requested to contact OSA in advance in order to facilitate scheduling.

8.1(2) Donations of materials are accepted in the following priority:

a. Iowa archaeology.
b. Midwest archaeology.
c. North American archaeology.
d. Midwest and Plains ethnography.
e. North American ethnology.

This rule is intended to implement section 305A.2 of the Code.

CHAPTER 10
LIAISON WITH THE DEPARTMENT OF ANTHROPOLOGY

70—10.1(305A) Definition. By statute the state board of regents shall appoint a state archaeologist, who shall be a member of the department of anthropology of the State University of Iowa. Midwestern archaeological programs of the department of anthropology and the OSA are co-ordinated through the co-operative efforts of the state archaeologist and the faculty of the department of anthropology. Such programs include, but are not limited to, field, laboratory, and research projects. As a faculty member, the state archaeologist is also involved in routine interaction with the anthropology faculty on departmental business.

10.1(1) In order to facilitate co-operative efforts with the department of anthropology, professors and students under their sponsorship will be granted as free, direct and complete access to the repository and documents collection as OSA staff time will permit. Research projects involving tests which will modify or physically damage specimens in the repository must be cleared with the director.

10.1(2) The OSA staff will cooperate fully with researchers, aiding with the location of materials needed. Work areas will be provided for reasonable lengths of time. All publications or reports resulting in full or in part from the use of OSA collections and facilities will include an appropriate acknowledgment. Two copies of

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all such publications or reports shall be sent to the OSA for inclusion in the documents collection.

This rule is intended to implement section 305A.1 of the Code.

CHAPTER 11
ANCIENT HUMAN SKELETAL REMAINS

70—11.1(305A) Procedures. OSA is the appropriate agency to contact regarding the discovery of human physical remains or suspected human physical remains believed to be over one hundred fifty years old. The OSA should be notified of the location of areas believed to represent ancient burial grounds. The director has the authority to deny permission to disinter human physical remains from aboriginal ossuaries, grave sites, cemeteries or any other archaeological deposit that are determined to have state and national significance from the standpoint of history or science.

11.1(1) A site will be judged significant if it has been demonstrated by archeological excavation and analysis that it possesses one or more of the qualities listed below:

a. Substantial information bearing on the biology of past populations.

b. Substantial information bearing on the technology, society or ideology of past populations.

c. Potential for public interpretation of past lifeways.

11.1(2) The basis for the determination of significance shall be specified in the written report filed with the department of health.

11.1(3) If a site is determined to be significant by these rules and is designated by the director to be preserved, any human physical remains recovered during testing may be reinterred at the original burial site rather than at one of the designated state cemeteries. Sites that are judged not to be significant will be salvaged by the OSA or its designated representative to the degree permitted by state funding and available staff. In such cases, materials recovered will be the subject of a written report and the human remains will be reburied in one of the designated state cemeteries.

11.1(4) The OSA shall maintain records of all known or suspected ancient burial sites in the state. The OSA has the authority to co-ordinate activities pertaining to ancient burial grounds in order to foster their protection and preservation.

11.1(5) The OSA will not assume financial responsibility for intermediate to large scale actions involving the removal of human physical remains from private lands. The OSA must participate, however, in the authorization and co-ordination of any such action on federal, state, county, municipal or private lands.

11.1(6) The OSA will assist with the on-going identification of ancient cemetery areas to the degree permitted by state funding and available staff. The OSA will co-ordinate such actions with appropriate federal, state, county, municipal or private concerns.

11.1(7) The director shall maintain an informal advisory committee composed of osteologists, anthropologists, state agency officials, the lay public, and a minimum of two Native-Americans residing in Iowa to consult on matters dealing with ancient human skeletal remains. Individuals appointed will serve on a voluntary basis. Certain travel expenses, authorized by the director in advance, will be paid by the OSA.

This chapter is intended to implement sections 305A.7 to 305A.9 of the Code.

CHAPTER 12
STATE SITE RECORD AND INVENTORY SYSTEM

70—12.1(305A) Definition. Pursuant to the statutory responsibilities of locating and recovering archaeological and paleontological remains, the OSA maintains site records and prepares and periodically updates the official site inventory for the state. The OSA is the appropriate agency for the public or other agencies to contact to report sites or to receive information concerning known sites in the inventory. The OSA assigns all official site numbers following written guidelines which are available from the OSA upon request.

70—12.2(305A) Iowa site records. Specific locational and descriptive information on each reported site is placed on official Iowa Site Record sheets. Blank sheets and a packet of information explaining how they are to be completed are available from OSA upon request.

12.2(1) The official site numbers used on site record sheets and in the inventory conform to the trinomial system which incorporates state and county designations coded with sequentially numbered sites within each county.

12.2(2) Numbers are usually assigned on an individual basis as needed. In special cases, blocks of site numbers shall be allocated by OSA to researchers to facilitate projects.

a. Blocks of site numbers will be issued for periods of time up to one year.

b. If an individual or agency fails to utilize assigned numbers within the period allowed, the numbers may be renewed or revoked depending upon the circumstances.

70—12.3(305A) State site inventory. The state site inventory contains summary information by county for all sites reported in the Iowa site records.

12.3(1) The inventory is updated on a daily basis as new sites record sheets are added to the documents collection. Duplicate copies of the site record sheets are made available to the Division of Historic Preservation, State Historical Department, for planning purposes.

12.3(2) A new compilation of the inventory is formalized twice yearly and copies thereof are distributed free of charge to the Division of Historic Preservation, State Historical Department and the Stae Preserves Advisory Board.

12.3(3) The OSA participates in the Iowa Water Resource Data System managed by the Iowa Geological Survey. The purpose of this participation is to make the state site inventory more accessible to other agencies via a computerized data retrieval and storage system.

This chapter is intended to implement section 305A.2 of the Code.

CHAPTER 13
STATE LEVEL ARCHAEOLOGICAL RESOURCE PLANNING
Reserved

[Filed 8/16/78, effective 10/11/78]

Notice of intended action regarding these rules was published in the Iowa Administrative Code Supplement dated March 22, 1978, and shall become effective October 11, 1978. These rules have been modified.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

COMMERCE COMMISSION[250]

Pursuant to the authority of sections 474.5 and 476.6, Code of Iowa, 1977, the following amendment to chapter 7, "Practice and Procedure," IAC, is hereby adopted.

ITEM 1. Amend rule 7.4(476) by adding the following new subrule:

7.4(1) Customer notification procedures.

a. Definitions. Terms not otherwise herein defined shall be understood to have their usual meaning.

(1) "Rates" shall mean amounts billed to customers for a recurring service or commodity rendered or offered by the public utility.

(2) "Charges" shall mean amounts billed to customers for a nonrecurring service or commodity rendered or offered by the public utility.

b. Notification of customers. Any public utility, as defined in section 476.1, Code of Iowa, which proposes to increase rates or charges, shall mail, not less than thirty days prior to the proposed effective date, an approved written notice of such rate or charge increase to all customers in all affected rate classifications.

c. Standardized notice.

(1) Rate-regulated utilities. Any rate-regulated utility company may use the following form for notification of its customers without seeking prior commission approval thereof:

Dear Customer:

__(Company_Name)__ is petitioning the Iowa State Commerce Commission for an increase in its utility rates effective with usage commencing on __(Date)__.

The increase in annual revenues resulting from this proposed increase will be approximately __$(Number)__, or __(Number)%__.

Although the effect of the proposed increase on your bill will vary depending upon the type and extent of usage, the average annual increase for the primary customer classes is as follows:

Customer Class	Amount of Increase	Percentage Increase

This rate increase may be suspended by the commission and be permitted to become effective at a later date, subject to refund with interest of any amounts ultimately determined by the commission to be excessive.

However, after a hearing in this matter, the commission may order a lesser or greater increase, or a decrease in rates to any or all customer classes.

You have the right to file a written objection to this proposed increase with the Iowa State Commerce Commission and you may also request a public hearing. The address of the Iowa State Commerce Commission is the State Capitol, Des Moines, Iowa 50319. The Commerce Counsel, which represents the public in litigation before the Iowa State Commerce Commission, should be provided any facts that would assist the Commission to determine the justness and reasonableness of this requested increase.

If you have any questions, please contact your local business office.

(2) Nonrate regulated utilities. Any nonrate regulated utility may use the following form for notification of its customers without seeking prior commission approval thereof:

Dear Customer:

On __(Date)__, __(responsible_party)__ approved an increase in rates affecting prices for __(type_of_service)__ service that you receive. The proposed rate increase will apply to your usage beginning on __(Date)__.

The total increase in annual revenues resulting from the proposed rate changes will be approximately __$(Number)__, or __(Number)%__.

The average annual increase for the primary customer classes is as follows:

Customer Class	Amount of Increase	Percentage Increase

The effect of the proposed increase on your bill will vary, depending upon the type and extent of usage.

If you have any questions, please contact our business office.

(3) General requirements for a form notice. The standardized notice provided under this subsection shall be of a type size and of a quality which is easily legible. The final notice with dates, cost figures and cost percentages shall be filed with the commission at the time of the customer notification.

d. Other customer notification forms.

(1) Prior approval. Any public utility, as defined in section 476.1, Code of Iowa, which proposes to increase rates or charges and which chooses not to use the form prescribed in 7.4(1)"c" above, shall submit to the commission not less than thirty days before providing notification to its customers in accordance with 7.4(1)"b", three copies of such proposed notice for approval. The commission, for good cause shown, may permit a shorter period for approval of the proposed notice.

(2) Form. The proposed notice as submitted to the commission pursuant to 7.4(1)"d"(1) may contain blank spaces for dates, cost figures and cost percentages; however, a copy of the approved notice with dates, cost figures and cost percentages shall be filed with the commission at the time of the customer notification. The form of the notice, as approved by the commission, may not be altered in the final form except to include dates, cost figures and cost percentages. The notice shall be of a type size and of a quality which is easily legible and shall be of the same format as that which was approved by the commission.

(3) Required content of notification. The notice submitted in accordance with 7.4(1)"d"(1) shall include, where applicable, and clearly explain the following items:

(a) The average percent of increase of annual revenue, whether the percentage is uniformly applicable to all classes of customers and, if not, the applicable percentage increase for the primary classes of customers;

(b) The total increase in annual revenue that the proposed change in rates or charges is anticipated to provide to the utility;

(c) The date on which the proposed increased rate or charge is to become effective. The effective date is that date from which future service will be subject to the new rate or charge. All service provided prior to the effective date must be at the previously-established price. Prorating may be used when computing a customer's bills whenever the effective date falls within the billing interval, or billing at the higher rate may be deferred until the first monthly billing interval which fully follows the effective date;

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(d) In the case of the rate regulated utilities, a statement that the customer has the right to file a written comment on the proposed rate increase with the Iowa State Commerce Commission, State Capitol, Des Moines, Iowa 50319, that the customer may request the commission to hold a public hearing to determine if such rate increase should be allowed, and that the commission may, after a hearing, increase or decrease any proposed rate or charge by any amount found just and reasonable. In the event that the notification to the customers exceeds one page in length, the notification of the right to file an objection and request a public hearing shall appear on the first page;

(e) Nonrate regulated utilities shall include the date on which the responsible party approved the increase.

(4) Notice of deficiencies. Within thirty days of the proposed notice's filing, the utility shall be notified of either the approval of the notice or of any deficiencies in the proposed notice. In the event deficiencies are found to exist in the proposed notice, the commission will describe the corrective measures necessary to bring the notice into compliance with chapter 476 of the Code of Iowa and commission rules.

(5) Fuel adjustment clause. Nothing in this subsection shall be taken to prohibit a public utility from establishing a sliding scale of rates and charges or from making provision for the automatic adjustment of rates and charges for public utility service, provided that a schedule showing such sliding scale or automatic adjustment of rates and charges is first filed with the commission. Such adjustment factors that result from the sliding scale shall be printed on the customer's bill.

f. Delivery of notification.

(1) The notice as required by 7.4(1)"b" and as approved by the commission in accordance with 7.4(1)"d" or 7.4(1)"e" shall be sent to all affected customers not less than thirty days prior to the proposed effective date.

(2) Notice of all increases, except nonrecurring service charge increases, shall be mailed to all affected customers, which mailing shall be marked, "Notice of rate increase," and may be enclosed with the regular period billing for service. Notice of nonrecurring service charge increases may be included with the regular period billing for service.

(3) Failure of the postal service to deliver the notice to any customers shall not invalidate or delay a proposed rate increase proceeding.

(4) After the date that the first notice is mailed to any affected customer and until such rates are placed in effect, any person who requests service and is affected by the proposed increase in rates shall be notified of such increases at the time service is requested or as soon as possible thereafter.

(5) Approved notice will be required for each filing proposing an increase that is not directly identifiable with a previous customer notification.

[Filed 8/7/78, effective 10/11/78]

Notice of Intended Action regarding these rules was published in IAC supplement February 8, 1978, and becomes effective October 11, 1978. These rules have been modified.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

EMPLOYMENT SECURITY[370]

DEPARTMENT OF JOB SERVICE

Pursuant to the authority of sections 96.11(1) and 17A.3 of the Iowa Code, employment security rules in chapter 2 appearing in the Iowa Administrative Code relating to employer's records and reports, are hereby amended.

ITEM 1. Strike all of subrule 2.11(1) and insert in lieu thereof the following:

2.11(1) Separate accounts. The department shall maintain a separate account for each employer (or single legal entity). Any single employer (or single legal entity) who has more than one establishment or business under a single ownership in which wages are paid to employees will be considered a single employing unit entitled to a single experience rate. Such employer may request in writing that the department assign a separate reporting number (account number) to each establishment or business. The department may issue a separate reporting number (account number) to the various establishments or businesses, or any part thereof. A quarterly contribution and wage report will be submitted by each establishment or business that has a reporting number (account number), showing all wages paid by such establishment or business during each quarter. The experience of all establishments or businesses of an employer (or any single legal entity) shall be combined on the rate computation date for the purpose of computing one experience rate for the legal ownership of the establishments or businesses as provided for in section 96.7, Code of Iowa.

For the purpose of this rule entities may include an individual, trust, estate, partnership, association or corporation.

The determination of whether any given establishment or business owned by any of the described entities may be entitled to separate rates will be decided on the basis of the law which created and gave legal existence and rights to such establishments or businesses. If, pursuant to such law the establishment or business by reason of the articles of incorporation or association of the terms of the partnership or other legal documents giving legal efficacy, thereby creates a separate legal entity which apart from the owners is legally responsible and answerable under the law for all its actions and obligations, such legal entity may be assigned a separate experience rating.

With respect to a successor employer to another covered establishment or business, the acquiring entity may have a separate account number for the acquired business only if that business retains its character as a separate legal entity. If the predecessor's business is merged with that of the successor so that they become a single legal entity under the law, the successor is not entitled to separate rates.

This subrule is intended to implement sections 96.7(2)"a", 96.7(3)"a", and 96.19(5) of the Code.

ITEM 2. Rule 2.11(96) is amended by adding the following new subrule:

2.11(4) Establishment defined. As used in this section "establishment" means an economic unit, generally at a single physical location, where business is conducted, or where services or industrial operations are performed, or from which employees are dispatched.

This subrule is intended to implement sections 96.7(2)"a", 96.7(3)"a", and 96.19(5) of the Code.

EMPLOYMENT SECURITY[400] *(cont'd)*

ITEM 3. Subrule 2.12(3) is amended to read as follows:

2.12(3) When a covered employer acquires a separate enterprise or business, the employer shall have the option of carrying two separate accounts, one for each business, or merging the two businesses into one account; ~~except when one of the two businesses is engaged in construction work, in which case the employer must carry separate accounts.~~ *See subrules 2.11(1) and 3.40(3).*

This subrule is intended to implement sections 96.7(2)"a", 96.7(3)"a", and 96.19(5) of the Code.

ITEM 4. Strike all of subrule 2.12(4) and insert in lieu thereof the following:

2.12(4) When an acquiring employer chooses to carry a separate account for each business, the employer shall have the option of having the experience of the predecessor account combined with his existing account for the computation of a single rate, or, having the rate of the acquiring employer's account assigned to the predecessor account. The assigned rate will be applicable for the balance of the calendar year in which the acquisition takes place. Future rates will be as described in subrule 2.11(1).

This subrule is intended to implement sections 96.7(2)"a", 96.7(3)"b", and 96.19(6) of the Code.

[Filed 8/17/78, effective 10/11/78]

Notice of intended action regarding these rules was published in the Iowa Administrative Bulletin June 28, 1978, and shall become effective October 11, 1978.

Subrule 2.12(4) was modified to meet Federal requirements. Also, the implementation clause for that subrule was corrected to read:

This subrule is intended to implement sections 96.7(2)"a", 96.7(3)"b", and 96.19(6) of the Code

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

EMPLOYMENT SECURITY[370]

DEPARTMENT OF JOB SERVICE

Pursuant to the authority of sections 96.11(1) and 17A.3 of the Iowa Code, employment security rules in chapter 3, appearing in the Iowa Administrative Code relating to employer's contribution and charges, are hereby amended.

ITEM 1. Rule 3.40(96) is amended by adding the following new subrules 3.40(3) and 3.40(4):

3.40(3) Different classification activities. Any single employer who has two or more establishments or businesses engaged in different industrial classification activities, with one or more establishments or businesses engaged in construction activity, as defined in rule 3.82(96), shall be assigned the contribution rate applicable to construction; provided, fifty per cent or more of the combined business activity is derived from establishments or businesses engaged in construction activities.

3.40(4) Correction of duplicate accounts. If an employer has reported wages and paid contributions under two or more accounts with separate contribution rates, the department shall combine the accounts, compute the corrected contribution rate and give notice of the combining to the employer.

No refunds, credit or assessment will be made with respect to contribution paid on wages reported on the accounts which have been combined for the purpose of computing a single contribution rate. The single contribution rate shall become effective on the first calendar day of the first subsequent calendar quarter after the computation of the single rate.

These subrules are intended to implement sections 96.7(2)"*a*", 96.7(3)"*a*", and 96.19(5) of the Code.

ITEM 2. Subrule 3.43(5) is amended to read as follows:

3.43(5) Better employment. A claimant who voluntarily quits for better employment and remains in such better employment for more than one week but less than six weeks shall be paid benefits if otherwise eligible. No charge shall accrue to either the former or subsequent better employer; *except that when the former employer is a reimbursable employer such reimbursable employer shall be charged with the benefits paid.*

This subrule is intended to implement section 96.5(1)"a" of the Code.

ITEM 3. Subrule 3.44(3) is amended to read as follow:

3.44(3) Erroneous payments not caused by employer. Erroneous payments caused by anything other than employer error shall be charged to the employer reserve. ~~Both the contributory and reimbursable employer shall be relieved of charges.~~ *Applies to contributory employers only.*

This subrule is intended to implement section 96.7(3)"a"(2) of the Code.

ITEM 4. Rule 3.82(96) is amended by adding the following new subrule:

3.82(3) The assignment of standard industrial codes. Each establishment or business shall be assigned an industry code on the basis of its primary activity, which is determined by its principal product or group of products produced or distributed, or services rendered. Ideally this should be determined by relative share of "value added." Since this is not possible for all sectors of the economy, the following should be used as a guide for determining industry codes:

Division	Data Measure
Agriculture, forestry and fishing (except agricultural services)	Value of production
Mining	Value of production
Construction	Value of production
Manufacturing	Value of production
Transportation, communication, electric, gas and sanitary services	Value of receipts or revenues
Wholesale trade	Value of sales
Retail trade	Value of sales
Finance, insurance, and real estate	Value of receipts
Service (including agricultural services)	Value of receipts or revenues
Public administration	Employment or payroll

In some cases it will not be possible to determine even on an estimated basis the value of production or similar appropriate measure for each product or service. In other cases an industrial classification based on such measures of output will not accurately reflect the importance of the diversified activities. In such cases, employment or payroll should be used in lieu of the normal basis for

determining the primary activity and subsequent code assignment of the establishment.

This subrule is intended to implement section 96.11(7) of the Code.

ITEM 5. Chapter 3 is amended by adding rule 3.86(96) as follows:

370—3.86(96) Benefits and compensation—school employees. The terms "benefits" and "compensation" have the same meaning within Acts of the Sixty-seventh General Assembly, chapter 54, section 2, as "benefits" defined in 96.19(2) of the 1977 Code.

This rule is intended to implement section 96.4(5) of the Code as amended by Acts of the Sixty-seventh General Assembly, chapter 54, section 2.

ITEM 6. Chapter 3 is amended by adding rule 3.87(96) as follows:

370—3.87(96) Effective date of benefits to school employees. Sections 96.4(5)"*a*", 96.4(5)"*c*" and 96.4(5)"*e*" are interpreted to mean "for weeks of unemployment beginning after December 31, 1977."

This rule is intended to implement section 96.4(5) as amended by Acts of the Sixty-seventh General Assembly, chapter 54, section 2.

[Filed 8/17/78, effective 10/11/78]

Notice of intended action regarding these rules was published in the Iowa Administrative Bulletin June 28, 1978, and they shall become effective October 11, 1978. The following typographical error was corrected:

3.44(3), line 1; "Error payments" corrected to read "Erroneous payments".

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

EMPLOYMENT SECURITY[370]

DEPARTMENT OF JOB SERVICE

Pursuant to the authority of sections 96.11(1) and 17A.3 of the Iowa Code, rules in chapter 4 appearing in the Iowa Administrative Code relating to claims and benefits, are hereby amended.

ITEM 1. Strike all of subrule 4.24(9) as follows:

4.24(9) ~~Employment of one day. A refusal of work for one day only shall not be sufficient to impose a refusal disqualification.~~ *Reserved.*

This subrule does not have any basis for existing and is not supported by any known court case or former policy.

ITEM 2. Strike all of subrule 4.25(9) as follows:

4.25(9) ~~The claimant will be deemed to have voluntarily left employment where the company has a rule or policy prohibiting the marriage of fellow employees stating that one of the employees could not continue in employment; and the claimant had been notified of such rule or policy before the marriage.~~ *Reserved.*

This subrule has no support in old commission policy or old court case.

ITEM 3. Subrule 4.25(37) is amended to read as follows:

4.25(37) The claimant will be considered to have left employment voluntarily when such claimant gave the employer notice of his(her) intention to resign and the employer accepted such resignation. *This rule shall also apply to the claimant who was employed by an educational institution who has declined or refused to accept a new contract or reasonable assurance of work for a successive academic term or year and the offer of work was within the purview of the individual's training and experience.*

This subrule is intended to implement section 96.4(5) of the Code.

ITEM 4. Rule 4.57(96) is amended by adding the following new subrule:

4.57(8) Athletes—denial of benefits. An individual (athlete) will be denied benefits between seasons based on services performed by such individual (athlete).

This subrule is intended to implement section 96.5 as amended by Acts of the Sixty-seventh General Assembly, chapter 54, section 3.

[Filed 8/17/78, effective 10/11/78]

These amendments are identical to those in Iowa Administrative Bulletin notices published June 28, 1978, and shall become effective October 11, 1978.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

EMPLOYMENT SECURITY[370]

DEPARTMENT OF JOB SERVICE

Pursuant to the authority of sections 96.11(1) and 17A.3 of the Iowa Code, chapter 10 rules appearing in the Iowa Administrative Code, relating to forms, are hereby amended.

ITEM 1. Amend 10.7(2) by adding new forms to the end of the subrule as follows:

IESC T-1454	Food stamp referral form. Used to inform department of social services of the date an active application for work was filed with the job placement office by the food stamp applicant.
IESC 1535-3	Information card and pamphlet. This pamphlet is used as promotional material for recruiting detasselers. The card portion is returned to Job Service by persons interested in detasseling.
IESC 1639 Parts 1 and 2	Job matching automatic mailer. This form is automatically sent to active job matching applicants to find out if they are still seeking a job or to find out if they are working, and if so, where.

[Filed 8/17/78, effective 10/11/78]

These rules are identical to those published in the Iowa Administrative Bulletin notices June 28, 1978, and shall become effective October 11, 1978.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

HEALTH DEPARTMENT[470]

CHIROPRACTIC BOARD OF EXAMINERS
CHAPTER 141

Pursuant to the authority of section 17A.3, 147.53 of the Code, the Chiropractic Board of Examiners hereby adopts the following subrule of their rule appearing in the Iowa Administrative Code chapter 141.

470—141.14(151) Chiropractic Practice.

141.14(1) It is a duty, incident to the practice of chiropractic for a chiropractor to make a diagnosis of his patient's ailments and physical condition in determining the nature and manner of chiropractic treatment to be employed or whether a chiropractic procedure should be performed.

141.14(2) It is a permissible duty incident to the practice of chiropractic for a chiropractor to use, at his discretion, laboratory findings in determining the nature and manner of chiropractic treatment to be employed or whether a chiropractic procedure should be performed.

141.14(3) It is a permissible duty incident to the practice of chiropractic for a chiropractor to employ physical, orthopedic and/or neurological examinations for the purpose of determining the nature and manner of chiropractic treatment to be employed or whether a chiropractic procedure should be performed, when the chiropractor has received training in the use of such examination procedures by a college of chiropractic offering courses of instruction approved by the Board of Chiropractic Examiners, or when the chiropractor has passed an examination in such procedures and techniques and possesses the necessary degree of efficiency and will exercise that care which is common to physicians in the state of Iowa.

141.14(4) It is a permissible duty incident to the practice of chiropractic for a chiropractor to utilize procedures and devices (instruments) for the use of which he has received training by a college of chiropractic offering courses of instruction approved by the Board of Chiropractic Examiners, or for which he has completed the necessary training and possesses that degree of proficiency and will exercise that degree of care which is common to physicians in the state of Iowa: Such procedures and devices (instruments) would be for the purpose of determining the nature and manner of chiropractic treatment to be employed or whether a chiropractic procedure should be performed.

141.14(5) It is a permissible duty incident to the practice of chiropractic for a chiropractor to give a patient advice and instruction on diet, food and exercise as support therapy when such therapy provides for an adjustment of the musculoskeletal structures, or when such therapy is used as a support measure.

[Filed 8/18/78, effective 10/11/78]

Notice of Intended Action regarding these rules was published in the Iowa Administrative Code Supplement February 8, 1978, and are identical to those published therein. These rules will become effective October 11, 1978.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

REVENUE, DEPARTMENT OF[730]

Pursuant to the authority of section 421.14 and 422.68 subsection 1 of the Code, the department hereby amends the following sales and use tax rules.

ITEM 1. Subrule 26.2(6) is amended to read as follows:

26.2(6) A service which is purchased for resale. A service is purchased for resale when it is subcontracted by the person who is contracted to perform the service. For example:

a. X is a printer and enters into a contract with Y to print 500 bulletins. X subcontracts the job to Z. Z prints the 500 bulletins for X. There is no tax on the contracts between X and Z since X is purchasing the printing service for resale.

b. B owns a used car lot and contracts an automobile repair job to C. B cannot purchase the repair service for resale merely because at some later date the automobile may be sold. B is in the business of selling used cars and is the consumer of the service since he or she owns the car. *See Merriwether v. State, 252, Al. 590, 42 So.2d 465, 11 A.L.R. 2d 918 (1949).*

~~c. B owns a used car lot. As a condition to a sale to E, B agrees to have the automobile repaired. B contracts with C to have the repair completed. B cannot purchase the repair service for resell since he or she is the owner of the automobile and therefore, the consumer of the repair service.~~

c. B owns a used car lot. E purchases an automobile from B. As a condition of such sale, B agrees to make repairs to the automobile. However, B subcontracts such repair work to C. E has agreed to pay B for the repair services and for the sale price of the automobile. Under these circumstances, the repair services furnished by C to B constitute a sale of such services to B for resell to E who is the consumer of these services.

d. B owns an auto repair shop and C brings his automobile in to have the air conditioner fixed. B is unable to fix the unit so he or she sends the car to G who is an air conditioning specialist. The sale of G's service to B is a sale for resell by B to C.

e. A operates a test laboratory business. A agrees to provide testing services to B. In the course of conducting such tests, A rents equipment from C. In computing the fee which B has agreed to pay A for testing services, A will include A's costs, including the rental A paid to C in rendering such testing sevices. Under these circumstances, A furnished B with testing services, and not with the equipment rental services which C furnished to A. A is the consumer of the equipment rental services which are not resold to B and B is the consumer of the testing services.

[Filed 8/18/78, effective 10/11/78]

A Notice of Intended Action was published in the Iowa Administrative Code on July 12, 1978. These rules will become effective October 11, 1978. These rules are identical to those published under the Notice of Intended Action.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 40) are hereby amended.

ITEM 1. Rule 770—40.2(239) is amended to read as follows:

770—40.2(239) Application. The application for aid to dependent children shall be submitted on Public Assistance Application, Form PA-2207-0. The application shall be signed by the applicant, the applicant's authorized representative, or, when the applicant is incompetent or incapacitated, someone acting responsibly on the applicant's behalf. ~~w~~ *W*hen both parents~~, including a stepparent,~~ are in the home, both shall sign the application. *When a stepparent is in the home, both the parent and stepparent shall sign the application when either's needs are included in the grant.*

ITEM 2. Subrule 40.7(3) is amended to read as follows:

40.7(3) Information for reviews shall be submitted on form PA-2227-5, Aid to Dependent Children Review. The review form shall be signed by the ~~recipient~~ *payee*, the ~~recipient's~~ *payee's* authorized representative, or when the ~~recipient~~ *payee* is incompetant or incapacitated, someone acting responsibly on the ~~recipient's~~ *payee's* behalf. When both parents~~, including a stepparent,~~ are in the home, both shall sign the review form. *When a stepparent is in the home, both the parent and stepparent shall sign the review form when either's needs are included in the grant.*

[Filed 8/9/78, effective 11/1/78]

Notice of intended action regarding these rules was published in the IAB June 28, 1978, and these rules shall become effective November 1, 1978. These rules are identical to those published in the June 28, 1978, IAB.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 41) are hereby amended.

ITEM 1. Subrule 41.1(5), paragraph "c", subaragraphs (1) and (2) are amended to read as follows:

(1) The determination of incapacity shall be supported by medical or psychological evidence. Such evidence may be submitted either by letter from the physician or on form PA-2126-5, ~~Confidential Report~~ *Report on Incapacity.*

(2) When an examination is required and other resources are not available to meet the expense of the examination, the physician shall be authorized to make the examination and submit the claim for payment on form ~~PA-3143-5~~ *PA-5113-0.* Authorization for Examination ~~of Incapacitated Parent~~ and Claim for Payment.

ITEM 2. Strike subrule 41.1(5), paragraph "d", and reletter paragraph "e" as paragraph "d".

ITEM 3. Subrule 41.6(2) is amended to read as follows:

41.6(2) Persons considered. The number of persons in the eligible group~~, plus any stepparent and dependent but ineligible children of the aid to dependent children parent living in the home,~~ shall be considered in establishing property limitations. *When a stepparent is in the home, the number of persons considered shall be as specified in subrule 41.10(2).* Supplemental security income recipients shall not be counted in estabishing property limitations.

ITEM 4. Strike subrule 41.7(6) and reserve said subrule for future use.

ITEM 5. Strike subrule 41.8(1), paragraph "e" and amend paragraph "f" to read as follows:

~~f~~ e. The ~~nonincapacitated~~ stepparent when he or she is the legal spouse of the natural or adoptive parent by ceremonial or common law marriage and such stepparent is required in the home to care for the dependent children or the incapacitated parent. Such services must be required to the extent that if the stepparent were not available, it would be necessary to pay for the care of the children or the incapacitated parent by inclusion of an allowance in the assistance grant.

ITEM 6. Add the following new rule.

770—41.10(239) Stepparent cases. A stepparent shall not be held liable for the support of stepchildren, but shall be liable for the support of such stepparent's spouse. The income and resources of the stepparent shall have no bearing upon the eligibility of the child for aid to dependent children or the amount of the assistance grant except when the needs of the parent or parent and stepparent are included in the eligible group.

41.10(1) Eligible group. When the natural or adoptive parent of the eligible child is married to a person other than the natural or adoptive parent of such child neither the natural parent nor stepparent shall be included in the aid to dependent children eligible group, except when the parent is financially needy by reason of the combined income of the parent and stepparent being insufficient to support the parent and other ineligible dependents in accordance with aid to dependent children standards of need. The parent and stepparent may be included in the eligible group when the requirements of subrule 41.8(1)"e" are met.

41.10(2) Resources. The resources of the stepparent of the eligible child shall have no bearing upon eligibility except when the parent's or stepparent's needs are included in the eligible group.

a. A natural or adoptive parent of the eligible child married to and living with a stepparent in the household with the eligible child when included in the eligible group shall be considered an eligible person for purposes of establishing the resource limitation of the eligible group.

b. When the needs of the parent, married to a stepparent, are included in the eligible group, but the needs of the stepparent are not included in the eligible group, the resources of the stepparent shall be required to be within the limitations set by these rules. In determining the limitations of the stepparent's resources any legal dependents living with such stepparent shall be counted as individuals in arriving at that determination, except that the parent who is in the eligible group shall not be counted. The ineligible dependents of the parent living in the house with the parent and stepparent shall be counted as dependents of the stepparent in arriving at the resource limitation for the ineligible group.

SOCIAL SERVICES[770] *(cont'd)*

c. When the stepparent's needs are included in the assistance grant such stepparent shall be counted as an eligible person in determining the resourse limitation. Any ineligible legal dependents living in the household shall not be counted as individuals for purposes of establishing the resource limitation. The phrase "ineligible legal dependents" shall be construed to include the stepparent's children by the current or prior marriage who are ineligible for aid to dependent children.

d. When the parent is not included in the eligible group, but is living with the eligible child and stepparent, such parent's resources shall be counted in determining the resource limitation for the eligible group. The combined resources of the eligible group plus the resources of the parent shall not exceed the limitation that would exist if the parent were in the eligible group.

e. When the parent is not in the eligible group and has income which would normally be attributed to the eligible group, but it is established that all or part of such income must be retained by the parent to support the parent, stepparent and any legal ineligible dependents of either of them, the resources of stepparent and legal dependents of the parent and stepparent living with them must be within the limitations established by these rules.

f. Verification shall be made of resources held by members of the eligible group and other individuals whose resources may affect eligibility. In those instances where resources are owned jointly or as tenants in common by the parent and stepparent the local office shall assume that each party has a fifty percent equity unless official records clearly establish a different equity. Liens, mortgages and other encumbrances shall be applicable against only the resource described in the encumbrance document.

41.10(3) Income. The income of the stepparent shall have no bearing upon the eligibility of the child for assistance nor the amount of the assistance grant except when the needs of the parent or parent and stepparent are included in the eligible group. There shall be no deduction of income-in-kind in determining the amount of the assistance grant when the child lives in the home with the parent and stepparent.

a. When the parent is in the eligible group and the stepparent is outside the eligible group the stepparent shall be permitted to retain such stepparent's income sufficient to meet such stepparents own needs and the needs of ineligible dependents, in accordance with aid to dependent children standards of need.

b. The income of the eligible child's parent shall be considered as available in the full amount for the support of the children in the eligible group until the parent and stepparent prove that a portion of all of the parent's income is required to meet the needs of the parent, stepparent and their dependents who are ineligible for assistance in accordance with aid to dependent children standards.

c. The income of the parent in the eligible group shall be considered available to the eligible group except for that portion of the nonexempt income which may be required to meet the needs of the parent's spouse and their ineligible dependents. The income of the parent in the eligible group shall be given the same consideration and treatment as in any other aid to dependent children case, including the allowance of expenses to secure the income and the applicable disregards.

d. When the income of the parent in the eligible group is needed to meet the needs of the spouse and their dependents such income as is nonexempt may be diverted to meet those needs including verified medical expenditures, in accordance with aid to dependent children standards.

e. When the combined countable income of the parent in the eligible group and the stepparent is sufficient to meet their and their dependent's needs in accordance with aid to dependent children standards of need, the parent shall be removed from the eligible group.

41.10(4) Medical eligibility.

a. Only those individuals whose needs are included in the eligible group shall be certified as eligible for medical assistance except when such person qualifies for medical assistance under other provisions of the medical assistance program.

b. A parent may be included in the eligible group when the combined income of the parent and the stepparent is insufficient to provide for their and their dependents' needs, including verified medical needs.

[Filed 8/9/78, effective 11/1/78]

Notice of intended action regarding these rules was published in the IAB June 28, 1978, and these rules shall become effective November 1, 1978. These rules are identical to those published in the June 28, 1978, IAB.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 239.18 of the Code, rules of the department of social services appearing in the IAC relating to aid to dependent children (chapter 41) are hereby amended.

Subrule 41.8(1), paragraph "b", is amended to read as follows:

b. The natural or adoptive parent, or both parents if one is incapacitated or if the father is partially or totally unemployed. *Paternity of the biological father shall be established by the court before a father who is not the legal father of the child is added to the eligible group.*

[Filed 8/9/78, effective 11/1/78]

Notice of intended action regarding these rules was published in the IAB June 28, 1978, and these rules shall become effective November 1, 1978. At the request of the Administrative Rules Review Committee, the department clarified what was meant by "established."

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to medical assistance (chapter 75) are hereby amended.

ITEM 1. Add new rule 770—75.3(249A)

770—75.3(249A) Acceptance of other financial benefits. An applicant or recipient shall take all steps necessary to apply for and, if entitled, accept any income

or resources for which such applicant or recipient may qualify, unless the applicant or recipient can show an incapacity to do so. Sources of such benefits may be, but are not limited to, contributions, annuities, pensions, retirement or disability benefits, veteran's compensation and pensions, old age, survivors, and disability insurance, railroad retirment benefits, black lung benefits, or unemployement compensation.

This rule is intended to implement sections 249A.3 and 249A.4 of the Code.

ITEM 2. Renumber existing rule 770—75.3(249A) as 770—75.4(249A).

[Filed 8/9/78, effective 10/11/78]

Notice of intended action regarding these rules was published in the IAB June 28, 1978, and these rules shall become effective October 11, 1978. These rules are identical to those published in the June 28, 1978, IAB.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to medical assistance (chapter 78) are hereby amended.

Rescind subrule 78.1(1), paragraph "e".

[Filed 8/18/78, effective 10/11/78]

Notice of intended action regarding these rules was published in IAC Supplement May 31, 1978, and these rules shall become effective October 11, 1978. Only Item 1 of the notice is being adopted at this time. Oral presentations have been requested for Item 2 and a decision will be made on that item after all comments have been considered.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to medical assistance (chapter 78) are hereby amended.

Rule 770—78.1(249A) is amended by striking subrule 78.1(17) and inserting the following in lieu thereof.

78.1(17) Abortions.

a. Form XIX (PHY-4), Certification Regarding Abortion, shall be attached to the claim submitted by the attending physician if payment is to be made for an abortion. If Form XIX (PHY-4) is not submitted or does not indicate that the abortion for which payment is being claimed falls within the prescribed conditions, no payment can be made either to the attending physician or any other physicians involved in the abortion or to the hospital. Form XIX (PHY-4) must be signed by the attending physician in the following types of cases:

(1) Where the life of the pregnant woman would be endangered if the fetus were carried to term; and

(2) Where the fetus is physically deformed, mentally deficient or afflicted with a congenital illness.

b. When the pregnancy was the result of rape, Form XIX (PHY-4) shall be signed by an official of a law enforcement or public or private agency certifying that the report was made within sixty days of the reported date of occurrence of the incident. The report shall have included the name, address and signature of the person making the report.

c. When the pregnancy was the result of incest, Form XIX (PHY-4) shall be signed by an official of a law enforcement agency or of the Iowa department of social services and shall certify that a report was submitted not later than the second trimester of pregnancy subsequent to the incident of incest and that the report of the incident included the name, address and signature of the person making the report.

[Filed 8/9/78, effective 10/11/78]

Notice of intended action regarding these rules was published in the IAB June 28, 1978, and these rules shall become effective October 11, 1978. These rules are identical to those published in the June 28, 1978, IAB.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

SOCIAL SERVICES DEPARTMENT[770]

Pursuant to the authority of section 249A.4 of the Code, rules of the department of social services appearing in the IAC relating to medical assistance (chapter 79) are hereby amended.

Subrule 79.1(1) is amended to read as follows:

79.1(1) Prohibition against reassignment of claims. No payment under the medical assistance program for any care or service provided to a patient by ~~a physician, dentist, other individual practitioner, or any other provider who is not reimbursed on a reasonable cost basis~~ *any health care provider* shall be made to anyone other than such providers. However with respect to physicians, dentists, or other individual practitioners direct payment may be made to the employer of the practitioner if the practitioner is required as a condition of employment to turn over fees to the employer; or where the care or service was provided in a facility, to the facility in which the care or service was provided if there is a contractual arrangement between the practitioner and the facility whereby the facility submits the claim for reimbursement; or to a foundation, plan or similar organization including a health maintenance organization which furnishes health care through an organized health care delivery system if there is a contractual agreement between organization and the person furnishing the service under which the organization bills or receives payment for such person's services. *Payment may be made in accordance with an assignment from the provider to a government agency or an assignment made pursuant to a court order. Payment may be made to a business agent, such as a billing service or*

SOCIAL SERVICES[770] *(cont'd)*

accounting firm, which renders statements and receives payment in the name of the provider when the agent's compensation for this service is (1) reasonably related to the cost of processing the billing; (2) not related on a percentage or other basis to the dollar amounts to be billed or collected; and (3) not dependent upon the actual collection of payment. Nothing in this rule shall preclude making payment to the estate of a deceased practitioner.

[Filed 8/9/78, effective 10/11/78]

Notice of intended action regarding these rules was published in the IAB June 28, 1978, and these rules shall become effective October 11, 1978. These rules are identical to those published in the June 28, 1978, IAB.

[Published 9/6/78]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement, 9/6/78.

CIVIL RIGHTS COMMISSION[240]*

At its August 15, 1978, meeting the Administrative Rules Review Committee voted the following objection to a filed subrule appearing in the 7/12/78 IAB:

Rule 2.14 provides that an employer who begins an affirmative action program pursuant to the rule:

> . . . does not thereby violate the Act with respect to any employee or applicant for employment who is denied an employment opportunity as a result of such action. The lawfulness of such remedial and/or affirmative action is not dependent upon an admission or a finding of evidence sufficient to prove that the employer or other person subject to the Act taking such action has violated the Act.

This statement is beyond the authority of the commission, in that it states an interpretation of the commission as if it were a settled point of law. The interpretation of a statute is a judicial function, Trinity Lutheran Church of Des Moines v. Brown, 121 N.W.2d 131 (1963). Although an agency is free to interpret the meaning of a statute, the interpretation is not binding on Iowa courts. In Iowa Department of Revenue v. Iowa Merit Employment Comm., 243 N.W.2d 610 (1976), the Court stated:

> It is true, although not controlling, [that] courts give weight to the construction of statutes of doubtful meaning by administrative officials charged with their operation and enforcement. [cite omitted]. However, courts should not necessarily follow such rulings when on thorough study it is found the prior interpretations and rulings are not sound.

The commission should amend the subrule by specifying that is is an interpretation by the commission, and that the effect of the interpretation will be that a 'no probable cause' order will be issued on challenges to affirmative action programs.

***See filed emergency rule published herein.**

HEALTH DEPARTMENT[470]

At its August 15, 1978, meeting the Administrative Rules Review Committee voted the following objection to rule of the board of cosmetology examiners relating to continuing education:

> The Committee objects to rule 151.3, appearing as a filed rule in the 7/12/78 IAB and relating to standards for continuing education for cosmetologists, on the grounds that it is beyond the authority of the board, since it does not allow credit for self study courses. Chapter 95, 67th GA 2nd session §1.2 specifically provides that: ". . . education may be obtained through . . . self-study . . . and by other means as authorized by the board.". The board may not deny by rule that which is specifically allowed by statute.

REVENUE DEPARTMENT[730]

At its August 15, 1978, meeting the Administrative Rules Review Committee voted the following objection to proposed amendments to paragraph 26.2(6):

The Committee objects to the proposed amendments to paragraph 26.2(6) on the grounds that they are unreasonable and contrary to the authority of sections 422.42 and 43, The Code. In essence the paragraph imposes sales tax upon the repair work provided by a subcontractor for a used car dealer, based on the rationale that the used car dealer is the 'consumer' of the work. This intepretation ignores the apparent legislative scheme in the Code that tangible personal property and services which change hands prior to the ultimate retail sale be taxed only once, at the time of that ultimate retail sale.

In support of its position the department cites Merriwether v. State, 42 So.2d 465 (1949), which held that services and goods provided by a subcontractor to repair used cars were subject to sales tax. This case is not persuasive in that under Alabama law used cars were not subject to sales tax, and in making its decision, the Alabama court stated that the exemption revealed a legislative intent that the reconditioning of used cars was a taxable event:

> Merely because the legislature saw fit to exempt from sales tax the gross proceeds received from the sale of used automotive vehicles, it does not follow that it intended to exempt the sale of materials, supplies and equipment purchased for the purpose of reconditioning such vehicles for resale . . . [W]e think the reason for the exemption was the fact that the legislature recognized that a sales tax is due on the sale of a new car and on the sales of parts, accessories and supplies purchased and used for the purpose of reconditioning the car for resale.

In Iowa the opposite situation exists, use tax is imposed upon the sale of used cars. Therefore under the Merriwether case, since sales tax is imposed upon the sale of used cars, a legislative intent may be implied that sales of services and materials to recondition these cars is exempt. The question of double taxation, not addressed in Merriwether, is present in Iowa. Since the sale of used cars is taxed in Iowa, a tax on services and materials used to recondition these cars for resale would result in taxing these items twice. Based on these considerations it appears that the fact situation in the Alabama case is significantly different than Iowa's and is not applicable.

Section 422.43, The Code, imposes a tax upon "the gross receipts of tangible personal property . . . sold at retail in this state to users or consumers . . .". Section 422.42(3), The Code, defines a retail sale as:

> . . . the sale to a consumer or to any person for any person, other than for processing or for resale of tangible personal property or taxable services, or for resale of tangible personal property in connection with taxable services, . . . Tangible personal property is sold for processing within the meaning of this sub-section only when it is intended that such property shall be by means of fabrication,

REVENUE[730] *(cont'd)*

> compounding, manufacturing, germination, become an integral part of other tangible personal property intended to be sold ultimately at retail. . .

The materials used by a subcontractor in repairing a used car are tangible personal property used for processing, which by fabrication and compounding become the final product; a refurbished used car destined to be sold at retail. These materials provided by the subcontractor are used in the process of restoring a used car and are therefore exempt from tax. This conclusion is supported by dicta appearing in Sandberg v. Iowa State Board of Assessment and Tax Review, 225 Ia 105, 278 N.W. 643 (1938), in which the Court considered a hypothetical case in which a shoe repairman was in the business of selling used shoes which he had refurbished. The court stated that under this hypothetical, the repairman would be considered a processor, since he was in the business of making new shoes out of old.

Section 422.43, The Code, also imposes a tax upon 'services'. 'Services' is defined in section 422.42(13) as:

> . . . [A]ll acts or services rendered, furnished, or performed, other than services . . . used in processing of tangible personal property for use in taxable retail sales or services. . . The tax shall be due and collectible when the service is rendered, furnished or performed for the ultimate user thereof.

The department imposes tax upon services rendered by a subcontractor on the grounds that the dealer ". . . is the consumer of the service since he or she owns the car." (26.2(6)b). The department's conclusion is faulty in that the tax is imposed upon the "ultimate user" of the service. The addition of this adjective is significant. Section 422.42(14), The Code defines "user" as: "the immediate recipient of the services"; by substituting the word "ultimate" for "immediate" in the imposition of tax shows a clear legislative intent that subcontracted services are only to be taxed when the goods or services are finally sold at retail. Also, as discussed earlier, the services are used in processing of tangible personal property and are therefore not taxable under the subsection.

In conclusion, it is the opinion of the Committee that the proposed paragraph, 26.2(6) is unreasonable and contrary to the authority of the department because the paragraph does not recognize the clear legislative intent embodied in sections 422.42 and 422.43, The Code; that goods and services provided by a subcontractor to a retailer, for the purpose of refurbishing a product to render it fit for resale, should be taxed only at the time of the retail sale.

This proposed amendment is under notice and appears in the 7/12/78 issue of the IAB.

EFFECTIVE DATE DELAY

[Pursuant to §17A.4(5)]

AGENCY	RULE	DELAYED
Environmental Quality[400]	1.2(7)	Under provision of 67 GA, S.F. 244, §19
	3.1	Under provision of 67 GA, S.F. 244, §19
	4.5(3)	Under provision of 67 GA, S.F. 244, §19
Health[470]	141.51(1) to 141.51(6)	70 days from 8/30/78

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