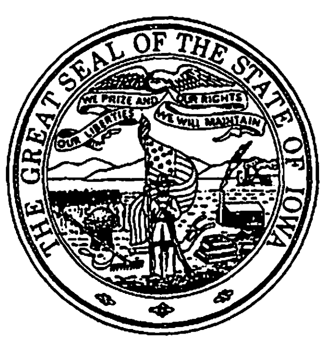
State of Iowa

Iowa Administrative Code Supplement

Biweekly
November 17, 1999



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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR

Updating Iowa Administrative Code
with Biweekly Supplement

NOTE: Please review the "Preface" for both the Iowa Administrative Code and Biweekly Supplement and follow carefully the updating instructions.

The boldface entries in the left-hand column of the updating instructions correspond to the tab sections in the IAC Binders.

Obsolete pages of IAC are listed in the column headed "Remove Old Pages." New and replacement pages in this Supplement are listed in the column headed "Insert New Pages." It is important to follow instructions in both columns.

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UPDATING INSTRUCTIONS
November 17, 1999, Biweekly Supplement

[Previous Supplement dated 11/3/99]

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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*It is recommended that "Old Pages" be retained indefinitely in a place of your choice. They may prove helpful in tracing the history of a rule.

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CHAPTER 76
EXTERNAL REVIEW

191—76.1(78GA,SF276) Purpose. This chapter is intended to implement 1999 Iowa Acts, Senate File 276, to provide a uniform process for enrollees of carriers providing health insurance coverage to request an external review of a coverage decision based upon medical necessity. Carriers defined in 1999 Iowa Acts, Senate File 276, section 8(1), are subject to these rules.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 7.

191—76.2(78GA,SF276) Applicable law. The rules contained in this chapter and 1999 Iowa Acts, Senate File 276, shall apply to health insurance policies and 509A plans delivered or issued for delivery in this state.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 7.

191—76.3(78GA,SF276) Notice of coverage decision and content. The notice required under 1999 Iowa Acts, Senate File 276, shall contain the following information:

1. The enrollee was covered by the carrier at the time the service or treatment was proposed;
2. The enrollee has been denied coverage based on a determination by the carrier that the proposed service or treatment does not meet the definition of medical necessity;
3. The enrollee or the enrollee's treating health care provider acting on behalf of the enrollee has exhausted all internal appeal mechanisms provided under the carrier's evidence of coverage; and
4. Information on how the enrollee or the enrollee's treating health care provider can request an external review. The information provided shall specify the following:

- The enrollee or the enrollee's treating health care provider must send the request for an external review within 60 days of receipt of the coverage decision from the carrier;
- The request shall be made to the Division of Insurance, 330 Maple Street, Des Moines, Iowa 50319;
- A copy of the carrier's coverage decision shall accompany the written request for an external review;
- A $25 filing fee is required unless the enrollee is requesting that the fee be waived. The check should be made payable to the Insurance Division. If a waiver is requested, the request shall include an explanation of why the enrollee is requesting that the fee be waived.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 10.

191—76.4(78GA,SF276) External review request.

76.4(1) The enrollee shall send a copy of the carrier's written notice with the enrollee's request for an external review to the insurance commissioner within 60 days of the receipt of the coverage decision.

76.4(2) A $25 filing fee shall be enclosed with the external review request. The commissioner may waive the fee for good cause.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 10.

191—76.5(78GA,SF276) Certification of external review.

76.5(1) The commissioner shall certify the enrollee for external review if the criteria in 1999 Iowa Acts, Senate File 276, section 11, are met.

76.5(2) The commissioner shall have two business days from receipt of a request for an external review to certify or deny the request and to notify, in writing, the carrier, the enrollee and the enrollee's treating health care provider acting on behalf of the enrollee. The commissioner shall fax the certification decision to the carrier, the enrollee or the enrollee's treating health care provider acting on behalf of the enrollee, within the two-day period.

76.5(3) A carrier has three business days to contest the eligibility of the request for external review with the commissioner. The commissioner has two business days to rule on this contested eligibility. The commissioner shall provide a written notice of the determination to the carrier and the enrollee or the enrollee's treating health care provider acting on behalf of the enrollee. The commissioner shall fax the decision to the carrier within the two-day period.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 11.

191—76.6(78GA,SF276) Expedited review.

76.6(1) The enrollee's treating health care provider shall directly contact the carrier for an expedited review if the enrollee's treating health care provider states that delay would pose an imminent or serious threat to the enrollee.

76.6(2) The enrollee's treating health care provider and the carrier shall select an independent review entity to conduct the external review within 72 hours. In the event that the enrollee's treating health care provider and the carrier cannot reach an agreement upon the selection of an independent review entity, the enrollee's treating health care provider shall notify the commissioner who shall select an independent review entity.

76.6(3) The carrier and enrollee's treating health care provider shall provide any additional medical information to the review entity.

76.6(4) The enrollee's treating health care provider shall notify the commissioner of the expedited review request following the agreement in subrule 76.6(2).

76.6(5) In the event the carrier does not find that a delay would pose an imminent or serious threat to the enrollee, the enrollee's treating health care provider may ask the commissioner to immediately review the request for certification as an expedited review.

76.6(6) A review by the commissioner under subrule 76.6(5) shall stay the 72-hour expedited review time period.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 14.

191—76.7(78GA,SF276) Decision notification. The independent review entity shall immediately notify the carrier, enrollee or enrollee's treating health care provider, and insurance division of the external appeal decision.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 18.

191—76.8(78GA,SF276) Carrier information. Each carrier shall provide to the commissioner the name or title, telephone and fax numbers and E-mail address of an individual who shall be the carrier's contact person for external review procedures. Any changes in personnel or communication numbers shall be immediately sent to the commissioner.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 13.

191—76.9(78GA,SF276) Certification of independent review entity.

76.9(1) The following minimum standards are required for certification as an independent review entity:

a. The individual must hold a current unrestricted license to practice a health care profession in the United States.

b. A health care professional who is a medical physician shall also hold a certification by a recognized American medical specialty board.

c. A health care professional who is not a physician shall also hold a current certification by the professional's respective specialty board if applicable.

d. The applicant must attest that reviewers have no history of disciplinary actions or sanctions including, but not limited to, the loss of staff privileges or any participation restriction taken or pending by any hospital or state or federal government regulatory agency for wrongdoing by the health care professional.

e. The applicant shall provide a description of the qualifications of the reviewers retained to conduct external reviews of coverage decisions including the reviewers' current and past employment histories and practice affiliations.

f. The applicant shall provide a description of the procedures employed to ensure that reviewers conducting external reviews are appropriately licensed, registered or certified; trained in the principles, procedures and standards of the independent review entity; and knowledgeable about the health care service which is the subject of the external review.

g. The applicant shall provide a description of the methods of recruiting and selecting impartial reviewers and matching such reviewers to specific cases.

h. The applicant shall provide the number of reviewers retained by the independent review entity and a description of the areas of expertise available from such reviewers and the types of cases such reviewers are qualified to review.

i. The applicant shall provide a description of the policies and procedures employed to protect confidentiality of individual medical and treatment records in accordance with applicable state and federal law.

j. The applicant shall provide a description of the quality assurance program established by the independent review entity.

k. The applicant shall provide the names of all corporations and organizations owned or controlled by the independent review entity or which own or control the applicant, and the nature and extent of any such ownership or control.

l. The applicant shall provide the names and résumés of all directors, officers, and executives of the independent review entity.

m. The applicant shall provide a description of the fees to be charged by the review entity for external reviews.

n. The applicant shall provide the name of the medical director or health professional director responsible for the supervision and oversight of the independent review procedure.

76.9(2) The independent review entity shall develop written policies and procedures governing all aspects of the external review process including, at a minimum, the following:

a. Procedures to ensure that external reviews are conducted within the times frames specified in 1999 Iowa Acts, Senate File 276, and that any required notices are provided in a timely manner.

b. Procedures to ensure the selection of qualified and impartial reviewers. The reviewers shall be qualified to render impartial determinations relating to the health care service which is the subject of the coverage decision under external review. The reviewers shall be experts in the treatment of the medical condition under review.

c. Procedures to ensure the confidentiality of medical and health treatment records and review materials.

d. Procedures to ensure adherence to the requirements of 1999 Iowa Acts, Senate File 276, by any contractor, subcontractor, subvendor, agent or employee affiliated with the certified independent review entity.

76.9(3) The independent review entity shall establish a quality assurance program. The program shall include a written description to be provided to all individuals involved in the program, the organizational arrangements, and the ongoing procedures for the identification, evaluation, resolution and follow-up of potential and actual problems in external reviews performed by the independent review entity and procedures to ensure the maintenance of program standards pursuant to this requirement.

76.9(4) The independent review entity shall establish a toll-free telephone service to receive information relating to external reviews pursuant to 1999 Iowa Acts, Senate File 276. The system shall develop a procedure to ensure the capability of accepting, recording, or providing instruction to incoming telephone calls during other than normal business hours. The independent review entity shall also establish a facsimile and electronic mail service.

76.9(5) No independent review entity, officer, director, employee, or reviewer employed or engaged to conduct external reviews shall have any material professional affiliation or material financial affiliation with a health plan for which it is conducting a review.

76.9(6) The independent review entity shall provide the commissioner such data, information, and reports as the commissioner determines necessary to evaluate the external review process established under 1999 Iowa Acts, Senate File 276.

76.9(7) Applications shall be submitted in duplicate to the Commissioner of Insurance, 330 Maple Street, Des Moines, Iowa 50319. Applications must be submitted in full to be considered. All applicants will be notified of the certification decision. A list of certified independent review entities shall be maintained at the division of insurance and shall be available through the division's Web site.

This rule is intended to implement 1999 Iowa Acts, Senate File 276, section 12.

[Filed 10/29/99, Notice 9/22/99—published 11/17/99, effective 12/22/99]

CHAPTERS 77 to 79
Reserved

INSURANCE COVERAGE FOR
PEDIATRIC PREVENTIVE SERVICES

CHAPTER 80
WELL-CHILD CARE

191—80.1(505,514H) Purpose. The purpose of this chapter is to implement Iowa Code section 514H.7A, as amended by 1993 Iowa Acts, House File 236, thereby setting forth those requirements deemed appropriate by the commissioner for the general provision of coverage for benefits for routine well-child care.

191—80.2(505,514H) Applicability and scope. This chapter shall apply to all group accident and sickness insurance, group nonprofit health service plans and prepaid group plans of health maintenance organizations delivered or issued for delivery in this state after March 1, 1993. However, this chapter shall not apply to those basic benefit policies approved under Iowa Code chapter 514H.

191—80.3(505,514H) Effective date. This chapter shall be effective on July 2, 1993, and shall be applicable to all new filings of group accident and sickness insurance, group nonprofit health service plans and prepaid group plans of health maintenance organizations made after that date and all other policies and contracts covered by this chapter delivered or issued for delivery prior to July 2, 1993, upon the date of renewal.

191—80.4(505,514H) Policy definitions. No group accident and sickness insurance, group nonprofit health service plan or prepaid group plan of a health maintenance organization delivered or issued for delivery in this state shall contain definitions respecting the matters set forth unless such definitions comply with the requirements of this rule.

80.4(1) *"Well-child care"* means pediatric preventive services appropriate to the age of a child from birth to age seven as defined by current Recommendations for Preventive Pediatric Health Care of the American Academy of Pediatrics. The Recommendations may be obtained by contacting the American Academy of Pediatrics at 141 Northwest Point Boulevard, P.O. Box 927, Elk Grove Village, Illinois 60009-0927. Pediatric preventive services shall include, at a minimum, a history and complete physical examination as well as developmental assessment, anticipatory guidance, immunizations, vision and hearing screening, and laboratory services including, but not limited to, screening for lead exposure as well as blood levels.

80.4(2) *"Developmental assessment"* and *"anticipatory guidance"* mean the services described in the Guidelines for Health Supervision II, published by and obtainable from the American Academy of Pediatrics.

191—80.5(505,514H) Benefit plan.

80.5(1) Every group accident and sickness insurance policy, group nonprofit health service plan or prepaid group plan of a health maintenance organization shall provide benefits for well-child care for any child covered by the policy or contract at approximately the following age intervals: birth, 2 weeks, 2 months, 4 months, 6 months, 9 months, 12 months, 15 months, 18 months, 24 months or two years, three years, four years, five years and six years.

80.5(2) Minimum benefits may be limited to one visit payable to one provider for all services provided at each visit cited in this rule.

80.5(3) Benefits shall be subject to any policy provisions which apply to other services covered by such policy, except as set forth in 80.5(5).

80.5(4) This rule does not apply to disability income, specified disease, Medicare supplement, hospital indemnity, long-term care or trip/travel policies.

80.5(5) The provisions of this benefit will supersede any deductible requirements.

These rules are intended to implement Iowa Code sections 505.8 and 514H.7A.

[Filed 12/18/92, Notice 10/28/92—published 1/6/93, effective 3/1/93]
[Filed emergency 7/2/93—published 7/21/93, effective 7/2/93]

CHAPTER 51
SELF-EMPLOYMENT LOAN PROGRAM

[Prior to 7/19/95, see 261—Ch 8]
[Former Ch 51, "Speculative Building Loans," rescinded IAB 7/19/95, effective 8/23/95]

261—51.1(15) Purpose. The department of economic development administers the self-employment loan program (SELP) in coordination with the job training partnership program (261—Chapter 19) and the entrepreneurship training program administered under Iowa Code section 15.108, subsection 6, paragraph *"c."* The purpose of the SELP is to provide loans to low-income persons and persons with a disability to establish or expand small business ventures.

261—51.2(15) Definitions. As used in this chapter, unless the context otherwise requires:

"Applicant" means an individual proprietorship, partnership, limited liability company or corporation engaged in a single business, or related businesses wherein overlapping ownership interests exceed 50 percent.

"Department" or *"IDED"* means the Iowa department of economic development.

"Family income (annualized)" means all income actually received from all sources by all household members of the family during the six months immediately prior to application multiplied by two. When computing family income, income of a spouse and other family members shall be counted for the portion of the income determination period that the person was actually a part of the family unit of the applicant.

"Fixed assets" means those items used to manufacture a product, provide a service, or to sell, store or deliver merchandise. These items will not be sold in the normal course of business, but will be used and worn out or consumed over time, usually longer than a year, as the business is conducted.

"Initial working capital" means those items that are required as part of the base of the business and includes, but is not limited to, deposits for utilities, rent, down payments for insurance and lease purchases, purchase of office supplies and incidentals and petty cash.

"Local sponsor" means a representative from a local organization willing to offer assistance and guidance to applicants. Appropriate local sponsors will be identified in the application materials provided by the IDED and may include the SBDC, JTPA, local chamber of commerce, or other organizations approved by IDED.

"Low income" means an individual with an annualized household income that is equal to or less than 125 percent of the most current poverty income guidelines as published on an annual basis by the Department of Health and Human Services (DHHS).

"Persons with a disability" means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of the individual, a record of physical or mental impairment that substantially limits one or more of the major life activities of the individual, or being regarded as an individual with a physical or mental impairment that substantially limits one or more of the major life activities of the individual. "Disability" does not include any of the following:

1. Homosexuality or bisexuality.
2. Transvestitism, transsexualism, pedophilia, exhibitionism, voyeurism, gender identity disorders not resulting from physical impairments, or other sexual behavior disorders.
3. Compulsive gambling, kleptomania, or pyromania.
4. Psychoactive substance abuse disorders resulting from current illegal use of drugs.

"Major life activity" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, breathing, learning, or working.

261—51.3(15) Eligibility requirements.

51.3(1) *Residence.* An applicant must be a resident of Iowa to be eligible to apply for a loan.

51.3(2) *Age.* An applicant must be 18 years of age or older at the time of application.

51.3(3) *Income.* To qualify to apply for a loan, an applicant must have annualized household family income that is equal to or less than 200 percent of the most current poverty guidelines as published on an annual basis by the Department of Health and Human Services (DHHS). For purposes of calculating family income, exclusions are:

a. Food stamps

b. Compensation received in the form of food or housing

c. Other noncash income

d. Public assistance payment

e. Federal, state, local, or private unemployment benefits

f. Payment, other than on-the-job training wages, made to participants while enrolled in employment and training programs

g. Capital gains and losses

h. Scholarship and fellowship grants

i. Accident, health, and casualty insurance proceeds

j. Disability and death insurance payments

k. Awards and gifts

l. Inheritances

m. Workers' compensation

n. Terminal leave

o. Pay or allowances previously received by any veteran while serving on active duty in the U.S. armed forces

p. Educational assistance and compensation payments to veterans and other eligible persons under the following chapters of Title 38 of the U.S. Code:

Chapter 11—Compensation for service-connected disability or death
Chapter 13—Dependency and indemnity compensation for service-connected deaths
Chapter 31—Training and rehabilitation for veterans with service-connected disabilities
Chapter 32—Post-Vietnam era veterans' educational assistance
Chapter 34—Veterans' educational assistance
Chapter 35—Survivors' and dependents' educational assistance
Chapter 36—Administration of educational benefits

q. Payments received under the Trade Act of 1974

r. Payments received on behalf of foster children

s. Child support payments

t. Cash payments received pursuant to a state plan approved under the Social Security Act:

Title II—disability insurance payments
Title IV—aid to families with dependent children
Title XVI—supplemental security income for the aged, blind, and disabled

u. Payments received under the Black Lung Benefits Reform Act of 1977 (Public Law 95-239)

v. Assets drawn down as withdrawals from a bank

w. Proceeds from the sale of property, a house, or car

x. Tax refunds

y. Other one-time and limited unearned income.

51.3(4) Reserved.

51.3(5) *Local sponsor.* Each applicant must secure participation from a local sponsor.

51.3(6) *Automatic eligibility.* Cash welfare recipients (AFDC, general assistance, refugee assistance, etc.), applicants who are JTPA-eligible or applicants who are certified as having a disability under the standards promulgated by the Iowa department of education, division of vocational rehabilitation, are automatically eligible to apply for a SELP loan.

51.3(7) *Experience.* Prior to applying for SELP funding, an applicant must have successfully completed a comprehensive business training program no less than four weeks in length including, but not limited to, programs such as Next Level, FasTrack, FirstStep, or other programs developed by a John Papajohn Entrepreneurial Center, Small Business Development Center, or the Institute for Social and Economic Development and agree in writing to accept and utilize ongoing technical assistance.

51.3(8) *Loan limitations.*

a. Maximum amount. The maximum loan amount available to any one applicant is $10,000.

b. Use of loan funds. Rescinded IAB 2/10/99, effective 3/17/99.

c. Follow-on funding. The department may accept applications for additional funding from current or former SELP loan recipients. No applicant may receive cumulatively more than $10,000 under the program. For example, a loan recipient who was awarded $5,000 in prior years may request an additional $5,000 for the business. In determining whether to fund a request for follow-on funding, the department will consider, in addition to the evaluation criteria in subrule 51.4(3), factors including, but not limited to, the applicant's credit history with the department in repayment of the prior SELP loan; the solvency of the business; and the business's need for funding. Any application for follow-on funding will be subject to the restrictions outlined in paragraph 51.3(8)*"b."*

d. Drawdowns. The department reserves the right to restrict the timing of the drawdown of funds. As a general rule, the initial drawdown of funds may not include more than $1,500 of initial working capital.

e. SELP—comprehensive management assistance.

(1) *Eligibility.* Comprehensive management assistance is limited to eligible applicants or recipients of the SELP program.

(2) *Use of funds.* Assistance is available only in the form of technical or professional services provided by department-contracted providers. Assistance may include, but shall not be limited to: consulting, training, apprenticeship, and professional services; assistance in furnishing information about available financial or technical assistance; evaluating small business venture proposals; assistance in the completion of viable start-up or expansion plans; and assistance in the completion of applications for financial or technical assistance under programs administered by the department.

(3) *Disbursement.* Each eligible business may receive funding for individualized management assistance. All funds under the comprehensive management assistance program will be paid directly to the service provider. No funds will be given directly to the business.

261—51.4(15) Application procedure. Application materials are available from the IDED division of marketing and business development.

51.4(1) *Submittal.* Completed applications shall be submitted to: SELP, Division of Marketing and Business Development, Iowa Department of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309.

51.4(2) *Review.* Applications will initially be reviewed by the IDED staff. IDED staff may request additional information from the applicant prior to committee review. A review committee will score each application. The scores will be averaged and the applications receiving an average score of 10 points or more out of a total of 19 will be considered by the committee for recommendation for funding. The committee's recommendation for funding will include the amount of the loan (not to exceed $10,000), the interest rate to be charged (not to exceed 5 percent), and other terms and conditions. The IDED director will review the recommendation and make a final decision based on various factors including, but not limited to, geographical distribution and economic impact.

51.4(3) *Evaluation factors.* Applications will be reviewed and evaluated using a 19-point system, based upon the following criteria:

a. Background of applicant 0-5 points

Does the applicant have education or work experience that is relevant to the proposed business? Does the application document previous business training or management experience?

b. Business plan—financial 0-5 points

Does the application contain a comprehensive two-year cash flow projection? Has the applicant provided sufficient documentation to support/justify the cash flow assumptions (i.e., third-party documentation regarding market size, annual sales, and competition)?

c. Business plan—marketing 0-5 points

Does the application contain sufficient information to ascertain that the applicant fully understands who their customers will be and how to reach them?

d. Need of applicant 0-3 points

Consideration will be given to an applicant's: inability to secure a loan from conventional sources (e.g., bank, savings and loan, credit union, etc.) for the business venture; personal debt level; and lack of personal financial resources to adequately fund the business venture.

e. Creditworthiness 0-1 point

Does the applicant have outstanding debt to the state? Can the business, as proposed, provide enough income to meet the applicant's minimum monthly income requirement, including service for outstanding debt?

261—51.5(15) Loan agreement. Upon award of a loan the IDED staff will prepare a loan agreement which will include loan conditions, a repayment schedule, and default provisions.

261—51.6(15) Monitoring and reporting.

51.6(1) *Monitoring.* The IDED reserves the right to monitor the recipient's records to ensure compliance with the terms of the loan. IDED staff will contact the loan recipient within 90 days of the award and as frequently as conditions may warrant during the life of the loan.

51.6(2) *Reporting.* Loan recipients shall submit to the IDED reports in the format requested by the department. The department retains the authority to request information on the condition of the business on a more frequent basis at any time during the life of the loan.

261—51.7(15) Default procedures.

51.7(1) Delinquency on a loan begins on the tenth day after the due date of the first missed payment not later made. A loan is in default when a borrower exceeds 90 days of delinquency.

51.7(2) If a payment is not made in a timely manner, the department will send written notices of delinquency or collection letters to the last-known address of the borrower. The notice will notify the borrower of the amount past due and request prompt payment of that amount.

51.7(3) If there is no response to written notices of delinquency or collection letters or if payment is not made, the department will send a Notice to Cure to the borrower. The Notice to Cure identifies the terms and conditions necessary to cure the delinquency and allows 20 days for the account to be resolved. The notice will notify the borrower that if the delinquency is not cured and results in default, the department may report the default to a credit reporting bureau and may bring suit against the borrower to compel repayment of the loan.

51.7(4) In the event the borrower does not comply with the Notice to Cure, a Final Demand letter will be sent to the borrower and a separate Final Demand letter will be sent to the cosigner.

51.7(5) Once a loan is in default and an account remains unresolved after the time period stated in the Final Demand letter, the department will refer the matter to the Iowa attorney general's office for appropriate action.

These rules are intended to implement Iowa Code sections 15.102 and 15.241.

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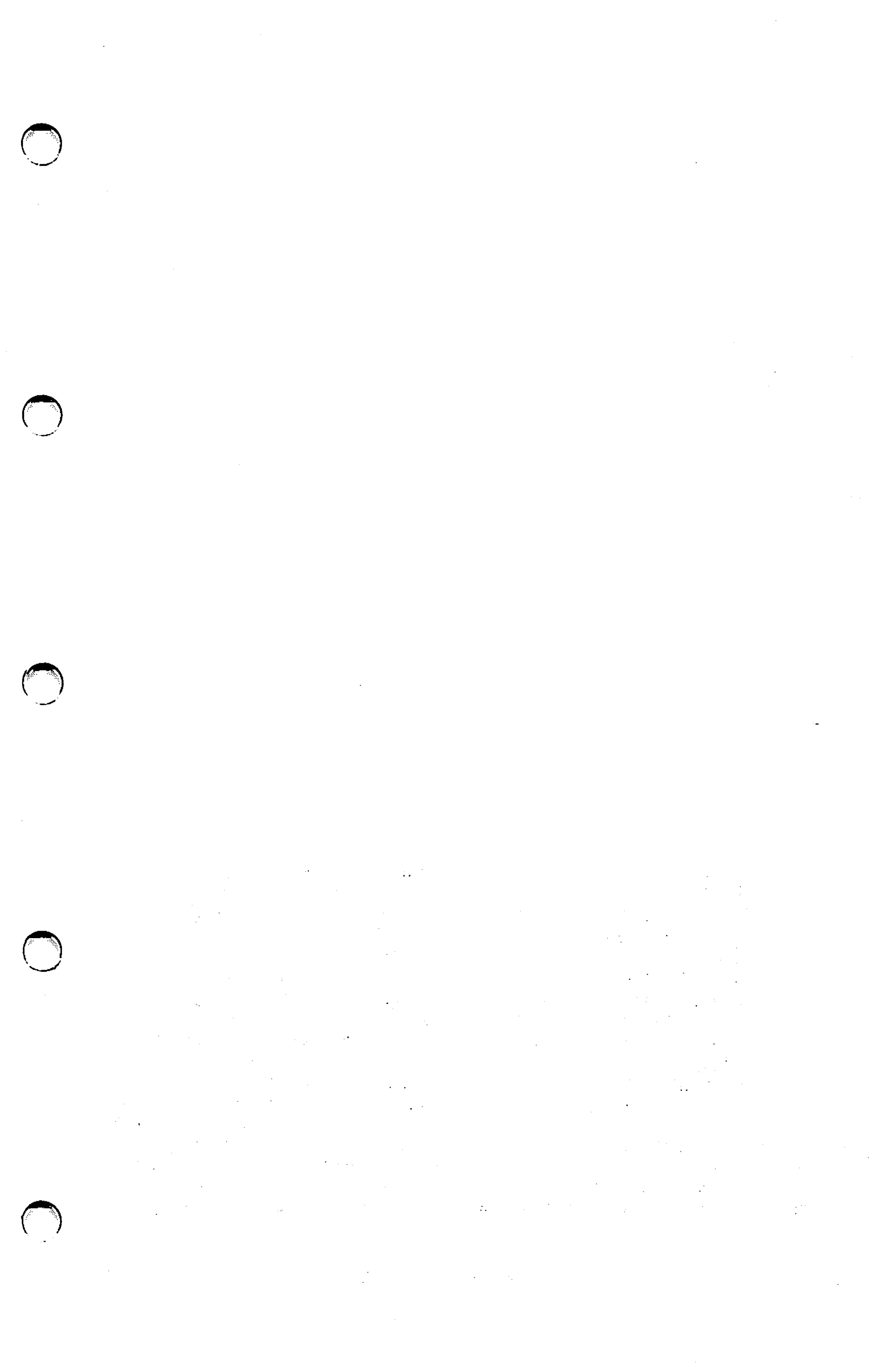

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281—78.12(256) Graduate student standards.

1. There shall be announced and written policies and criteria for admission to each graduate practitioner preparation program.

2. There shall be announced and written policies and criteria for retention in each graduate practitioner preparation program.

3. Graduate students in practitioner preparation shall have available to them advisory services. The advisory system shall reflect attention to individual student potentialities.

4. Graduate students in practitioner preparation shall have the opportunity through a formal means to express their views regarding the graduate practitioner preparation programs offered and their views shall be considered in the development and modification of graduate practitioner preparation programs.

281—78.13(256) Graduate practitioner preparation faculty standards.

1. Faculty members involved in graduate practitioner preparation programs leading to licensure shall have preparation and have had experiences in situations similar to those for which the graduate practitioner preparation students are being prepared.

2. Faculty members involved in graduate practitioner preparation programs leading to licensure shall have and maintain an ongoing involvement in activities in elementary, middle, and secondary schools.

3. Faculty members involved in graduate practitioner preparation programs leading to licensure shall be provided opportunities, through faculty development, to grow professionally through participation in activities related to their assignments.

4. Faculty members involved in graduate practitioner preparation programs leading to licensure shall be provided conditions essential to carry out effective performance; such conditions shall include policies establishing maximum limits for teaching and supervisory loads and other assigned responsibilities.

5. Part-time faculty involved in graduate practitioner preparation programs leading to licensure shall meet the requirements for appointment to the full-time faculty or are employed on a proportionate basis when they can make a contribution to the graduate practitioner preparation programs.

281—78.14(256) Graduate resources and facilities standards.

1. The library shall serve as the principal material resource center for instruction, research, and other services pertinent to the graduate practitioner preparation programs; library administrative procedures and equipment shall conform to accepted media practices, including cataloging methods, adequate hours of accessibility; the library shall be administered by professionally prepared personnel.

2. A materials laboratory or center shall be maintained either as part of the library or as a separate entity. It shall be available to students and faculty as a laboratory of materials of instruction, contain an array of media, technology, and materials commonly used in elementary, middle, and secondary schools, and shall be administered by professionally prepared personnel.

3. Classrooms, offices, clerical assistance, equipment, and similar resources essential for graduate practitioner preparation shall be provided to support the scope of graduate practitioner preparation programs being offered.

281—78.15(256) Curriculum standards.

1. Each graduate practitioner preparation program leading to licensure shall be built upon a statement of purposes and objectives of teaching/serving in the area of the school curriculum.

2. Each graduate practitioner preparation program leading to licensure shall be designed to meet the guidelines established by the state board.

3. Curriculum development for each graduate practitioner preparation program leading to licensure shall make provision for enlisting the cooperation and participation of representatives of local school systems, college practitioners in fields related to the area of specialization, professional associations, and appropriate committees.

4. Each graduate practitioner preparation program leading to licensure shall require scholarship beyond that achieved in undergraduate education; therefore, each program shall provide for maintaining quality of this scholarship.

5. Each graduate practitioner preparation program leading to licensure designed for the development of initial competence in teaching or in an area of educational specialization shall include a program of supervised practical experience in the function for which the student is being prepared. These experiences shall be designed both to develop competency and to serve as a basis for evaluating performance. Time for both on-campus and off-campus experiences shall be provided.

6. Each graduate practitioner preparation program leading to licensure shall be built on a statement of the courses or competencies needed by students to teach or serve in the appropriate area of the school program or curriculum.

281—78.16(256) Graduate practitioner preparation evaluation standards.

1. The unit shall define and implement procedures to assess the quality of its graduates when they complete the graduate practitioner preparation program and apply for recommendation for licensure and entry into the profession.

2. The unit shall define and implement procedures to evaluate the graduates from graduate practitioner preparation programs after they enter their professional roles. Such evaluation shall determine the adequacy of their preparation and their competence to perform in the role for which they were prepared.

3. The unit shall show evidence that results of evaluation of graduates and their performance are used to modify and improve the graduate programs in practitioner preparation.

These rules are intended to implement Iowa Code chapter 256.

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CHAPTER 79
STANDARDS FOR PRACTITIONER PREPARATION PROGRAMS

(Effective August 31, 2001)

281—79.1(256) General statement. Programs of practitioner preparation leading to licensure in Iowa are subject to approval by the state board of education, as provided in Iowa Code chapter 256. All programs having accreditation on August 31, 2001, are presumed accredited unless or until the state board takes formal action to remove accreditation. Commencing August 31, 2001, all program approval evaluations will be conducted under these rules.

281—79.2(256) Definitions. For purposes of clarity, the following definitions are used throughout the chapter:

"Administrator candidates" means individuals who are enrolled in practitioner preparation programs leading to administrator licensure.

"Cooperating teachers" means classroom teachers who provide guidance and supervision to teacher candidates during the candidates' field experiences in the schools.

"Department" means department of education.

"Director" means director of education.

"Institution" means a college or university in Iowa offering practitioner preparation and seeking state board approval of its practitioner preparation program(s).

"INTASC" means Interstate New Teacher Assessment and Support Consortium, the source of national standards for beginning teachers.

"ISLLC" means Interstate School Leadership and Licensure Consortium, the source of national standards for school administrators.

"Practitioner candidates" means individuals who are enrolled in practitioner preparation programs leading to licensure as administrators, teachers or other professional school personnel that require a license issued by the board of educational examiners.

"Practitioner preparation programs" means the programs of practitioner preparation leading to licensure of teachers, administrators, and other professional school personnel.

"Program" means a specific field of specialization leading to a specific endorsement.

"State board" means Iowa state board of education.

"Teacher candidates" means individuals who are enrolled in practitioner preparation programs leading to teacher licensure.

"Unit" means the organizational entity within an institution with the responsibility of administering the practitioner preparation program(s).

281—79.3(256) Institutions affected. All Iowa colleges and universities engaged in the preparation of practitioners and seeking state board approval of their programs (hereinafter institutions) shall meet the standards contained in this chapter.

281—79.4(256) Criteria for Iowa practitioner preparation programs. Each institution seeking approval of its programs of practitioner preparation shall file evidence of the extent to which it meets the standards contained in this chapter by means of a self-evaluation report. After the state board has approved the practitioner preparation programs filed by an institution, students who complete the programs and are recommended by the authorized official of that institution will be issued the appropriate license and endorsement(s).

281—79.5(256) Approval of programs. Approval of institutions' practitioner preparation programs by the state board shall be based on the recommendation of the director after study of the factual and evaluative evidence on record about each program in terms of the standards contained in this chapter.

Approval, if granted, shall be for a term of five years; however, approval for a lesser term may be granted by the state board if it determines conditions so warrant.

If approval is not granted, the applying institution will be advised concerning the areas in which improvement or changes appear to be essential for approval. In this case, the institution shall be given the opportunity to present factual information concerning its programs at the next regularly scheduled meeting of the state board. The institution may also reapply at its discretion when it is ready to show what actions have been taken to address the areas of suggested improvement.

281—79.6(256) Visiting teams. Upon application or reapplication for approval, a team shall visit each institution for evaluation of its practitioner preparation program. The membership of the team shall be selected by the practitioner preparation and licensure bureau with the concurrence of the institution being visited. The team may include faculty members of other practitioner preparation institutions within or outside the state; personnel from elementary and secondary schools, to include classroom practitioners; personnel of the state department of education; and representatives from professional education organizations. Each team member should have appropriate competencies, background, and experiences to enable the member to contribute to the evaluation visit. The expenses for the visiting team shall be borne by the institution.

281—79.7(256) Periodic reports. Institutions placed on the approved programs list may be asked to make periodic reports upon request of the department which shall provide basic information necessary to keep records of each practitioner preparation program up to date and to provide information necessary to carry out research studies relating to practitioner preparation.

281—79.8(256) Reevaluation of practitioner preparation programs. Every five years or at any time deemed necessary by the director, an institution shall file a self-evaluation of its practitioner preparation programs to be followed by a team visit. Any action for continued approval or rescission of approval shall be approved by the state board.

281—79.9(256) Approval of program changes. Upon application by an institution, the director is authorized to approve minor additions to, or changes within, the institution's approved practitioner preparation program. When an institution proposes a revision which exceeds the primary scope of its programs, the revisions shall become operative only after having been approved by the state board.

281—79.10(256) Unit governance and resources standards.

79.10(1) The professional education unit shall have primary responsibility for all programs offered at the institution for the initial and continuing preparation of teachers and other professional school personnel.

79.10(2) Unit faculty shall collaborate with members of the professional community, including the unit's advisory committee, to design, deliver, and evaluate programs to prepare school personnel.

79.10(3) Resources shall support quality clinical practice for all candidates, professional development for faculty, and technological and instructional needs of faculty to prepare candidates with the dispositions, knowledge, and skills necessary to support student learning.

79.10(4) Practitioner candidates' and faculty's access to books, journals, and electronic information shall support teaching and scholarship.

79.10(5) Sufficient numbers of faculty and administrative, clerical, and technical staff shall be available to ensure the consistent planning, delivery, and quality of programs offered for the preparation of school personnel.

79.10(6) The use of part-time faculty and graduate students in teaching roles shall be managed to ensure integrity, quality, and continuity of programs.

79.10(7) Institutional commitment shall include financial resources, facilities and equipment to ensure the fulfillment of the institution's and unit's missions, delivery of quality programs, and preparation of practitioner candidates.

79.10(8) The unit's planning and evaluation system shall support practitioner candidate performance and shall use assessment data to evaluate the effectiveness of the unit and its programs.

281—79.11(256) Diversity.

79.11(1) Recruitment, admissions, hiring, and retention policies and practices shall support a diverse faculty and candidate population in the unit.

79.11(2) Efforts toward racial, ethnic, and gender diversity among education candidates and unit faculty shall be documented. In addition, diversity efforts shall include persons with disabilities, persons from different language and socioeconomic backgrounds, and persons from different regions of the country and world.

79.11(3) Unit efforts in increasing or maintaining diversity shall be reflected in plans, monitoring of plans and efforts, and results.

79.11(4) The institution and unit shall maintain a climate that supports diversity in general as well as supporting practitioner candidates and faculty from underrepresented groups on the campus.

281—79.12(256) Faculty performance and development.

79.12(1) Faculty shall be engaged in scholarly activities that relate to teaching, learning, or practitioner preparation.

79.12(2) Faculty members in professional education shall have preparation and have had experiences in situations similar to those for which the practitioner preparation students are being prepared.

79.12(3) Faculty members shall collaborate regularly and in significant ways with colleagues in the professional education unit and other college/university units, schools, Iowa department of education, area education agencies, and professional associations as well as community representatives.

79.12(4) The work climate within the unit shall promote intellectual vitality, including best teaching practice, scholarship and service among faculty.

79.12(5) Policies and assignments shall allow faculty to be involved effectively in teaching, scholarship, and service.

79.12(6) The unit shall administer a systematic and comprehensive evaluation system and professional development activities to enhance the teaching competence and intellectual vitality of the professional education unit.

79.12(7) Part-time faculty, when employed, shall be identified and shall meet the requirements for appointment as full-time faculty or be employed to fill a need for staff to support instruction.

79.12(8) Faculty members in professional education shall maintain an ongoing, meaningful involvement in activities in preschools, elementary, middle, or secondary schools. Activities of professional education faculty members preparing preservice teachers shall include at least 40 hours of team teaching during a period not exceeding five years in duration at the preschool, elementary, middle, or secondary school level.

281—79.13(256) Practitioner preparation clinical practice standards.

79.13(1) Candidates admitted to a teacher preparation program shall participate in field experiences including both observation and participation in teaching activities in a variety of school settings and totaling at least 50 hours' duration, with at least 10 hours to occur prior to acceptance into the program and at least 40 hours after acceptance.

79.13(2) Student teaching shall be a full-time experience for a minimum of 12 consecutive weeks in duration during the student's final year of the practitioner preparation program.

79.13(3) Practitioner candidates shall study and practice in settings that include diverse populations, students with disabilities, and students of different ages.

79.13(4) Clinical practice for teacher, administrator and other professional school personnel candidates shall support the development of knowledge, dispositions, and skills that are identified in the Iowa board of educational examiners' licensure standards, the unit's framework for preparation of effective practitioners, and standards from INTASC, ISLLC, or other national professional organizations as appropriate for the licenses sought by candidates.

79.13(5) Practitioner candidates shall develop the capacity to utilize assessment data in effecting student learning in prekindergarten through grade 12.

79.13(6) Environments for clinical practice shall support learning in context, including:

a. Scheduling and use of time and resources to allow candidates to participate with teachers and other practitioners and learners in the school setting.

b. Practitioner candidate learning that takes place in the context of providing high quality instructional programs for children.

c. Opportunities for practitioner candidates to observe and be observed by others and to engage in discussion and reflection on practice.

d. The involvement of practitioner candidates in activities directed at the improvement of teaching and learning.

79.13(7) School and college/university faculty shall share responsibility for practitioner candidate learning, including, but not limited to, planning and implementing curriculum and teaching and supervision of the clinical program.

79.13(8) School and college/university faculty shall jointly provide quality clinical experiences for practitioner candidates. Accountability for these experiences shall be demonstrated through:

a. Jointly defined qualifications for practitioner candidates entering clinical practice.

b. Selection of college/university and school faculty members to demonstrate skills, knowledge, and dispositions of highly accomplished practitioners.

c. Selection of college/university and school faculty members who are prepared to mentor and supervise practitioner candidates.

d. Involvement of the cooperating teacher and college/university supervisor in the evaluation of practitioner candidates.

e. Use of a written evaluation procedure with the completed evaluation form included in practitioner candidates' permanent records.

79.13(9) The institution shall annually offer workshop(s) for prospective cooperating teachers to define the objectives of the student teaching experience, review the responsibilities of the cooperating teacher, and provide the cooperating teacher other information and assistance the institution deems necessary. The cumulative instructional time for the workshop(s) shall be a day or the equivalent hours, and the workshop(s) shall utilize delivery strategies identified as appropriate for staff development and reflect information gathered via feedback from workshop participants.

79.13(10) The institution shall enter into a written contract with the cooperating school providing field experiences, including student teaching.

281—79.14(256) Practitioner preparation candidate performance standards.

79.14(1) *Candidate knowledge and competence.*

a. Candidates for teacher, administrator and other professional education personnel roles in schools shall be expected to develop the knowledge, skills, and dispositions identified by the profession and reflected in the national guidelines for the appropriate field, including methods of teaching with an emphasis on the subject area and grade level endorsement sought.

b. Alignment shall exist between the unit's expectations for content, performance, and dispositions, content and pedagogy identified by national professional organizations, Iowa board of educational examiners' licensure standards, national advanced certification, educational leadership, and others appropriate for specific areas.

c. Teacher candidates shall acquire a core of professional education knowledge that includes social, historical, and philosophical foundations; human growth and development; student learning; diversity, including mobile students, students speaking English as a second language, and exceptionalities (students with disabilities and students who are gifted and talented); assessment methods including use of student achievement data in instructional decision making; classroom management addressing high-risk behaviors including, but not limited to, behavior related to substance abuse; teachers as consumers of research; law and policy, ethics, and the profession of teaching.

d. Teacher candidates shall acquire a core of liberal arts knowledge including but not limited to mathematics, natural sciences, social sciences, and humanities.

e. Teacher candidates shall acquire through a human relations course approved by the board of educational examiners knowledge about and skill in interpersonal and intergroup relations that shall contribute to the development of sensitivity to and understanding of the values, beliefs, life styles, and attitudes of individuals and the diverse groups found in a pluralistic society.

f. Teacher candidates in elementary education shall acquire knowledge about and receive preparation in elementary reading programs, including but not limited to reading recovery.

g. Teacher candidates in secondary education shall acquire knowledge about and receive preparation in the integration of reading strategies into secondary content areas.

h. Teacher candidates shall develop the dispositions, knowledge, and performance expectations of the INTASC standards embedded in the professional education core for an Iowa teaching license at a level appropriate for a novice teacher.

i. Administrator candidates shall develop the dispositions, knowledge, and performance expectations of the ISLLC standards embedded in the requirements for an Iowa administrator license at a level appropriate for a novice administrator.

j. Teacher, administrator, and other professional school personnel candidates shall demonstrate their dispositions and knowledge related to diversity as they work with student populations and communities.

k. Teacher candidates shall effectively integrate technology in their instruction to support student learning.

l. Experienced teachers in graduate programs shall build upon and extend their prior knowledge and experiences to improve their teaching and their effect on student learning as outlined in the national advanced certification propositions.

79.14(2) *Candidate assessment and unit planning and evaluation.*

a. The performance assessment system for teacher, administrator and other professional school personnel candidates shall be an integral part of the unit's planning and evaluation system.

b. Performance of teacher, administrator and other professional school personnel candidates shall be measured against national professional standards, state licensure standards, and the unit's learning outcomes.

c. Multiple criteria and assessments shall be used for admission at both graduate and undergraduate levels to identify teacher, administrator and other professional school personnel candidates with potential for becoming education practitioners.

d. The teacher candidate performance system shall include the administration of a basic skills test with program admission denied to any applicants failing to achieve the institution's designated criterion score.

e. Information on performance of teacher, administrator and other professional school personnel candidates shall be drawn from multiple assessments, including, but not limited to, institutional assessment of content knowledge, professional knowledge and its application, pedagogical knowledge and its application; teaching and other school personnel performance and the effect on student learning, as candidates work with students, teachers, parents, and professional colleagues in school settings; and follow-up studies of graduates and employers.

f. The design and implementation of the assessment system shall include all stakeholders associated with the unit and its practitioner preparation activities.

g. The unit's assessment system shall:

(1) Provide description of stakeholders' involvement in system development.

(2) Provide evidence that the assessment system reflects both the institution's mission and the unit's framework for preparation of effective teachers, administrators and other professional school personnel.

(3) Include a coherent, sequential assessment system for individual practitioner candidates that shall:

1. Provide evidence that the unit and Iowa licensure standards are shared with teacher, administrator and other professional school personnel candidates.

2. Utilize, for both formative and summative purposes, a range of performance-based assessment strategies throughout the program that shall provide teacher, administrator and other professional school personnel candidates with ongoing feedback about:

• What performance of teacher, administrator and other professional school personnel candidates is being assessed/measured. Examples include preentry understandings, skills and dispositions, including professional and pedagogical and content knowledge, teaching abilities and dispositions, leadership abilities and dispositions, and effect on student learning.

• How performance of teacher, administrator and other professional school personnel candidates is being assessed/measured. Examples include a specified grade point average at preentry, standardized test scores, authentic assessments of content and professional studies, authentic assessments of teaching and leadership abilities.

3. Have multiple summative decision points. Examples include admission to professional education, after completing introductory courses; prior to, during, and upon completion of student teaching/internship; and beginning performance on the job.

4. Clearly document teacher, administrator and other professional school personnel candidates' attainment of the unit and the board of educational examiners' licensure standards by providing evidence of:

• Content knowledge via multiple measures. Examples include content tests, lesson plans showing representation of knowledge structures, ability to apply principles of the discipline to problem solving in the classroom, written essays on content, evidence of being able to represent classroom/school problems in terms of abstract principles of the discipline.

• Professional and pedagogical knowledge via multiple measures. Examples include core performance tasks such as analyzing a child's progress on learning and development and instruction using a case study of a child; designing a curriculum unit; analyzing a curriculum case study; analyzing an example of teaching as presented on video clip or teacher candidate's own teaching, including an assessment on student learning; evaluating examples of performance of a range of school district and area education agency personnel; analyzing student work and learning over time; assessing feedback given by teachers to students; communicating with parents and the community; developing a school vision based on assessment data related to student learning; analyzing a budget plan; and other measures appropriate to a given task.

• Effect on student learning and achievement via multiple measures. Examples include student work, lesson plans, scores on achievement tasks, feedback from cooperating teachers and administrators, scoring rubrics for determining levels of student accomplishment, and other measures appropriate to a given task.

5. Include scoring rubrics or criteria for determining levels or benchmarks of teacher, administrator and other professional school personnel candidate accomplishment.

6. Demonstrate credibility such as reliability and validity of both the overall assessment system and the instruments being used.

(4) Document the quality of programs through the collective presentation of assessment data related to performance of teacher, administrator and other professional school personnel candidates and demonstrate how the data are used for continuous program improvement. This shall include:

1. Evidence of evaluative data collected by the department from teachers, administrators and other professional school personnel who work with the unit's candidates. The department shall report this data to the unit.

2. Evidence of evaluative data collected by the unit through follow-up studies of graduates and their employers.

(5) Demonstrate how the information gathered via the individual practitioner candidate assessment system is utilized to refine and revise the unit's framework and programs' goals, content and delivery strategies.

(6) Describe how the assessment system is managed.

(7) Explain the process for reviewing and revising the assessment system.

h. An annual report including a composite of evaluative data collected by the unit shall be submitted to the bureau of practitioner preparation and licensure by September 30 of each year.

These rules are intended to implement Iowa Code section 256.7 and 1999 Iowa Acts, House File 532, sections 1 and 3.

[Filed 10/22/99, Notice 6/30/99—published 11/17/99, effective 8/31/01]

CHAPTER 80
EVALUATOR APPROVAL

[Prior to 9/7/88, see Public Instruction Department[670]Ch 81]
[Transferred to Educational Examiners[282] Ch 20, IAB 10/3/90, effective 9/14/90]

CHAPTER 81
REQUIREMENTS FOR SPECIAL EDUCATION ENDORSEMENTS

[Prior to 9/7/88, see Education Department[281]Ch 73]
[Transferred to Educational Examiners[282] Ch 15, IAB 10/3/90, effective 9/14/90]

CHAPTER 82
OCCUPATIONAL AND POSTSECONDARY CERTIFICATION AND ENDORSEMENTS

[Prior to 9/7/88, see Education Department[281]Ch 74]
[Transferred to Educational Examiners[282] Ch 16, IAC 10/3/90, effective 9/14/90]

CHAPTER 83
BEGINNING TEACHER INDUCTION PROGRAM

281—83.1(78GA,SF464) Purpose. The beginning teacher induction program is available to Iowa school districts as a means to promote excellence in teaching, build a supportive environment within school districts, increase the retention of promising beginning teachers, and promote the personal and professional well-being of teachers.

281—83.2(78GA,SF464) Definitions. For the purpose of these rules, the following definitions shall apply:

"Beginning teacher" means an individual serving under an initial provisional or conditional license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a classroom teacher new to the profession of teaching.

"Board" means the board of directors of a school district or a collaboration of boards of directors of school districts.

"Classroom teacher" means an individual who holds a valid practitioner's license under Iowa Code chapter 272 and who is employed under a teaching contract with a school district or area education agency in the state of Iowa.

"Department" means the department of education.

"District facilitator" means a professional licensed in Iowa who is appointed by a board to serve as the liaison between the board and the department for the beginning teacher induction program.

"Mentor" means an individual who holds a valid practitioner's license under Iowa Code chapter 272 and who is employed under a teaching contract with a school district or area education agency in the state of Iowa. This individual has been selected and trained to be a mentor. The individual must have a record of four years of successful teaching practice, must be employed as a classroom teacher on a nonprobationary basis, and must demonstrate professional commitment to the improvement of teaching and learning, and the development of beginning teachers.

"School district" means a public school district.

281—83.3(78GA,SF464) Program requirements.

83.3(1) *Area education agency models.* An area education agency shall prepare a model beginning teacher induction program plan and shall provide the model plan to each school district within its area. The plan shall include a model evaluation component by which a school district may measure the effectiveness of its program. The area education agency shall be responsible for monitoring effective practices, integrating those effective practices into the model, and continually updating the model based on those practices. The model shall include the components contained in the state-funded induction program.

83.3(2) *Eligibility.* All school districts are eligible to apply for funding. School districts eligible for the beginning induction program shall meet all of the following:

a. *District plan.* A school district that wishes to participate in the program shall have the board adopt a beginning teacher induction program plan and written procedures for the program. At the board's discretion, the district may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district written induction program shall include, but are not limited to, the following:

(1) Goals for the program.

(2) A process for the selection of mentors.

(3) A description of the mentor training process which shall:

1. Be consistent with effective staff development practices and adult professional needs.
2. Describe mentor needs, indicating a clear understanding of the role of the mentor.
3. Demonstrate the mentor's understanding of the needs of new teachers.

4. Demonstrate the mentor's understanding of the district expectations for all teachers.
5. Facilitate the mentor's ability to provide guidance and support to new teachers.
(4) A description of the supportive organizational structure for beginning teachers which shall include:
1. The activities that shall provide access and opportunities for interaction between mentor and beginning teacher.
2. The identification of who will be in the mentor/beginning teacher partnership.
3. Supportive actions of the district.
4. The name of the district facilitator.
(5) The evaluation process for the program, which shall include:
1. The periodic assessment and monitoring of the mentor and beginning teacher program to address both summative and formative evaluation strategies.
2. District participation in the state evaluation of the beginning teacher induction program.
3. Evaluation strategies which shall include an evaluation of the district program goals, an evaluation process that provides for the minor and major program revisions and a process for how information about the program will be provided to interested stakeholders.
(6) The process for dissolving mentor and beginning teacher partnerships.
(7) A plan that reflects the needs of the beginning teacher employed by the district.
(8) Activities recommended to meet the needs of beginning teachers. Examples include:
1. Managing the classroom.
2. Acquiring information about the school system.
3. Obtaining instructional resources and materials.
4. Planning, organizing, and managing instruction and other professional responsibilities.
5. Assessing students and evaluating student progress.
6. Motivating students.
7. Using effective teaching methods.
8. Dealing with individual students' needs, interests, abilities, and problems.
9. Communicating and collaborating with colleagues, including administrators, supervisors, and other teachers.
10. Communicating with parents.
11. Adjusting to the teaching environment and role.
12. Receiving emotional support.
(9) Budget.
b. *District facilitator.* A district must engage a board-appointed facilitator. Duties of the facilitator shall include, but not be limited to, the following:
(1) Submits the proposed board plan and proposed costs to the board and the department.
(2) Oversees the implementation of the board plan.
(3) Ensures that the plan meets the goals of the program as set forth in the board plan.
(4) Works collaboratively with the area education agency and postsecondary institutions in preparation and implementation of the board plan.
(5) Places beginning teachers participating in the program in a manner that provides the opportunity to work with at least one mentor. Whenever possible, there should be opportunities to work with other mentors in the district.
(6) Acts as a liaison between the district and the department.
(7) Submits the annual report on program results to the department.

281—83.4(78GA,SF464) Program approval. Any district participating in the state-funded induction program must submit an application according to the components established in these rules. Programs shall be awarded a maximum of 425 points according to the following criteria:

1. Readiness summary—40 points. The readiness summary is evidence that the district is prepared to implement the program. The summary should describe the district's ability to make this program a success and the partnerships the district has or plans to develop with area education agency, community college, or other institution of higher education.
2. Abstract—20 points. The abstract is a detailed summary of the proposal. It may be shared with the department and others and may be used for annual reporting purposes.
3. District plan—300 points. The requirements for the plan are included in rule 83.3(78GA,SF464).
4. Budget—25 points. The budget requirements are included in rule 83.6(78GA,SF464).
5. Timeline—20 points. The timeline shall provide for the implementation of the program and be reflective of the period the applicant is utilizing the funds requested, not to exceed June 30, 2001.

281—83.5(78GA,SF464) Funding for approved programs. The process to be followed in determining the amount of funds to be approved for this competitive program grant will be described in the grant application. The review criteria and point allocation for each criterion will also be described in the grant application material. The membership of the funding review committee shall be determined by the appropriate division administrator. Members shall, at minimum, include representatives from local school districts, area education agencies, and institutions of higher education. The review committee members shall allocate points per review criterion in rule 83.3(78GA,SF464). In the event the number of approved programs exceeds available funding, the department will award grants based on the geographic and district population of the school districts with approved plans. A district may receive funding for subsequent years if it has an approved plan on file with the department and also submits any additional program improvements or updates that have been implemented by the district.

281—83.6(78GA,SF464) Beginning teacher induction program budget. Funds received by a school district from the beginning teacher induction program shall be used for any or all of the following purposes:

1. To pay mentors as they implement the plan. A mentor in a beginning teacher induction program approved under this chapter shall be eligible for an award of $500 per semester, at a minimum, for full participation in the program.
2. To provide for a stipend for the district facilitator.
3. To pay any applicable costs of the employer's share of contributions to federal social security and the Iowa public employees' retirement system for a pension and annuity retirement system established under Iowa Code chapter 294 for such amounts paid by the district.

These funds are miscellaneous funds or are considered encumbered. A school district shall maintain a separate listing within its budget for payments received and expenditures made for this program. Funds that remain unencumbered or unobligated at the end of the fiscal year will not revert, but will remain available for expenditure for the purposes of the program until the close of the succeeding fiscal year.

281—83.7(78GA,SF464) Appeal of grant denial or termination. Any applicant for beginning teacher induction program grant funds may appeal the denial of a properly submitted competitive program grant application or the unilateral termination of a competitive program grant to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of decision and must be based on a contention that the process was conducted outside of statutory authority; violated state or federal law, policy or rule; did not provide adequate public notice; was altered without adequate public notice; or involved conflict of interest by staff or committee members. The hearing and appeal procedures found in 281—Chapter 6 that govern the director's decisions shall be applicable to any appeal of denial or termination. In the notice of appeal, the grantee shall give a short and plain statement of the reasons for the appeal. The director shall issue a decision within a reasonable time, not to exceed 60 days from the date of the hearing.

281—83.8(78GA,SF464) Annual report. The board implementing an approved beginning teacher induction program will submit an assessment of the evaluation strategies on forms secured from the department by each July 1 of the fiscal year succeeding the year in which the school district received funding. Each district receiving funding must report the results of the state evaluation. The department will annually report the statewide results of the program to the chairpersons and ranking members of the senate and house education committees by January 1.

These rules are intended to implement 1999 Iowa Acts, Senate File 464, sections 22 to 26.

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[Filed 10/21/99, Notice 9/8/99—published 11/17/99, effective 12/22/99]

CHAPTER 84
FINANCIAL INCENTIVES FOR NATIONAL BOARD CERTIFICATION

281—84.1(256) Purpose. National Board Certification (NBC) is available to teachers nationwide and requires candidates to demonstrate their teaching practice as measured against high and rigorous standards. NBC teachers enhance the educational experience of their students and motivate fellow teachers towards excellence in classroom teaching. These rules implement the two financial incentive pilot programs enacted by the Iowa legislature to increase the number of NBC teachers in Iowa.

281—84.2(256) Definitions. For the purpose of these rules, the following definitions shall apply:

"A person receives a salary as a classroom teacher" means a teacher employed by a school district in Iowa who receives any salary compensation from the school district for providing classroom instruction to students in the school district.

"Department" means the state department of education.

"Director" means the director of the state department of education.

"Employed by a school district in Iowa" means a teacher employed in a nonadministrative position in an Iowa school district pursuant to a contract issued by a board of directors of a school district under Iowa Code section 279.13 and any full-time permanent substitute teacher employed under individual contracts not included under Iowa Code section 279.13 but who is receiving retirement and health benefits as part of the substitute teacher's contract.

"National Board Certification (NBC)" is a nationwide certification program administered by the National Board for Professional Teaching Standards. The certification program requires candidates to participate in a rigorous two-part assessment consisting of portfolio entries and assessment center exercises.

"National Board for Professional Teaching Standards (NBPTS)" is a private nonprofit organization whose goal is to develop professional standards for early childhood, elementary and secondary school teaching. NBPTS administers the NBC program.

"School district" means a public school district.

"Teacher" means an Iowa-licensed teacher as defined in Iowa Code section 272.1.

281—84.3(256) Registration fee reimbursement program. If funds are appropriated by the Iowa legislature, the department shall administer a registration fee reimbursement program.

84.3(1) *Eligibility.* Teachers seeking reimbursement shall apply to the department within one year of registration with NBPTS. Teachers eligible for the registration fee reimbursement program shall meet all of the following qualifications:

a. The individual has all qualifications required by NBPTS for application for certification.

b. The individual is a teacher.

c. The individual is employed by a school district in Iowa.

d. The individual receives a salary as a classroom teacher.

e. The individual completes the department's application process, which includes submitting verification of NBC registration.

f. The individual has not received reimbursement from this program at any previous time.

84.3(2) *Registration fee reimbursement.* If funds are appropriated by the legislature, all teachers who apply to the department shall receive registration fee reimbursement. If, however, in any fiscal year the number of eligible teachers that apply for the reimbursement exceeds the funds available, the department shall prorate the amount of the registration fee reimbursement among all eligible teachers.

84.3(3) *Reimbursement.* Teachers determined eligible shall receive reimbursement in the following manner:

a. Initial registration fee reimbursement. Each eligible teacher shall receive an initial reimbursement of one-half of the reimbursement fee charged by NBPTS or, if necessary, a prorated amount upon submission to the department of the NBC registration confirmation form provided to each teacher by NBPTS.

b. Final registration fee reimbursement. The final registration fee reimbursement of one-half of the reimbursement fee charged by NBPTS or, if necessary, a prorated amount shall be awarded when the eligible teacher notifies the department of the teacher's certification achievement and submits verification of certification. If an eligible teacher fails to receive certification, the teacher can receive the remaining reimbursement if the teacher achieves certification within three years of the initial NBC score notification.

84.3(4) *Withdrawal from NBC process.* A teacher who has received the initial registration fee reimbursement from the department and withdraws from the NBC process shall reimburse the department the amount received from the department within 30 days of receiving any fee reimbursement from NBPTS if the reimbursement from NBPTS is equal to or greater than the amount received from the department. If the reimbursement amount from NBPTS is less than the amount the teacher received from the department, the teacher shall reimburse the department any amount received from NBPTS.

281—84.4(256) NBC annual award. If funds are appropriated by the legislature, each eligible NBC teacher can qualify for one of the following NBC annual awards. If in any fiscal year the funds appropriated are insufficient to pay the maximum amount of the annual awards to each eligible teacher or the number of teachers eligible to receive annual awards exceed 1,100 individuals, the funds shall be prorated among all eligible teachers.

1. *$5,000 annual award.* An eligible teacher who receives NBC certification prior to May 1, 2000, will receive an annual award of up to $5,000 per year or a prorated amount for a period of ten years or until the teacher's total state annual award amount reaches $50,000, whichever occurs first.

2. *$2,500 annual award.* An eligible teacher who receives NBC certification after May 1, 2000, will receive an annual award of up to $2,500 per year or a prorated amount for a maximum period of ten years.

84.4(1) *Eligibility.* Individuals eligible for the NBC annual award shall meet all of the following qualifications:

a. The individual is an NBC teacher.

b. The individual is a teacher.

c. The individual is employed by a school district in Iowa.

d. The individual receives a salary as a classroom teacher.

e. The individual completes the department's annual application process, which includes submitting verification of certification.

f. The individual has not received an NBC annual award for more than ten years.

g. The individual has not received state NBC annual awards totaling more than $50,000.

h. The individual is applying for the award within one year of being eligible for the award.

84.4(2) *Application.* An NBC teacher shall submit an application verifying eligibility for an NBC award to the department by May 1 of each fiscal year the NBC teacher is eligible for the award. NBC awards shall be issued to eligible NBC teachers no later than June 1 of each fiscal year.

84.4(3) *Taxes.* The NBC award is not considered salary for purposes of Iowa Code chapter 97B. The eligible NBC teacher will be responsible to pay the appropriate state and federal taxes. The department will notify state and federal taxing authorities of the award and the NBC teacher will be issued an IRS Form 1099.

281—84.5(256) Appeal of denial of a registration fee reimbursement award or an NBC annual award. Any applicant may appeal the denial of a registration fee reimbursement award or an NBC annual award to the director of the department. Appeals must be in writing and received within ten working days of the date of the notice of denial and must be based on a contention that the process was conducted outside statutory authority or violated state or federal law, regulation or rule. The hearing and appeal procedures found in 281—Chapter 6 that govern director's decisions shall be applicable to any appeal of denial.

In the notice of appeal, the applicant shall give a short and plain statement of the reasons for the appeal.

The director shall issue a decision within a reasonable time, not to exceed 30 days from the date of the hearing.

These rules are intended to implement Iowa Code section 256.44 as amended by 1999 Iowa Acts, House File 766.

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TITLE XIV—A
TEACHERS AND PROFESSIONAL LICENSING
(Effective through September 30, 1988)

CHAPTER 85
CLASSIFICATION OF CERTIFICATES (Through 9/30/88)

[Prior to 9/7/88, see Public Instruction Department[670] Ch 14]
Rescinded 11/14/90, see IAB 12/12/90

CHAPTER 86
ENDORSEMENTS (Through 9/30/88)

[Prior to 9/7/88, see Public Instruction Department[670] Ch 15]
Rescinded 11/14/90, see IAB 12/12/90

CHAPTER 87
APPROVALS (Through 9/30/88)

[Prior to 9/7/88, see Public Instruction Department[670] Ch 16]
Rescinded 11/14/90, see IAB 12/12/90

CHAPTER 88
CONVERSION AND RENEWAL OF CERTIFICATES (Through 9/30/88)

[Prior to 9/7/88, see Public Instruction Department[670] Ch 17]
Rescinded 11/14/90, see IAB 12/12/90

CHAPTER 89
STANDARDS FOR TEACHER EDUCATION PROGRAMS (Through 9/30/88)

[Prior to 9/7/88, see Public Instruction Department[670] Ch 19]
Rescinded 11/14/90, see IAB 12/12/90

CHAPTER 90
STANDARDS FOR GRADUATE TEACHER EDUCATION PROGRAMS

[Prior to 9/7/88, see Public Instruction Department[670] Ch 20]
Rescinded IAB 12/16/98, effective 1/20/99

CHAPTER 97
SUPPLEMENTARY WEIGHTING

281—97.1(257) Definitions. For the purpose of this chapter, the following definitions apply.

"Class" means a course for academic credit which applies toward a high school or community college diploma.

"Enrolled" shall mean that a student has registered with the school district and is taking part in the educational program.

"Fraction of a school year at the elementary level" shall mean the product of the minutes per day of class times the number of days per year the class meets divided by the product of the total number of minutes in a school day times the total number of days in a school year.

"Fraction of a school year at the secondary level" shall mean the product of the class periods per day of class times the number of days per year the class meets divided by the product of the total number of class periods in a school day times the total number of days in a school year. All class periods available in a normal day shall be used in the calculation.

"Supplant" shall mean the community college's replacing the identical course that was offered by the school district in the preceding year or the second preceding year, or the community college's offering a course that is required by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.

"Supplementary weighting plan" shall mean a plan as defined in this chapter to add a weighting for each resident student eligible that is enrolled in an eligible class taught by a teacher employed by another school district or taught by a teacher employed jointly with another school district or sent to and enrolled in an eligible class in another school district or sent to and enrolled in an eligible community college class. The supplementary weighting for each eligible class shall be calculated by multiplying the fraction of a school year that class represents times the number of eligible resident students enrolled in that class times the weighting factor of forty-eight hundredths.

"Teacher" shall be defined pursuant to Iowa Code section 272.1.

281—97.2(257) Supplementary weighting.

97.2(1) *Eligibility.* Except if listed under subrule 97.2(6), a resident student is eligible for supplementary weighting if the student is eligible to be counted as a resident student for certified enrollment and if one of the following conditions is met pursuant to Iowa Code section 257.11:

a. Resident student attends class in another school district pursuant to subrule 97.2(2), or

b. Resident student attends class taught by a teacher employed by another school district pursuant to subrule 97.2(3), or

c. Resident student attends class taught by a teacher jointly employed by two or more school districts pursuant to subrule 97.2(4), or

d. Resident student attends class in a community college for college credit pursuant to subrule 97.2(5).

Other than as listed in paragraphs *"a"* to *"d"* above, no other sharing arrangement shall be eligible for supplementary weighting.

97.2(2) *Attend class in another school district.* Students attending class in another school district will be eligible for supplementary weighting under paragraph 97.2(1)*"a"* only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(3) *Attend class taught by a teacher employed by another school district.* Students attending class taught by a teacher employed by another school district will be eligible for supplementary weighting under paragraph 97.2(1)*"b"* only if the school district does not have a licensed and endorsed teacher available within the school district to teach the course(s) being provided.

97.2(4) *Attend class taught by a teacher jointly employed with another school district.* All of the following conditions must be met for any student attending class taught by a teacher jointly employed to be eligible for supplementary weighting under paragraph 97.2(1)*"c."* The school districts jointly employing the teacher must have:

a. A joint teacher evaluation process and instruments.

b. A joint educational excellence phase III plan.

c. A joint seniority list.

d. One single, unified master contract which illustrates joint collective bargaining.

e. One single salary schedule.

Except for joint employment contracts which meet the requirements of paragraphs *"a"* to *"e"* above, no two or more school districts shall list each other for the same classes and grade levels.

97.2(5) *Attend class in a community college.* All of the following conditions must be met for any student attending class in a community college to be eligible for supplementary weighting under paragraph 97.2(1)*"d."*

a. The course must supplement, not supplant, high school courses.

(1) The course must not replace the identical course that was offered by the school district in the preceding year or the second preceding year.

(2) The course must not be required by the school district in order to meet the minimum accreditation standards in Iowa Code section 256.11.

b. The course must be included in the community college catalog or an amendment or addendum to the catalog.

c. The course must be open to all registered community college students not just high school students.

d. The course must be for college credit and the credit must apply toward an associate of arts or associate of science degree, or toward an associate of applied arts or associate of applied science degree, or toward completion of a college diploma program.

e. The course must be taught by a teacher meeting community college licensing requirements.

f. The course must be taught utilizing the community college course syllabus.

g. The course must be of the same quality as a course offered on a community college campus.

97.2(6) *Ineligibility.* The following students are ineligible for supplementary weighting:

a. Nonresident students attending the school district under any arrangement.

b. Students taking courses taught via the Iowa Communications Network (ICN) or any other television or electronic medium pursuant to Iowa Code section 257.11.

c. Students eligible for the special education weighting plan provided in Iowa Code section 256B.9.

d. Students in whole-grade sharing arrangements.

e. Students open enrolled in or out.

f. Students enrolled in nonpublic schools.

g. Students participating in a home school assistance program or dual enrollment.

h. Students participating in shared services rather than shared classes.

i. Students taking postsecondary enrollment options (PSEO) courses authorized under Iowa Code chapter 261C are ineligible for supplementary weighting for the PSEO courses.

j. Students enrolled in courses or programs offered by their resident school districts unless those courses meet the conditions for attending classes in a community college under subrule 97.2(5) or if the teacher is employed by another school district pursuant to subrule 97.2(3) or if a teacher is jointly employed with another school district pursuant to subrule 97.2(4).

k. Students enrolled in courses or programs taught by teachers employed by their resident school districts unless the employment meets the criteria of joint employment with another school district under subrule 97.2(4) or if the criteria in subrule 97.2(5) are met for students attending class in a community college.

97.2(7) *Whole-grade sharing.* If all or a substantial portion of the students in any grade are shared with another two or more school districts for all or a substantial portion of a school day, then no students in that grade level are eligible for supplementary weighting.

281—97.3(257) Due date. Supplementary weighting shall be included with the certified enrollment which is due October 1 following the third Friday in September on which the enrollment was taken.

These rules are intended to implement Iowa Code sections 257.6, 257.11, and 257.12.

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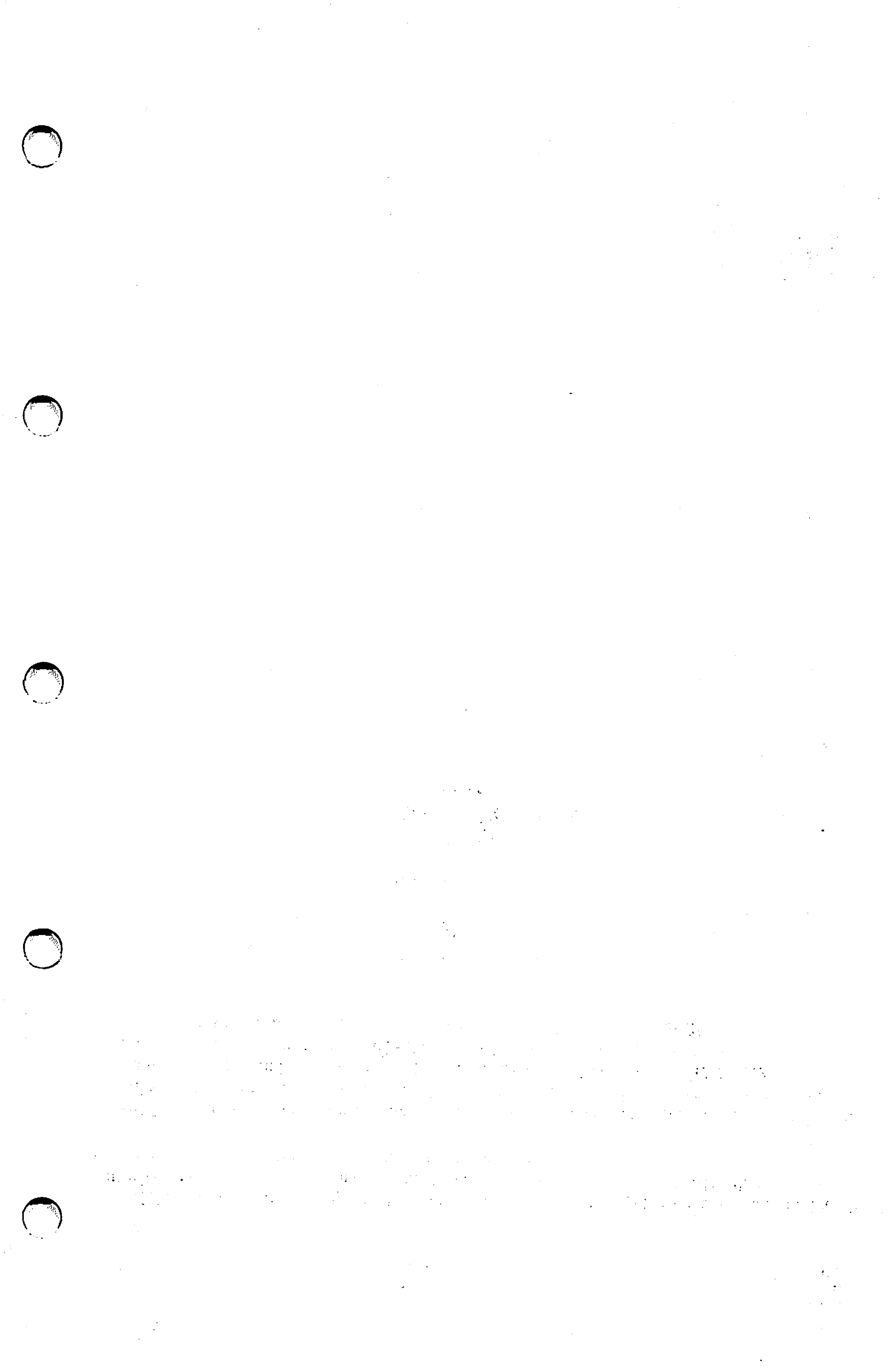
CHAPTERS 98 to 100
Reserved

TITLE XVII
PROTECTION OF CHILDREN

CHAPTER 101
CHILD ABUSE REPORTING
Reserved



SCHOOL BUDGET REVIEW COMMITTEE[289]

[Prior to 12/14/88, see School Budget Review[740]]

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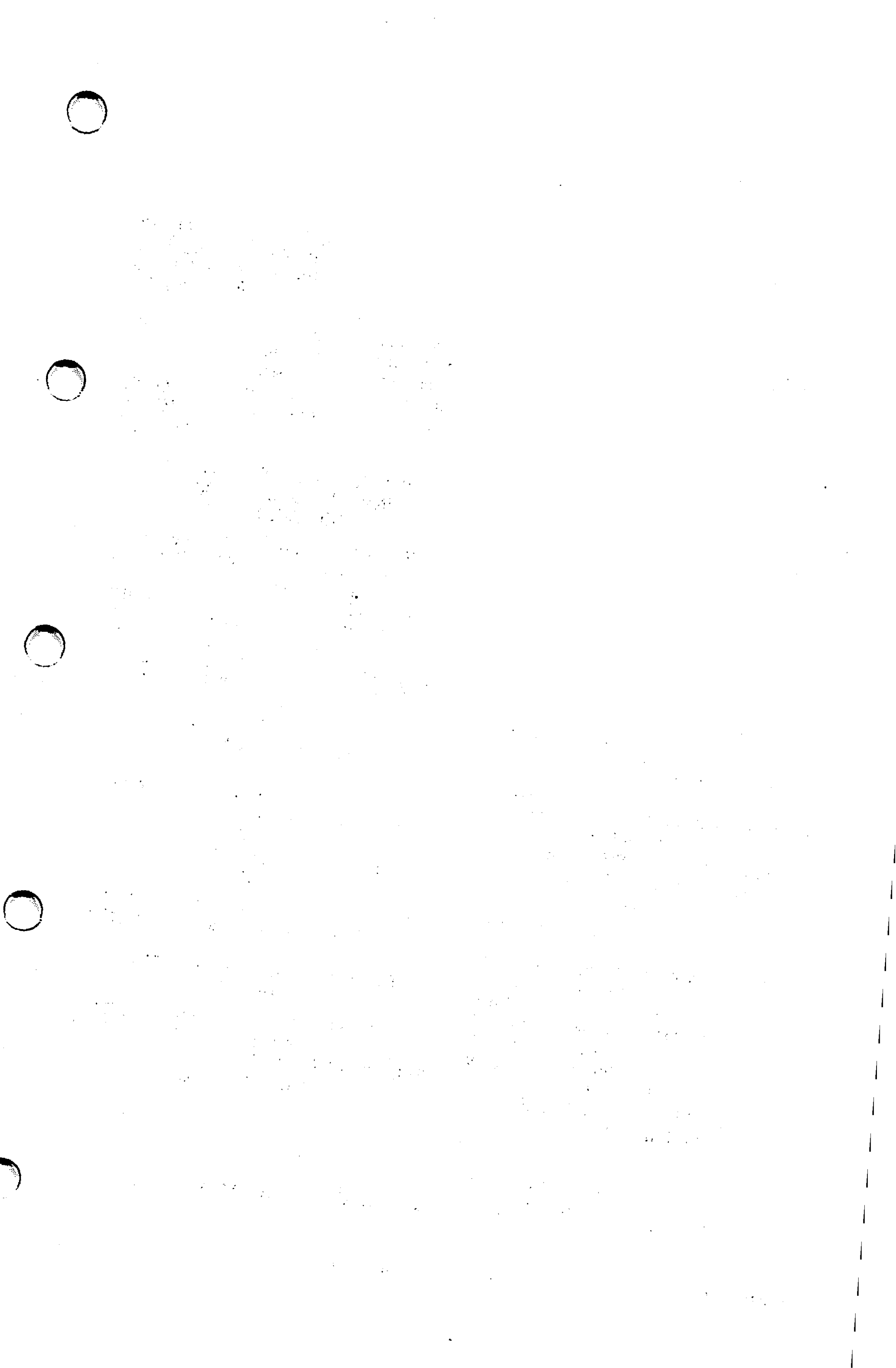

CHAPTER 7
ON-TIME FUNDING FOR INCREASED ENROLLMENT

289—7.1(257) Definitions. For the purpose of this chapter, the following definition applies.

"Increased enrollment" means an actual enrollment for the budget year which is greater than the budget enrollment for the budget year. Enrollment shall be determined pursuant to Iowa Code section 257.6.

289—7.2(257) On-time funding eligibility.

7.2(1) *Eligibility.* A school district is eligible to request on-time funding if it experiences increased enrollment and it incurs additional costs due to the increased enrollment in one or both of the following categories.

a. The school district adds an additional teacher or other instructional staff due to the increased enrollment or incurs additional expenditures for instructional supplies.

b. The school district incurs additional expenditures other than instructional staff and instructional supplies. This would include, but not be limited to, expenditures for transportation and equipment.

7.2(2) *Expenditure definitions.* Expenditure objects and functions shall be defined according to Uniform Financial Accounting for Iowa LEAs and AEAs.

7.2(3) *Special education expenditures excluded.* Expenditures shall not include instructional staff, instructional supplies, or other expenditures for students eligible for the special education weighting plan provided in Iowa Code section 256B.9.

7.2(4) *Average costs.* Expenditures for instructional staff and instructional supplies shall be based on average costs. Average costs for instructional staff shall be determined separately for teachers, teacher aides, and other instructional staff. The average shall be calculated as the sum of expenditure objects for salaries, employee benefits, travel, in-service, and professional dues divided by the total staff full-time equivalent in each category. The average costs shall be multiplied by the staff full-time equivalent increase in each staff classification to determine increased expenditures for instructional staff. The average instructional supplies costs shall be determined separately for elementary, middle or junior high, and high school. The average shall be calculated as the sum of the expenditure objects for general supplies, books and periodicals, software and magnetic media, and audio-visual media within the expenditure function of instruction divided by the total student full-time equivalent at each level. The average cost shall be multiplied by the student full-time equivalent increase at each level to determine increased expenditures for instructional supplies. Actual expenditures for the base year shall be used in the calculation. The school budget review committee will provide a form for the purpose of calculating these average costs.

7.2(5) *Additional expenditures.* If the school district has expenditures due to increased enrollment other than for instructional staff and instructional supplies, the school district shall provide a listing of the additional expenditures and a statement showing the relationship between the additional expenditures and the increased enrollment.

289—7.3(257) Maximum on-time funding for increased enrollment.

7.3(1) *Maximum requests.* The total amount requested for on-time funding shall not be greater than the increased enrollment multiplied by the state cost per pupil for the budget year.

7.3(2) *Proration of appropriation.* If the total amount of the requests for on-time funding approved by the SBRC exceeds the appropriation to the department of education to be paid to school districts as on-time funding for increased enrollment, the appropriation shall be prorated such that each school district approved for on-time funding shall receive an amount of on-time funding equal to the percentage that the on-time funding to be provided to the school district bears to the total amount of on-time funding to be provided to all school districts receiving SBRC approval.

7.3(3) *Reduction for budget adjustment.* The amount of funding calculated and approved by the SBRC pursuant to this chapter shall be reduced by the amount of budget adjustment which the school district is receiving for the budget year.

289—7.4(257) Due date. An application for on-time funding for increased enrollment must be on the forms provided by the SBRC and is due November 1. The application form shall include an assurance statement certifying the accuracy of the information submitted. A copy of the resolution of the board of directors of the school district requesting the on-time funding must be included with the application.

289—7.5(257) Waiver. Upon a majority vote of the members of the school budget review committee at a regular or special meeting, the committee may waive rule 289—7.2(257) or any portion of that rule. A waiver may be requested by a school district if the school district did not have increased expenditures. The school district must provide evidence regarding why it was not able to increase expenditures associated with enrollment increases but would have increased expenditures had additional miscellaneous income been available and how additional funds will be expended if they become available. The school district must include the waiver request and the evidence required by this rule with the application form submitted pursuant to rule 289—7.4(257). It is the intent of the committee to waive requirements only when it is determined that they would result in unequal treatment of school districts or cause an undue hardship to the requesting district and the waiver clearly is in the public interest.

These rules are intended to implement Iowa Code chapter 257 as amended by 1999 Iowa Acts, House File 147, section 2.

[Filed Emergency 10/21/99 after Notice 9/8/99—published 11/17/99, effective 10/21/99]

STATE PUBLIC DEFENDER[493]

Created within the Department of Inspections and Appeals[481] by Iowa Code section 13B.2

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CHAPTER 11
INDIGENT DEFENSE CONTRACTS

493—11.1(13B) Definitions.

"Attorney" means an individual licensed to practice law by the Iowa Supreme Court.

"Attorney time" means the total time the attorney appointed to a case spends on in-court time, out-of-court time, and in travel time attributable to that specific case.

"Case" means all charges or allegations arising from the same transaction or occurrence contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding.

"Contract" means a written agreement between the state public defender and an attorney.

"Fees" means the consideration paid to an attorney appointed by the court to represent an indigent.

"In-court time" means time spent by the attorney appointed to the case engaged before a judge or jury including, but not limited to, arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings.

"Indigent" means a person entitled to legal representation as defined in Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27.

"Out-of-court time" means time actually spent by the attorney appointed to the case in drafting documents, case preparation, depositions and other discovery, client or witness interviews, investigation, research, brief drafting, conferences or negotiations with opposing counsel or the court, obtaining or reviewing records, and other productive case-related time that is not "in-court time" or "travel time."

"Paralegal time" means time actually spent by someone other than the attorney appointed to the case which would be "out-of-court time" if performed by the attorney appointed to the case with the following exceptions. Paralegal time does not include any time spent on the case if the attorney appointed to the case also charges for the same time and activity. In addition, paralegal time does not include time spent making photocopies, sending faxes, mailing documents, answering phones, scheduling, or other similar clerical activities.

"Travel time" means the reasonable and necessary time spent by the attorney in automobile travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a criminal case, if the place of detention is other than the county seat of the county in which the crime occurred;
5. To and from the location of the placement of a child in a juvenile case, if required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
6. To and from the location of the placement of a child in a juvenile case, if required by statute and court order to visit the placement and the placement is outside the state of Iowa; or
7. Other automobile travel for which prior written authorization is obtained from the state public defender.

493—11.2(13B) Contracts. An attorney may enter into a contract with the state public defender for the provision of legal services to indigent persons.

11.2(1) To be eligible to contract with the state public defender, an attorney must be licensed to practice law in the state of Iowa.

11.2(2) A copy of an original contract is available from the Office of the State Public Defender, Lucas State Office Building, Des Moines, Iowa 50319-0087, by telephoning (515)242-6158, or on the Web at www.spd.state.ia.us.

493—11.3(13B) Notice of proposed contract. The state public defender will give notice to attorneys of the availability of contracts for indigent defense services in a manner reasonably calculated to make attorneys aware of the availability of the contracts.

493—11.4(13B) Contract approval or rejection.

11.4(1) The state public defender may confer with judges, attorneys and others with knowledge of the potential contracting attorney's competence, effectiveness, trustworthiness, or ability to provide services to eligible individuals. The information received may be taken into consideration in determining whether to enter into a contract with the potential contracting attorney.

11.4(2) The state public defender may hold discussions with, or otherwise obtain information from, potential contracting attorneys to determine their qualifications and ability to perform the conditions of the contract.

11.4(3) The state public defender may hold discussions with, or otherwise obtain information from, potential contracting attorneys to establish the types of cases the contracting attorney will handle and the geographic area in which the cases will be handled.

11.4(4) The state public defender may decline to award a contract to a proposed contracting attorney if the state public defender receives information from credible sources that the attorney is not competent, effective, or trustworthy, or is not appropriate to provide the services for some other pertinent reason. The state public defender shall give written notice of this action to the attorney. The attorney may appeal this decision in the manner prescribed in rule 11.9(13B).

11.4(5) Nothing contained in this rule shall obligate the state public defender to enter into any contract if the state public defender determines that it is not in the best interests of the state to enter into such contract.

493—11.5(13B) Contract elements.

11.5(1) A contract with a private attorney may be awarded for the provision of trial or appellate legal services to indigents in cases as determined by the state public defender.

11.5(2) A contract can only be in force and effect when signed by the contracting attorney and approved by the state public defender.

11.5(3) The contracting attorney shall be an independent contractor and shall not be an agent or employee of the state of Iowa or of the state public defender. The attorney shall exercise the attorney's best independent professional judgment on behalf of clients to whom the attorney is assigned.

11.5(4) Once a contract has been awarded, the state public defender shall notify the court administrator of the district and clerks of court of the counties in which the contracting attorney has agreed to provide services.

11.5(5) A contract with a private attorney should cover, but not be limited to, the following subjects:

a. The categories of cases in which the attorney is to provide services;

b. The term of the contract and the responsibility of the attorney for provision of services in cases undertaken pursuant to the contract;

c. Identification of the attorney(s) who will perform legal representation under the contract;

d. A prohibition against assignment of the obligations undertaken pursuant to the contract, including a prohibition against substitution of counsel without prior consent of the state public defender or the court;

e. The qualifications of the contracting attorney to undertake legal representation pursuant to the contract;

f. A description of the compensation to be paid and the manner of payment;

g. A description of any expenses, such as support services, investigative services and expert witness expenses, which may be provided under the contract;

h. A description of the record-keeping and reporting requirements under the contract;

i. A description of the manner in which the contract may be terminated;

j. A description of the manner of disposition of ongoing obligations following termination.

11.5(6) Compensation. Unless the attorney has a contract with the state public defender that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of services rendered at the trial level in all cases to which the attorney is appointed after June 30, 1999:

		Out-of-Court Time	In-Court Time
Attorney time	Class A felonies	$60/hour	$60/hour
	Class B felonies	$55/hour	$55/hour
	All other cases	$50/hour	$50/hour
Paralegal time		$25/hour	N/A

In addition to this compensation, contract attorneys shall be entitled to payment and reimbursement for expenses to the extent provided in 493—Chapter 12 of these rules.

11.5(7) Applicability to juvenile cases. In juvenile cases to which the attorney was appointed prior to July 1, 1999, the state public defender will pay the attorney at the above-referenced rate for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. However, the attorney must file a separate claim for services before and after said hearing.

11.5(8) Appointments before July 1, 1999. Except as provided in subrule 11.5(7), in cases in which the attorney was appointed prior to July 1, 1999, attorney time shall be paid at a rate that is $5 per hour less than the above rates.

493—11.6(13B) Appellate contracts. Subject to the provisions of this rule, attorneys who have entered into a contract with the state public defender shall be paid $1,500 for each appellate case to which the attorney is appointed. One thousand dollars is payable following submission of the contract attorney's proof brief; the remainder, at the conclusion of the case.

11.6(1) *Frivolous appeals.* In appeals in which the attorney withdraws, based on a determination that the appeal is frivolous or in which the appeal is dismissed prior to the filing of the attorney's proof brief, the attorney shall be paid at the rate of $50 per hour with a maximum fee of $750 in each case.

11.6(2) *Unusually complicated cases.* In appeals that are unusually complicated, the attorney may negotiate with the state public defender for a fee in excess of the fees contained in this rule. However, this rule does not require that the state public defender agree to a higher fee in any particular case. The term "unusually complicated" as used in this rule means that the case is highly exceptional and complex from a legal or factual perspective and so atypical as to be beyond the purview of both the attorney and the state public defender. A case is not considered unusually complicated merely because the client is difficult to work with or because the case took longer than the attorney anticipated. Cases in which an application for further review is filed are generally deemed to be "atypical" as that term is used in this rule.

493—11.7(13B) Contract renewal. Prior to renewal of any contract, the state public defender may contact judges, attorneys, court personnel, and others to determine if any existing contract is being properly fulfilled. If the state public defender has determined that a contract renewal is in the best interests of the state, the state public defender may offer a new contract to the contracting attorney. The contracting attorney may accept the new contract by signing the same and returning the signed contract to the state public defender within 30 days of the date on which the contract is submitted to the contracting attorney. If a contracting attorney is not offered a contract renewal, the state public defender shall give the contracting attorney written notice of this action. The attorney may appeal this decision in the manner prescribed in rule 11.9(13B).

493—11.8(13B) Contract termination. Either the state public defender or the contract attorney upon 30 days' notice in any of the following instances may terminate any contract:

1. Mutual agreement of the parties;
2. Failure of appropriation or sufficient funds available to continue the services;
3. Failure to make required reporting;
4. Failure to abide by the provisions of the contract;
5. Repeated submission of inappropriate claims;
6. Good cause.

The terminating party shall notify the other party in writing not less than 30 days before the date of termination except in an emergency situation wherein the contract can be terminated upon notice of termination. An emergency situation would exist if the contracting attorney could no longer provide the service or in any situation which would have rendered the contracting attorney originally ineligible for the contract. The attorney may appeal any termination in the manner prescribed in rule 11.9(13B).

Upon termination of the contract, the cases currently assigned to the attorney shall be handled as provided in the contract.

493—11.9(13B) Appeals. An appeal is perfected by giving written notice of appeal to the state public defender within ten days of receipt of notice of the action. The notice of appeal shall state the grounds upon which the attorney challenges the action. Upon receipt of the appeal, the state public defender shall hold a hearing and may uphold, reverse or modify the prior decision. The decision following the hearing shall be made in writing and shall set forth all of the findings relied upon in making the decision. If an attorney remains aggrieved by the decision, the attorney may seek judicial review of the decision.

493—11.10(13B) Applicability. This chapter shall apply to contracts with an effective date on or after July 1, 1999.

These rules are intended to implement Iowa Code chapter 13B as amended by 1999 Iowa Acts, Senate File 451.

[Filed emergency 6/10/99—published 6/30/99, effective 7/1/99]
[Filed 10/26/99, Notice 6/30/99—published 11/17/99, effective 12/22/99]

CHAPTER 12
CLAIMS FOR INDIGENT DEFENSE LEGAL SERVICES

493—12.1(13B,815) Definitions.

"Attorney" means an individual licensed to practice law by the Iowa Supreme Court.

"Attorney time" means the total time the attorney appointed to a case spends on in-court time, out-of-court time, and in travel time attributable to that specific case.

"Case" means all charges or allegations arising from the same transaction or occurrence contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding.

"Court-appointed attorney" means an attorney appointed by the court to represent an indigent person whether or not the attorney has a contract with the state public defender.

"Fee limitations" means the limitations established by the state public defender for specific classes of cases.

"Fees" means the consideration paid to an attorney appointed by the court to represent an indigent.

"Good cause" means a sound, effective and truthful reason. It is something more than an excuse, plea, apology, extenuation, or some justification. Inadvertence or oversight does not constitute good cause.

"In-court time" means time spent by the attorney appointed to the case engaged before a judge or jury including, but not limited to, arraignments, bail hearings, pretrial conferences, pretrial motion hearings, evidentiary hearings, jury selection, trial, plea proceedings, posttrial hearings, and probation violation hearings.

"Indigent" means a person entitled to legal representation as defined in Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27.

"Out-of-court time" means time actually spent by the attorney appointed to the case in drafting documents, case preparation, depositions and other discovery, client or witness interviews, investigation, research, brief drafting, conferences or negotiations with opposing counsel or the court, obtaining or reviewing records, and other productive case-related time that is not "in-court time" or "travel time."

"Paralegal time" means time actually spent by someone other than the attorney appointed to the case which would be "out-of-court time" if performed by the attorney appointed to the case with the following exceptions. Paralegal time does not include any time spent on the case if the attorney appointed to the case also charges for the same time and activity. In addition, paralegal time does not include time spent making photocopies, sending faxes, mailing documents, answering phones, scheduling, or other similar clerical activities.

"Travel time" means the reasonable and necessary time spent by the attorney in automobile travel under one of the following circumstances:

1. To and from the scene of a crime;
2. To and from the location of a pretrial hearing, trial, or posttrial hearing, if the venue has been changed from the county in which the crime occurred;
3. To and from the place of incarceration of a client in a postconviction relief case, criminal appeal, or postconviction relief appeal;
4. To and from the place of detention of a client in a criminal case, if the place of detention is other than the county seat of the county in which the crime occurred;
5. To and from the location of the placement of a child in a juvenile case, if required by statute to visit the placement and the placement is located in Iowa, but outside the county in which the case is pending;
6. To and from the location of the placement of a child in a juvenile case, if required by statute and court order to visit the placement and the placement is outside the state of Iowa; or

7. Other automobile travel for which prior written authorization is obtained from the state public defender.

"Written" as used in these rules may include electronically transmitted communication to the extent permitted by subsequent rules of the state public defender.

493—12.2(13B,815) Submission and payment of claims. Court-appointed attorneys shall submit written claims to the state public defender for review, approval and payment. These claims shall include the following:

1. A completed request for compensation on a form promulgated by the state public defender.
2. A copy of the signed order appointing the attorney to the case.
3. A copy of any application and court order authorizing the attorney to exceed the fee limitations.
4. An itemization detailing all work done on the case for which the attorney seeks compensation. The itemization shall separately designate time claimed for in-court time, out-of-court time and travel time.

Payment for services shall be made only after all reporting requirements have been complied with and the claim has been approved by the state public defender.

493—12.3(13B,815) Interim claims. Claims will be paid only at the conclusion of the case, unless one of the following applies.

12.3(1) *Juvenile cases.* Initial claims for services in juvenile cases may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each hearing held in the case.

12.3(2) *Appellate cases.* A claim for work done to date by an attorney having an appellate contract with the state public defender may be submitted in appellate cases after filing of the attorney's proof brief. A subsequent claim may be submitted at the conclusion of the case.

12.3(3) *Specific cases.* Interim claims in Class A felony cases, Class B felony cases, cases under Iowa Code chapter 229A, and cases defined in Iowa Code section 902.12 may be submitted once every three months with the first claim submitted at least 90 days following the effective date of the attorney's appointment.

12.3(4) *Other cases.* In all other cases, claims filed prior to the conclusion of the case will not be paid except with prior written consent of the state public defender. Approval of or payment of any interim claims shall not affect the right of the state public defender to review any subsequent claims or the aggregate amount of the claims submitted.

493—12.4(13B,815) Fee limitations. The state public defender establishes fee limitations for combined attorney time and paralegal time in the following particular categories of cases:

Class A felonies	$15,000
Charges defined in Iowa Code section 902.12	$3,500
Class B felonies	$3,000
Class C felonies	$1,200
Class D felonies	$1,000
Aggravated misdemeanors	$1,000
Serious misdemeanors	$500
Simple misdemeanors	$200
Contempt/show cause proceedings	$200

Proceedings under Iowa Code chapter 229A	$10,000
Probation violation	$250
Delinquency (through disposition)	$1,000
Child in need of assistance (CINA) (through disposition)	$1,000
Termination of parental rights (through disposition)	$1,500
Juvenile review hearings (postdispositional hearings)	$200
Judicial bypass hearings	$150
Appeals to supreme court	$2,000

Postconviction relief—the greater of $1,000 or 1/2 of charge for which relief is sought.

12.4(1) *Claims in excess of fee limitations.* Claims will not be paid in excess of the fee limitations unless the attorney seeks and obtains authorization from the appointing court to exceed the fee limitations prior to exceeding the fee limitations. If authorization to exceed the fee limitations is granted, payments in excess of the fee limitations shall be made only for services performed after the date of submission of the request for authorization to exceed the fee limitations.

Nothing contained in this rule is intended to in any manner diminish, increase, or modify the state public defender's authority to review any and all claims for services as authorized by the Iowa Code.

12.4(2) *Retroactivity of authorization.* Authorization to exceed the fee limitations shall be effective only as to services performed after an application to exceed the fee limitations is filed with the court unless the court enters an order specifically authorizing a late filing of the application and finding that good cause exists that excuses the attorney's failure to timely file the application to exceed the fee limitations.

12.4(3) *Applicability to juvenile cases.* For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each phase of the case separately.

493—12.5(13B,815) Rate of compensation. Unless the attorney has a contract with the state public defender that provides for a different manner or rate of payment, the following hourly rates are deemed reasonable compensation and shall apply to payment of all claims for cases to which the attorney is appointed after June 30, 1999:

		Out-of-Court Time	In-Court Time
Attorney time	Class A felonies	$60/hour	$60/hour
	Class B felonies	$55/hour	$55/hour
	All other cases, including all appeals	$50/hour	$50/hour
Paralegal time		$25/hour	N/A

Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 5.

Claims for services rendered prior to the effective date of the attorney's appointment are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 5.

Claims for services that contain charges that are either not reasonable or not necessary to adequately represent the client are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 4.

12.5(1) *Appointments before July 1, 1999.* In cases to which the attorney was appointed prior to July 1, 1999, attorney time shall be paid at a rate that is $5 per hour less than the above rates.

Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced pursuant to 1999 Iowa Acts, Senate File 451, section 5.

12.5(2) *Applicability to juvenile cases.* In juvenile cases to which the attorney was appointed prior to July 1, 1999, the state public defender will pay the attorney at the above-referenced rate in the table above for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. However, the attorney must file a separate claim for services before and after said hearing.

493—12.6(13B,815) Reimbursement for specific expenses. The state public defender will reimburse the attorney for the payments made by the attorney to investigators for necessary investigations in the interest of justice, court reporters, and expert witnesses if the following conditions exist:

1. The attorney obtained court approval to conduct depositions or hire an investigator or expert witness prior to incurring any expenses with regard to each.
2. A copy of the application and order granting authority accompanies the claim.
3. The investigator, court reporter or expert witness does not submit a claim for the same services.
4. The attorney is seeking reimbursement for moneys already expended or certifies that the funds for these services will be paid to the investigator, court reporter or expert witness.

Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order, or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

In the case of an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, paragraphs "2," "3," and "4" above shall apply.

Claims for expenses that do not meet these conditions are not payable under the attorney's appointment and will be denied pursuant to 1999 Iowa Acts, Senate File 451, section 5.

493—12.7(13B,815) Reimbursement of other expenses. The state public defender will reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case:

1. Mileage for travel outside the county in which the attorney's office is located at the rate of 24 cents per mile;
2. Lodging and meals, when required to be away from one's home overnight for hearings and trials at the state approved rate;
3. Necessary photocopying at the attorney's office at the rate of 10 cents per copy;
4. Photocopying for which the attorney must pay at the actual cost of photocopying;
5. Postage, toll calls, collect calls, faxes and parking for the actual cost of these expenses;
6. Other specific expenses for which prior approval by the state public defender is obtained.

Claims for expenses other than these or at rates in excess of the rates set forth herein are not payable under the attorney's appointment and will be reduced or denied pursuant to 1999 Iowa Acts, Senate File 451, section 5.

493—12.8(13B,815) Court review. An attorney whose claim for compensation is denied, reduced, or otherwise modified by the state public defender, for other than mathematical errors, may seek court review of the action of the state public defender.

12.8(1) *Motions for court review.* Court review of the action of the state public defender is initiated by filing a motion with the appointing court requesting the review. The following conditions shall apply to all such motions:

1. The motion must be timely filed pursuant to 1999 Iowa Acts, Senate File 451, section 4 or 5.
2. The motion must set forth each and every ground on which the attorney intends to rely in challenging the actions of the state public defender.

3. The motion must have attached to it a complete copy of the claim, together with the notice of action that the attorney seeks to have reviewed.

4. A copy of all documents filed must be provided to the state public defender.

5. It is unnecessary for the state public defender to file any response to the motion.

12.8(2) *Hearings.* The following shall apply to hearings on motions for court review:

1. Notice of the hearing on the attorney's request for review shall be provided to the attorney and the state public defender at least ten days prior to the date and time set by the reviewing court.

2. Hearings on an attorney's motion for review shall be conducted telephonically. For purposes of this subrule, the state public defender may be reached at (515)242-6158.

3. As provided in 1999 Iowa Acts, Senate File 451, section 4 or 5, the burden shall be on the attorney requesting the review.

4. Issues not raised in the attorney's motion will not be considered by the court at the hearing.

5. The court shall issue a written ruling on the issues properly presented in the request for review.

These rules are intended to implement Iowa Code chapters 13B and 815 as amended by 1999 Iowa Acts, Senate File 451.

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CHAPTER 13
COURT-APPOINTED COUNSEL—ELIGIBILITY GUIDELINES

493—13.1(815) Definitions. As used in these rules, unless the context otherwise requires, the following definitions apply:

"Affidavit of Financial Status" means a full written disclosure of all income, assets, liabilities, dependents, and other information required to determine if an applicant qualifies for legal assistance by an appointed attorney.

"Applicant" means a person requesting legal assistance by appointed counsel.

"Assets" means all resources or possessions of the applicant.

"Child" or *"juvenile"* means a person so defined in Iowa Code chapter 232.

"Family" or *"household"* includes the applicant, applicant's spouse, including a common-law spouse and applicant's children living in the same residence.

"Governmental assistance program" means any public assistance program from which a person is receiving assistance.

"Income" means any money received from any source, including but not limited to remuneration for labor, products or services; money received from governmental assistance programs; tax refunds; prize winnings; pensions; investments; and money received from any other source.

"Liabilities" includes all living expenses, business or farming expenses, and fixed debts.

"Poverty income guidelines" means the annual poverty income guidelines established by the United States Department of Health and Human Services (DHHS).

493—13.2(815) Eligibility. The eligibility of any person for legal assistance by an appointed attorney shall be determined in accordance with Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27, and with the guidelines set forth in these rules. Any person who is eligible for appointed counsel shall be required by the court to repay all or a part of the cost of the applicant's legal assistance.

493—13.3(815) Income guidelines. Annually, the state public defender shall provide information to the court showing the most recently revised poverty income guidelines.

493—13.4(815) Designation of eligibility reviewer. The chief judge of each judicial district may designate the person(s) or entity to evaluate the eligibility of persons for legal assistance by an appointed attorney. However, the decision to appoint counsel remains with the court.

493—13.5(815) Application. Except as specifically provided in Iowa Code chapter 232, any person claiming to be entitled to legal representation by an appointed attorney shall have an indigency evaluation done before being provided legal representation. The applicant should provide information on an Affidavit of Financial Status/Application for Appointment of Counsel and Order form. This form will be prescribed by the state public defender, but any form containing substantially the same information will be accepted.

13.5(1) *Affidavit.* The applicant shall provide information required by the Affidavit of Financial Status under penalty of perjury.

13.5(2) *Family.* The applicant shall provide information that accurately represents the number of family members who are supported by or live with the applicant.

13.5(3) *Income.* The applicant shall provide information that accurately represents the total gross income received or reasonably anticipated to be received by the applicant.

13.5(4) *Household income.* The applicant shall provide information that accurately represents the gross income of the household in which the applicant lives. The income of a spouse is not included if the spouse is the alleged victim in the offense charged. The income of a child member of the household need not be included unless the legal representation is sought for the child in a delinquency proceeding.

13.5(5) *Assets.* The applicant shall provide information that accurately represents the total assets owned, in whole or in part, by the applicant. This includes the requirement to disclose interest in real property and tangible and intangible personal property.

13.5(6) *Liabilities.* The applicant shall provide information that accurately represents the total monthly debts and expenses for which the applicant is responsible. Child support and alimony payments should be included only when payments have been made in a timely manner.

13.5(7) *Nature of proceedings.* In criminal cases, the Affidavit of Financial Status shall contain a statement of the charge(s) against the defendant. In juvenile or civil cases, a statement of the nature of the proceedings shall be included.

13.5(8) *Child applicant.* If the applicant is a child, the child's parent, guardian, or custodian shall complete the Affidavit of Financial Status. The Affidavit of Financial Status shall include a statement of the income, assets and liabilities of the person or persons having a legal obligation to support the child.

13.5(9) *Additional information.* The applicant shall provide such additional information as may be required by the court to determine applicant's eligibility for appointed counsel. The applicant has a continuing duty to update information provided in the Affidavit of Financial Status to reflect changes in the information previously provided.

493—13.6(815) Evaluation of Affidavit of Financial Status. In determining whether counsel should be appointed to represent the applicant, the court should consider the following:

13.6(1) *Family size.* The total size of applicant's household shall be used to determine eligibility for appointed counsel.

13.6(2) *Household income.* The applicant's income, or the combined income of the applicant and the applicant's spouse, if living in the same residence, shall be used in determining an applicant's household income, subject to the following:

a. The income of applicant's spouse shall not be considered if the spouse is the alleged victim of the offense charged.

b. The income of a child shall not be considered unless the child is requesting representation in a delinquency case, or unless the child is under a conservatorship or is the beneficiary of trust proceeds.

c. In juvenile proceedings, the income of both parents shall be considered to determine whether the child is entitled to appointed counsel. If a child's parents are divorced, the household income of each parent shall be considered separately.

13.6(3) *DHHS poverty income guidelines.* The applicant's family size and household income shall be compared to the DHHS poverty income guidelines to determine whether the applicant's household income is less than 125 percent of the poverty level; between 125 percent and 200 percent of the poverty level; or greater than 200 percent of the poverty level.

13.6(4) *Income less than 125 percent of the poverty level.* If the applicant's household income is less than 125 percent of the poverty level, the applicant is entitled to appointed counsel, unless the court determines that the applicant is able to pay for the cost of an attorney to represent the applicant on the pending charge. In determining whether the applicant is able to pay for the cost of an attorney, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

13.6(5) *Income between 125 percent and 200 percent of the poverty level.* If the applicant's household income is greater than 125 percent, but less than 200 percent of the poverty level, the applicant is not entitled to appointed counsel, unless the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

13.6(6) *Income greater than 200 percent of the poverty level.* If the applicant's household income is greater than 200 percent of the poverty level, the applicant is not entitled to appointed counsel, unless the applicant is charged with a felony and the court determines and makes a written finding that not appointing counsel on the pending charge would cause the applicant substantial hardship. In determining whether substantial hardship would result, the court should consider not only the applicant's income, but also the availability of any assets subject to execution and the seriousness of the charge.

13.6(7) *Applicability to juvenile cases.* In evaluating whether to appoint counsel for a parent in a juvenile proceeding, the court shall consider not only the applicant's income, but also the availability of any assets subject to execution and the nature of the proceeding in determining whether the parent is financially unable to employ counsel.

493—13.7(815) Payment procedures.

13.7(1) *Payment to clerk.* An applicant who has been determined to be eligible for appointed counsel shall pay any sums ordered by the court to the office of the clerk of the district court. This order for payment may be entered during or following the pendency of the action.

13.7(2) *Wage assignments.* If the applicant is employed, the applicant shall execute an assignment of applicant's wages. A portion of the applicant's wages, as determined by the court, shall be paid to the office of the clerk of district court for recovery of attorney fees. This assignment of wages may be entered during or following the pendency of the action.

These rules are intended to implement Iowa Code section 815.9 as amended by 1999 Iowa Acts, Senate File 451, section 27.

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TITLE IV
WASTEWATER TREATMENT AND DISPOSAL

CHAPTER 60
SCOPE OF TITLE—DEFINITIONS—FORMS—RULES OF PRACTICE

[Prior to 7/1/83, see DEQ Chs 15 and 24]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—60.1(455B,17A) Scope of title. The department has jurisdiction over the surface and groundwater of the state to prevent, abate and control water pollution, by establishing standards for water quality and for direct or indirect discharges of wastewater to waters of the state and by regulating potential sources of water pollution through a system of general rules or specific permits. The construction and operation of any wastewater disposal system and the discharge of any pollutant to a water of the state requires a specific permit from the department, unless exempted by the department.

This chapter provides general definitions applicable in this title and rules of practice, including forms, applicable to the public in the department's administration of the subject matter of this title.

Chapter 61 contains the water quality standards of the state, including classification of surface waters. Chapter 62 contains the standards or methods for establishing standards relevant to the discharge of pollutants to waters of the state. Chapter 63 identifies monitoring, analytical and reporting requirements pertaining to permits for the operation of wastewater disposal systems. Chapter 64 contains the standards and procedures for obtaining construction, operation and discharge permits for wastewater disposal systems other than those associated with animal-feeding operations. Chapter 65 specifies minimum waste control requirements and permit requirements for animal-feeding operations. Chapter 66 specifies restrictions on pesticide application to waters. Chapter 68 contains standards and licensing requirements applicable to commercial septic tank cleaners. Chapter 69 specifies guidelines for private sewage disposal.

567—60.2(455B) Definitions. The following definitions apply to this title, unless otherwise specified in the particular chapter of this title:

"Act" means the Federal Water Pollution Control Act as amended through July 1, 1999, 33 U.S.C. §1251 et seq.

"Acute toxicity" means that level of pollutants which would rapidly induce a severe and unacceptable impact on organisms.

"Aquatic pesticide" means any pesticide, as defined in Iowa Code section 206.2, that is labeled for application to surface water.

"ASTM" means "Annual Book of Standards, Part 31, Water." The publication is available from the American Society for Testing and Materials, 1916 Race St., Philadelphia, Pennsylvania 19103.

"Best management practice (BMP)" means a practice or combination of practices that is determined, after problem assessment, examination of alternative practices, and appropriate public participation, to be the most effective, practicable (including technological, economic and institutional considerations) means of preventing or reducing the amount of pollution generated by nonpoint sources to a level compatible with water quality goals.

"Biochemical oxygen demand (five-day)" means the amount of oxygen consumed in the biological processes that break down organic matter in water by aerobic biochemical action in five days at 20°C.

"Carbonaceous biochemical oxygen demand (five-day)" means the amount of oxygen consumed in the biological processes that break down carbonaceous organic matter in water by aerobic biochemical action in five days at 20°C.

"Chronic toxicity" means that level of pollutants which would, over long durations or recurring exposure, cause a continuous, adverse or unacceptable response in organisms.

"Continuing planning process (CPP)" means the continuing planning process, including any revision thereto, required by Sections 208 and 303(e) of the Act (33 U.S.C. §§1288 and 1313(e)) for state water pollution control agencies. The continuing planning process is a time-phased process by which the department, working cooperatively with designated areawide planning agencies:

a. Develops a water quality management decision-making process involving elected officials of state and local units of government and representatives of state and local executive departments that conduct activities related to water quality management.

b. Establishes an intergovernmental process (such as coordinated and cooperative programs with the state conservation commission in aquatic life and recreation matters, and the soil conservation division, department of agriculture and land stewardship in nonpoint pollution control matters) which provides for water quality management decisions to be made on an areawide or local basis and for the incorporation of such decisions into a comprehensive and cohesive statewide program. Through this process, state regulatory programs and activities will be incorporated into the areawide water quality management decision process.

c. Develops a broad-based public participation (such as utilization of such mechanisms as basin advisory committees composed of local elected officials, representatives of areawide planning agencies, the public at large, and conservancy district committees) aimed at both informing and involving the public in the water quality management program.

d. Prepares and implements water quality management plans, which identify water quality goals and established state water quality standards, defines specific programs, priorities and targets for preventing and controlling water pollution in individual approved planning areas and establishes policies which guide decision making over at least a 20-year span of time (in increments of 5 years).

e. Based on the results of the statewide (state and areawide) planning process, develops the state strategy to be updated annually, which sets the state's major objectives, approach, and priorities for preventing and controlling pollution over a five-year period.

f. Translates the state strategy into the annual state program plan (required under Section 106 of the federal Act), which establishes the program objectives, identifies the resources committed for the state program each year, and provides a mechanism for reporting progress toward achievement of program objectives.

g. Periodically reviews and revises water quality standards as required under Section 303(c) of the federal Act.

"CFR" means the Code of Federal Regulations as published by the Superintendent of Documents, U.S. Government Printing Office, Washington, D.C. 20402.

"Crossover point" means that location in a river or stream in which the flow shifts from being principally along one bank to the opposite bank. This crossover point usually occurs within two curves or an S-shaped curve of a water course.

"Culture water" means reconstituted water or other acceptable water used for culturing test organisms.

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

"Diluted effluent sample" means a sample of effluent diluted with culture water at the same ratio as the dry weather design flow to the applicable receiving stream flow contained in the zone of initial dilution as allowed in 567—subrule 61.2(4), regulatory mixing zones, including paragraphs *"b," "c"* and *"d."*

b. *Amendments.* A permittee seeking an amendment to its operation permit shall make a written request to the department which shall include the nature of the requested amendment and the reasons therefor. A variance or amendment to the terms and conditions of a general permit shall not be granted. If a variance or amendment to a general permit is desired, the applicant must apply for an individual permit following the procedures in 567—paragraph 64.3(4)*"a."*

(1) Schedules of compliance. Requests to amend a permit schedule of compliance shall be made at least 30 days prior to the next scheduled compliance date which the permittee contends it is unable to meet. The request shall include any proposed changes in the existing schedule of compliance, and any supporting documentation for the time extension. An extension may be granted by the department for cause. Cause includes unusually adverse weather conditions, equipment shortages, labor strikes, federal grant regulation requirements, or any other extenuating circumstances beyond the control of the requesting party. Cause does not include economic hardship, profit reduction, or failure to proceed in a timely manner.

(2) Interim effluent limitations. A request to amend interim effluent limitations in an existing permit shall include the proposed amendments to existing effluent limitations and any documentation in support of the proposed limitations. The department will evaluate the request based upon the capability of the disposal system to meet interim effluent limitations, taking into account the contributions to treatment capability which can be made by good operation and maintenance of the disposal system and by minor alterations which can be made to the system to improve its capability. The department may deny a request where the inability of the disposal system to meet interim effluent limitations is due to increased waste loadings on the system over those loadings upon which the interim limitations were based.

(3) Monitoring requirements. A request for a change in monitoring requirements in an existing permit shall include the proposed changes in monitoring requirements and documentation therefor. The requesting permittee must provide monitoring results which are frequent enough to reflect variations in actual wastewater characteristics over a period of time and are consistent in results from sample to sample. The department will evaluate the request based upon whether or not less frequent sample results accurately reflect actual wastewater characteristics and whether operational control can be maintained.

Upon receipt of a request the department may grant, modify, or deny the request. If the request is denied, the department may notify the permittee of any violation of its permit and may proceed administratively on the violation or may request that the commission refer the matter to the attorney general for legal action.

These rules are intended to implement Iowa Code section 17A.3(1)*"b"* and chapter 455B, division III, part 1.

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c. Waste stabilization ponds. Departmental secondary treatment standards for waste stabilization ponds are the same as those found in subrule 62.3(1) concerning secondary treatment with the exception of the standards for suspended solids which are as follows:

(1) SS, the 30-day average shall not exceed 80 mg/l.

(2) SS, the 7-day average shall not exceed 120 mg/l.

d. Less concentrated influent wastewater for separate sewers. The department may substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements in 62.3(1) and 62.3(3) provided that the permittee demonstrates that:

(1) The treatment works is consistently meeting or will consistently meet, its permit effluent concentration limits but its percent removal requirements cannot be met due to less concentrated influent wastewater.

(2) To meet the percent removal requirements, the treatment works would have to achieve significantly more stringent limitations than would otherwise be required by the concentration-based standards, and

(3) The less concentrated influent wastewater is not the result of excessive infiltration/inflow (I/I). A system is considered to have nonexcessive I/I when an average wet weather influent flow (as defined in the department's design standards 567—paragraph 64.2(9)*"b,"* Chapter 14.4.5.1.b) comprised of domestic wastewater plus infiltration plus inflow equals less than 275 gallons per day per capita.

e. Upgraded facilities designed to operate in a split flow mode. The department may substitute either a lower percent removal requirement or a mass loading limit for the percent removal requirements in 62.3(1) only (not 62.3(3)),provided that the treatment works is designed to split part of the primary treated wastewater flow around the secondary treatment unit(s). The design to accommodate split flow must be approved by the department and consistent with applicable design standards for wastewater treatment facilities. The requirements of 62.3(2)*"d"* would apply to facilities considered under this subrule. This subrule shall not be considered for facilities eligible for treatment equivalent to secondary treatment under 62.3(3).

Any applicant requesting a permit limit adjustment must include as part of the request an analysis of the I/I sources in the system and a plan for the elimination of all inflow sources such as roof drains, manholes and storm sewer interconnections. Infiltration sources that can be economically eliminated or minimized shall be corrected.

f. Dilution. Nothing in this subrule or any other rule of the department shall be construed to encourage dilution of sewage as a means of complying with secondary treatment effluent standards. Reasonable efforts to prevent and abate infiltration of groundwater into sewers, and prevention or removal of any significant source of inflow, are required of all persons responsible for facilities subject to these standards.

62.3(3) *Treatment equivalent to secondary treatment.* This subrule describes the minimum level of effluent quality attainable by facilities eligible for treatment equivalent to secondary treatment in terms of the pollutant measurements $CBOD_5$, SS and pH. Treatment works shall be eligible at any time for consideration of effluent limitations described for treatment equivalent to secondary treatment if:

a. The $CBOD_5$ and SS effluent concentrations consistently achievable through proper operation and maintenance of the treatment works exceed the minimum level of the effluent quality set forth in 62.3(1)*"a"* and 62.3(1)*"b"*; and

b. A trickling filter or waste stabilization pond is used as the principal process; and

c. The treatment works provide significant biological treatment of municipal wastewater; and

d. The facility was not constructed since January 1, 1972, in order to achieve design effluent limits set forth in 62.3(1)*"a," "b,"* and *"c"* or predecessor rules on secondary treatment. An eligible trickling filter or waste stabilization pond may have undergone an upgrade to achieve the effluent requirements specified in this subrule. Nothing in this subrule shall be construed to allow a facility to circumvent the design standards of 567—Chapter 64 in the replacement or construction of the individual treatment units; and

e. The treatment works is one that does not receive organic or hydraulic loadings which prevent the facilities from consistently complying with 62.3(3)*"f," "g,"* and *"h."*

All requirements for the specified pollutant measurements in paragraphs *"f," "g,"* and *"h"* following in this subrule shall be achieved except as provided for above in 62.3(2) or paragraph *"i"* of this subrule below.

f. $CBOD_5$ limitations:

(1) The 30-day average shall not exceed 40 mg/l.

(2) The 7-day average shall not exceed 60 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

g. SS limitations. Except where SS values have been adjusted in accordance with subrule 62.3(2), paragraph *"c,"* above:

(1) The 30-day average shall not exceed 45 mg/l.

(2) The 7-day average shall not exceed 65 mg/l.

(3) The 30-day average percent removal shall not be less than 65 percent.

h. pH. The requirements of above subrule 62.3(1), paragraph *"c,"* shall be met.

i. Permit adjustments. More stringent limitations are required if the 30-day average and 7-day average $CBOD_5$ and SS effluent values that could be achievable through proper operation and maintenance of the upgraded or existing treatment works, based on an analysis of the past performance of the treatment works, would enable the treatment works to achieve more stringent limitations. These more stringent limitations shall be maintained and not relaxed unless as specified in subrule 62.3(2)*"b."*

Effluent concentrations consistently achievable through proper operation and maintenance are:

(1) The ninety-fifth percentile value of the 30-day average effluent quality achieved by the upgraded or existing treatment works in a period of at least two years, excluding values attributable to upsets, bypasses, operational errors, or other unusual conditions, and

(2) A 7-day average value equal to 1.5 times the value derived for the 30-day average above.

This subrule shall only be applied when the existing or upgraded facility has achieved its design organic loading as specified in the most recent construction permit or its accompanying documentation. The determination of the effluent concentration consistently achievable through proper operation and maintenance shall only be based on the effluent quality data following the period when the design organic loading has been achieved.

567—62.4(455B) Federal effluent and pretreatment standards. The federal standards, 40 Code of Federal Regulations (CFR), revised as of July 1, 1999, are applicable to the following categories:

62.4(1) *General provisions.* The following is adopted by reference: 40 CFR Part 401.

62.4(2) *Cooling water intake structures.* Reserved.

62.4(3) *General pretreatment regulations for existing and new sources of pollution.* The following is adopted by reference: 40 CFR 403.

62.4(4) *Thermal discharges.* The following is adopted by reference: 40 CFR Part 125, Subpart H.

62.4(5) *Dairy products processing industry point source category.* The following is adopted by reference: 40 CFR Part 405.

62.4(60) *Hospital point source category.* The following is adopted by reference: 40 CFR Part 460.

62.4(61) *Battery manufacturing point source category.* The following is adopted by reference: 40 CFR Part 461.

62.4(62) Reserved.

62.4(63) *Plastic molding and forming point source category.* The following is adopted by reference: 40 CFR Part 463.

62.4(64) *Metal molding and castings point source category.* The following is adopted by reference: 40 CFR Part 464.

62.4(65) *Coil coating point source category.* The following is adopted by reference: 40 CFR Part 465.

62.4(66) *Porcelain enameling point source category.* The following is adopted by reference: 40 CFR Part 466.

62.4(67) *Aluminum forming point source category.* The following is adopted by reference: 40 CFR Part 467.

62.4(68) *Copper forming point source category.* The following is adopted by reference: 40 CFR Part 468.

62.4(69) *Electrical and electronic components point source category.* The following is adopted by reference: 40 CFR Part 469.

62.4(70) Reserved.

62.4(71) *Nonferrous metals forming and metal powders.* The following is adopted by reference: 40 CFR Part 471.

567—62.5(455B) Federal toxic effluent standards. The following is adopted by reference: 40 CFR Part 129, revised as of July 1, 1999.

567—62.6(455B) Effluent limitations and pretreatment requirements for sources for which there are no federal effluent or pretreatment standards.

62.6(1) *Definitions.* As used in this rule:

a. *"Average"* means the sum of the total daily discharges by weight, volume or concentration during the reporting period (as specified in the operation permit) divided by the total number of days during the reporting period when the facility was in operation. With respect to the monitoring requirements, the "daily average" discharge shall be determined by the summation of all the measured daily discharges by weight, volume or concentration divided by the number of days during the reporting period when the measurements were made.

b. *"Maximum"* means the total discharge by weight, volume or concentration which cannot be exceeded during a 24-hour period.

c. *"Best engineering judgment"* means a judgment that considers any or all of the following:

(1) Known state-of-the-art (i.e., demonstrated treatment that is being done or can be done);

(2) Published technical articles and research results;

(3) Engineering reference books;

(4) Consultation with acknowledged experts in the field;

(5) Availability of equipment;

(6) Known or suspected toxicity of the pollutants;

(7) Safety, welfare and aesthetic effects on persons who may come in contact with the discharge; and

(8) Standards and rules of other regulatory agencies and states.

62.6(2) *Time of compliance.* Effluent limitations and pretreatment limitations established pursuant to this rule shall be achieved within a reasonable time after receipt of notice from the department of the applicability of these limitations.

62.6(3) *Effluent limitations.* This subrule establishes effluent limitations on the discharge of pollutants from sources other than publicly owned treatment works and privately owned domestic sewage treatment works that are not subject to the federal effluent standards adopted by reference in 62.4(1) and 62.4(3) to 62.4(60).

a. There shall be established an effluent limitation that represents the best engineering judgment of the department of the degree of effluent reduction consistent with the Act and Iowa Code chapter 455B.

b. The following wastes shall not be introduced into privately owned treatment works subject to this subrule:

(1) Wastes that create a fire or explosion hazard in the treatment works.

(2) Wastes at a flow rate or pollutant discharge rate, or both, which is excessive over relatively short time periods so that there is a treatment process upset and subsequent loss of treatment efficiency such that the effluent limitations in the permit of the treatment works are violated.

62.6(4) *Pretreatment requirements for incompatible wastes.* This subrule establishes pretreatment requirements for incompatible pollutants that apply to sources other than those covered by 40 CFR §128.133, (i.e., sources other than existing "major contributing industries" as defined in 40 CFR §128.124), and to sources that are new or existing major contributing industries for which there is no federal pretreatment standard (i.e., sources which do not fall within a point source category or, if they do fall within a point source category, sources for which the administrator has not yet promulgated a pretreatment standard).

a. For sources that are within a point source category adopted by reference in 62.4(455B) for which there are promulgated effluent limitation guidelines, but no promulgated pretreatment standards, the pretreatment standard for incompatible pollutants shall be the promulgated effluent limitation guideline. Provided, that if the treatment works which receives the pollutants is committed in its operation permit to remove a specified percentage of any incompatible pollutant, the pretreatment standard applicable to users of such treatment works shall be correspondingly reduced for that pollutant.

b. For sources that are not subject to paragraph *"a,"* there shall be established an effluent limitation that represents the best engineering judgment in the department of the degree of effluent reduction consistent with the Act and Iowa Code chapter 455B.

c. In no case shall a discharge into a publicly owned treatment works or a privately owned domestic sewage treatment works by a source subject to this subrule intermittently change the pH of the raw waste reaching the treatment plant by more than 0.5 pH unit or cause the pH of the waste reaching the plant to be less than 6.0 or greater than 9.0.

567—62.7(455B) Effluent limitations less stringent than the effluent limitation guidelines. An effluent limitation less stringent than the effluent limitation guideline (adopted by reference in 62.4(455B)) representing the degree of effluent reduction achievable by application of the best practicable control technology currently available may be allowed in an NPDES permit if the factors relating to the equipment or facilities involved, the process applied, or other such factors related to the discharger are fundamentally different from the factors considered by the administrator in the establishment of the guidelines. An individual discharger or other interested person may submit evidence concerning such factors to the director. On the basis of such evidence or other available information, the director will make a written finding that such factors are or are not fundamentally different from the facility compared to those specified in the development document. Any such less stringent effluent limitations must, as a condition precedent, be approved by the administrator.

567—62.8(455B) Effluent limitations or pretreatment requirements more stringent than the effluent or pretreatment standards.

62.8(1) *Effluent limitations more stringent than the effluent limitation guidelines.* An effluent limitation more stringent than the effluent limitation guidelines representing the degree of effluent reduction achievable by application of the best practicable control technology currently available may be required in an NPDES permit if the factors relating to the equipment or facilities involved, the process applied, or other such factors related to the discharger are fundamentally different from the factors considered by the administrator in the establishment of the guidelines. An individual discharger or other interested person may submit evidence concerning such factors to the director. On the basis of such evidence or other information available to the director, the director will make a written finding that such factors are or are not fundamentally different for the facility compared to those specified in the development document. Any such more stringent effluent limitation must, as a condition precedent, be approved by the administrator.

62.8(2) *Effluent limitations necessary to meet water quality standards.* No effluent, alone or in combination with the effluent of other sources, shall cause a violation of any applicable water quality standard. When it is found that a discharge that would comply with applicable effluent standards in 62.3(455B), 62.4(455B) or 62.5(455B) or effluent limitations in 62.6(455B) would cause violation of water quality standards, the discharge will be required to meet whatever effluent limitations are necessary to achieve water quality standards, including the nondegradation policy of 567—subrule 61.2(2). Any such effluent limitation shall be determined using a statistically based portion of the calculated waste load allocation, as described in "Supporting Document for Iowa Water Quality Management Plans" (Iowa Department of Water, Air and Waste Management, July 1976, Chapter IV, as revised on March 20, 1990). (Copy available upon request to the Department of Natural Resources, Henry A. Wallace Building, 900 East Grand, Des Moines, Iowa 50319. Copy on file with the Iowa Administrative Rules Coordinator.)

62.8(3) *Pretreatment requirements more stringent than pretreatment standards or requirements.* The department or the publicly owned treatment works may impose pretreatment requirements more stringent than the applicable pretreatment standard of 62.4(455B) or pretreatment requirements of 62.6(455B) if such more stringent requirements are necessary to prevent violations of water quality standards, or the permit limitations of the treatment works.

62.8(4) *Effluent limitations or pretreatment requirements in approved areawide waste treatment management plans.* Effluent limitations or pretreatment requirements more stringent than applicable effluent or pretreatment standards in 62.3(455B) to 62.5(455B) or effluent limitations or pretreatment requirements in 62.6(455B) may be imposed by the department if the more stringent effluent limitations or pretreatment requirements are required by an approved areawide waste treatment management (208(b)) plan.

62.8(5) *Effluent limitations for pollutants not covered by effluent or pretreatment standards.* An effluent limitation on a pollutant not otherwise regulated under 62.3(455B) to 62.6(455B) (e.g., polybrominated biphenyls, PBBs) may be imposed on a case-by-case basis. Such limitation shall be based on effect of the pollutant in water and the feasibility and reasonableness of treating such pollutant.

567—62.9(455B) Disposal of pollutants into wells. Commencing September 1, 1977, there shall be no disposal of a pollutant other than heat into wells within Iowa. Any disposal of heat shall be sufficiently controlled to protect the public health and welfare and to prevent pollution of ground and surface water resources. In reviewing any permits proposed to be issued for the disposal into wells, the director shall consider, among other things, any policies, technical information, or requirements specified by the administrator in regulations issued pursuant to the Act or in directives issued to EPA regional offices.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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CHAPTER 63
MONITORING, ANALYTICAL AND REPORTING REQUIREMENTS

[Prior to 7/1/83, DEQ Ch 18]
[Prior to 12/3/86, Water, Air and Waste Management[900]]

567—63.1(455B) Guidelines establishing test procedures for the analysis of pollutants. Only the procedures prescribed in this chapter shall be used to perform the measurements indicated in an application for an operation permit submitted to the department, a report required to be submitted by the terms of an operation permit, and a certification issued by the department pursuant to Section 401 of the Act.

63.1(1) *Identification of test procedures.*

a. The following is adopted by reference: 40 Code of Federal Regulations (CFR) Part 136, revised as of July 1, 1999.

b. All parameters for which testing is required by a wastewater discharge permit, permit application, or administrative order, except operational performance testing, must be analyzed using approved methods specified in 40 CFR Part 136.3 or, under certain circumstances, by other methods that may be more advantageous to use when such other methods have been previously approved by the director pursuant to 63.1(2). Samples collected for operational testing pursuant to 63.3(4) need not be analyzed by approved analytical methods; however, commonly accepted test methods should be used.

63.1(2) *Application for alternate test procedures.*

a. Any person may apply to the EPA regional administrator through the director for approval of an alternate test procedure.

b. The application for an alternate test procedure may be made by letter and shall:

(1) Provide the name and address of the responsible person or firm holding or applying for the permit (if not the applicant) and the applicable ID number of the existing or pending permit and type of permit for which the alternate test procedure is requested and the discharge serial number, if any.

(2) Identify the pollutant or parameter for which approval of an alternate testing procedure is being requested.

(3) Provide justification for using testing procedures other than those specified in 40 CFR Part 136.3.

63.1(3) *Required containers, preservation techniques and holding times.* All samples collected in accordance with self-monitoring requirements as defined in an operation permit shall comply with the container, preservation techniques, and holding time requirements as specified in Table VI. Sample preservation should be performed immediately upon collection, if feasible.

63.1(4) All laboratories conducting analyses required by this chapter must be certified in accordance with 567—Chapter 83 except that routine, on-site monitoring for pH, temperature, dissolved oxygen, total residual chlorine and other pollutants that must be analyzed immediately upon sample collection, settleable solids, physical measurements such as flow and cell depth, and operational monitoring tests specified in 63.3(4) are excluded from this requirement.

567—63.2(455B) Records of monitoring activities and results.

63.2(1) The permittee shall maintain records of all information resulting from any monitoring activities required in its operation permit.

63.2(2) Any records of monitoring activities and results shall include for all samples:

a. The date, exact place and time of sampling.

b. The dates analyses were performed.

c. Who performed the analyses.

d. The analytical techniques or methods used, and

e. The results of such analyses.

63.2(3) The permittee shall retain for a minimum of three years any records of monitoring activities and results including all original strip chart recordings for continuous monitoring instrumentation and calibration and maintenance records. The period of retention shall be considered to be extended during the course of any unresolved litigation or when requested by the director or the regional administrator.

567—63.3(455B) Minimum self-monitoring requirements in permits.

63.3(1) *Monitoring by organic waste dischargers.* The minimum self-monitoring requirements to be incorporated in operation permits for facilities discharging organic wastes shall be the appropriate requirements in Tables I, II, and IV. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexity of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit.

63.3(2) *Monitoring by inorganic waste dischargers.* The minimum self-monitoring requirements to be incorporated in the operation permit for an inorganic waste discharge shall be the appropriate requirement in Table V. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor which requires strict control to meet the effluent limitations of the permit.

63.3(3) *Monitoring of industrial contributors to publicly owned treatment works.* All major contributing industries as defined in 567—60.2(455B) and industrial contributors that are subject to national pretreatment standards shall be monitored in accordance with the requirements in Tables I, II and V, provided that the monitoring program of a publicly owned treatment works with a pretreatment program approved by the department may be used in lieu of the tables. The results of such monitoring shall be submitted to the department in accordance with the reporting requirements in the operation permit.

63.3(4) *Operational monitoring.* The minimum operational monitoring to be incorporated in permits shall be the appropriate requirements in Table III. These requirements reflect minimum indicators that any adequately run system must monitor. The department recognizes that most well-run facilities will be monitored more closely by the operator as appropriate to the particular system. However, the results of this monitoring need not be reported to the department. Operational monitoring requirements may be modified or reduced at the discretion of the director when adequate justification is presented by the permittee that the reduced or modified requirements will not adversely impact the operation of the facility. Additional operational monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, complexity of the treatment process, history of noncompliance or any other factor that requires strict control to meet the effluent limitations of the permit.

567—63.4(455B) Effluent toxicity testing requirements in permits.

63.4(1) *Effluent toxicity testing.* All major municipal and industrial dischargers shall be required to carry out effluent toxicity testing. Minor dischargers may be required to conduct effluent toxicity tests based on a case-by-case evaluation of the impact of the discharge on the receiving stream or industrial contribution to the system. All dischargers required to conduct effluent toxicity tests shall conduct, at a minimum, one valid effluent toxicity test annually. The testing requirements will be placed in the operation permit for each discharger required to conduct this testing. Additional monitoring may be specified in the operation permit based on a case-by-case evaluation of the impact of the discharge on the receiving stream, toxic or deleterious effects of wastewaters, industrial contribution to the system, complexities of the treatment process, history of noncompliance or any other factor which requires strict operational control to meet the effluent limitations of the permit. Any effluent toxicity test completed by the department or other agency and conducted according to procedures stated or referenced in this rule may be used to determine compliance with an operational permit.

Table VI Notes

1. Polyethylene (P) or Glass (G).

2. Sample preservation should be performed immediately upon sample collection. For composite samples, each aliquot should be preserved at the time of collection. When use of an automated sampler makes it impossible to preserve each aliquot, then samples may be preserved by maintaining at 4°C until compositing and sample splitting is completed.

3. Samples should be analyzed as soon as possible after collection. The times listed are the maximum times that samples may be held before analysis and still be considered valid. Samples may be held for longer periods only if the permittee, or monitoring laboratory, has data on file to show that the specific types of samples under study are stable for the longer time, and has received a variance from the executive director. Some samples may not be stable for the maximum time period given in the table. A permittee, or monitoring laboratory, is obligated to hold the sample for a shorter time if knowledge exists to show this is necessary to maintain sample stability.

4. Should only be used in the presence of residual chlorine.

5. Maximum holding time is 24 hours when sulfide is present. Optionally, all samples may be tested with lead acetate paper before the pH adjustment in order to determine if sulfide is present. If sulfide is present, it can be removed by the addition of cadmium carbonate powder until a negative spot test is obtained. The sample is filtered and then NaOH is added to pH 12.

6. Samples should be filtered immediately onsite before adding preservative for dissolved metals.

These rules are intended to implement Iowa Code section 455B.173.

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64.6(6) *Transfer of ownership—construction activity part of a larger common plan of development.* For construction activity which is part of a larger common plan of development, such as a housing or commercial development project, in the event a permittee transfers ownership of all or any part of property subject to NPDES General Permit No. 2, both the permittee and transferee shall be responsible for compliance with the provisions of the general permit for that portion of the project which has been transferred, including when the transferred property is less than five acres in area, from and after the date the department receives written notice of the transfer, provided that:

a. The transferee is notified in writing of the existence and location of the general permit and pollution prevention plan, and of the transferee's duty to comply, and proof of such notice is included with the notice to the department of the transfer.

b. If the transferee agrees, in writing, to become the sole responsible permittee for the property which has been transferred, then the transferee shall be solely responsible for compliance with the provisions of the general permit for the transferred property from and after the date the department receives written notice of the transferee's assumption of responsibility.

567—64.7(455B) Terms and conditions of NPDES permits.

64.7(1) *Prohibited discharges.* No NPDES permit may authorize any of the discharges prohibited by 567—62.1(455B).

64.7(2) *Application of effluent, pretreatment and water quality standards and other requirements.* Each NPDES permit shall include any of the following that is applicable:

a. An effluent limitation guideline promulgated by the administrator under Sections 301 and 304 of the Act and adopted by reference by the commission in 567—62.4(455B).

b. A standard of performance for a new source promulgated by the administrator under Section 306 of the Act and adopted by reference by the commission in 567—62.4(455B).

c. An effluent standard, effluent prohibition or pretreatment standard promulgated by the administrator under Section 307 of the Act and adopted by reference by the commission in 567—62.4(455B) or 567—62.5(455B).

d. A water quality related effluent limitation established by the administrator pursuant to Section 302 of the Act.

e. Prior to promulgation by the administrator of applicable effluent and pretreatment standards under Sections 301, 302, 306, and 307 of the Act, such conditions as the director determines are necessary to carry out the provisions of the Act.

f. Any other limitation, including those:

(1) Necessary to meet water quality standards, treatment or pretreatment standards, or schedules of compliance established pursuant to any Iowa law or regulation, or to implement the policy of nondegradation in 567—subrule 61.2(2); or

(2) Necessary to meet any other federal law or regulation; or

(3) Required to implement any applicable water quality standards; or

(4) Any legally applicable requirement necessary to implement total maximum daily loads established pursuant to Section 303(d) of the Act and incorporated in the continuing planning process approved under Section 303(e) of the Act and any regulations and guidelines issued pursuant thereto.

g. Any more stringent legally applicable requirements necessary to comply with a plan approved pursuant to Section 208(b) of the Act.

In any case where an NPDES permit applies to effluent standards and limitations described in paragraph *"a," "b," "c," "d," "e," "f,"* or *"g,"* the director must state that the discharge authorized by the permit will not violate applicable water quality standards and must have prepared some verification of that statement. In any case where an NPDES permit applies any more stringent effluent limitation, described in 64.7(2)*"f"*(1), based upon applicable water quality standards, a waste load allocation must be prepared to ensure that the discharge authorized by the permit is consistent with applicable water quality standards.

64.7(3) *Effluent limitations in issued NPDES permits.* In the application of effluent standards, and limitations, water quality standards, and other legally applicable requirements, pursuant to 64.7(2), the director shall, for each issued NPDES permit, specify average and maximum daily quantitative limitations for the level of pollutants in the authorized discharge in terms of weight (except pH, temperature, radiation, and any other pollutants not appropriately expressed by weight). The director may, in addition to the specification of daily quantitative limitations by weight, specify other limitations such as average or maximum concentration limits, for the level of pollutants authorized in the discharge.

[COMMENT: The manner in which effluent limitations are expressed will depend upon the nature of the discharge. Continuous discharges shall be limited by daily loading figures and, where appropriate, may be limited as to concentration or discharge rate (e.g., for toxic or highly variable continuous discharges). Batch discharges should be more particularly described and limited in terms of (i) frequency (e.g., to occur not more than once every three weeks), (ii) total weight (e.g., not to exceed 300 pounds per batch discharge), (iii) maximum rate of discharge of pollutants during the batch discharge (e.g., not to exceed 2 pounds per minute), and (iv) prohibition or limitation by weight, concentration, or other appropriate measure of specified pollutants (e.g., shall not contain at any time more than 0.1 ppm zinc or more than ¼ pound of zinc in any batch discharge). Other intermittent discharges, such as recirculation blowdown, should be particularly limited to comply with any applicable water quality standards and effluent standards and limitations.]

64.7(4) *Schedules of compliance in issued NPDES permits.* The director shall follow the following procedure in setting schedules in NPDES permit conditions to achieve compliance with applicable effluent standards and limitations, water quality standards, and other legally applicable requirements.

a. With respect to any discharge which is not in compliance with applicable effluent standards and limitations, applicable water quality standards, or other legally applicable requirements listed in 64.7(2)*"f"* and 64.7(2)*"g,"* the permittee shall be required to take specific steps to achieve compliance with: applicable effluent standards and limitations; if more stringent, water quality standards; or if more stringent, legally applicable requirements listed in 64.7(2)*"f"* and 64.7(2)*"g."* In the absence of any legally applicable schedule of compliance, such steps shall be achieved in the shortest, reasonable period of time, such period to be consistent with the guidelines and requirements of the Act.

b. In any case where the period of time for compliance specified in paragraph *"a"* of this subrule exceeds nine months, a schedule of compliance shall be specified in the permit which will set forth interim requirements and the dates for their achievement; in no event shall more than nine months elapse between interim dates. If the time necessary for completion of the interim requirements (such as the construction of a treatment facility) is more than nine months and is not readily divided into stages for completion, interim dates shall be specified for the submission of reports of progress toward completion of the interim requirement.

[COMMENT: Certain interim requirements such as the submission of preliminary or final plans often require less than nine months and thus a shorter interval should be specified. Other requirements such as the construction of treatment facilities may require several years for completion and may not readily subdivide into nine-month intervals. Long-term interim requirements should nonetheless be subdivided into intervals not longer than nine months at which the permittee is required to report progress to the director pursuant to 64.7(4)*"c."*]

c. Either before or up to 14 days following each interim date and the final date of compliance the permittee shall provide the department with written notice of the permittee's compliance or noncompliance with the interim or final requirement.

d. On the last day of the months of February, May, August, and November the director shall transmit to the regional administrator a list of all instances, as of 30 days prior to the date of such report, of failure or refusal of a permittee to comply with an interim or final requirement or to notify the department of compliance or noncompliance with each interim or final requirement (as required pursuant to paragraph *"b"* of this subrule). Such list shall be available to the public for inspection and copying and shall contain at least the following information with respect to each instance of noncompliance:

(1) Name and address of each noncomplying permittee.

(2) A short description of each instance of noncompliance (e.g., failure to submit preliminary plans, two-week delay in commencement of construction of treatment facility; failure to notify of compliance with interim requirement to complete construction by June 30).

(3) A short description of any actions or proposed actions by the permittee to comply or by the director to enforce compliance with the interim or final requirement.

(4) Any details which tend to explain or mitigate an instance of noncompliance with an interim or final requirement (e.g., construction delayed due to materials shortage, plan approval delayed by objections).

e. If a permittee fails or refuses to comply with an interim or final requirement in an NPDES permit such noncompliance shall constitute a violation of the permit for which the director may, pursuant to 567—Chapters 7 and 60, modify, suspend or revoke the permit or take direct enforcement action.

64.7(5) *Other terms and conditions of issued NPDES permits.* Each issued NPDES permit shall provide for and ensure the following:

a. That all discharges authorized by the NPDES permit shall be consistent with the terms and conditions of the permit; that facility expansions, production increases, or process modifications which result in new or increased discharges of pollutants must be reported by submission of a new NPDES application or, if such discharge does not violate effluent limitations specified in the NPDES permit, by submission to the director of notice of such new or increased discharges of pollutants; that the discharge of any pollutant more frequently than or at a level in excess of that identified and authorized by the permit shall constitute a violation of the terms and conditions of the permit; that if the terms and conditions of a general permit are no longer applicable to a discharge, the applicant shall apply for an individual NPDES permit;

b. That the permit may be modified, suspended or revoked in whole or in part for the causes provided in 64.3(11).

c. That the permittee shall permit the director or the director's authorized representative upon the presentation of credentials:

(1) To enter upon permittee's premises in which an effluent source is located or in which any records are required to be kept under terms and conditions of the permit;

(2) To have access to and copy any records required to be kept under terms and conditions of the permit;

(3) To inspect any monitoring equipment or method required in the permit; or

(4) To sample any discharge of pollutants.

d. That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall provide notice to the director of the following:

(1) One hundred eighty days in advance of any new introduction of pollutants into such treatment works from a source which would be a new source as defined in Section 306 of the Act if such source were discharging pollutants;

(2) Except as specified below, 180 days in advance of any new introduction of pollutants into such treatment works from a source which would be subject to Section 301 of the Act if such source were discharging pollutants. However, the connection of such a source need not be reported if the source contributes less than 50,000 gallons of wastewater per day at the maximum discharge, or less than 5 percent of the organic or hydraulic loading of the treatment facility, or does not contribute toxic materials that may adversely affect the treatment process or any waste that may have an adverse or deleterious impact on the treatment process; and

(3) Sixty days in advance of any substantial change in volume or character of pollutants being introduced into such treatment works by a source introducing pollutants into such works at the time of issuance of the permit.

Such notice shall include information on the quality and quantity of effluent to be introduced into such treatment works and any anticipated impact of such change in the quantity or quality of effluent to be discharged from such publicly owned treatment works.

e. That, if the permit is for a discharge from a publicly owned treatment works, the permittee shall require any industrial user of such treatment works to comply with the requirements of Sections 204(b), 307, and 308 of the Act. As a means of ensuring such compliance, the permittee shall require that each industrial user subject to the requirements of Section 307 of the Act give to the permittee periodic notice (over intervals not to exceed six months) of progress toward full compliance with Section 307 requirements. The permittee shall forward a copy of the notice to the director.

f. That the permittee at all times shall maintain in good working order and operate as efficiently as possible any facilities or systems of control to achieve compliance with the terms and conditions of the permit.

g. That if a toxic effluent standard or prohibition (including any schedule of compliance specified in such effluent standard or prohibition) is established under Section 307(a) of the Act for a toxic pollutant which is present in the permittee's discharge and such standard or prohibition is more stringent than any limitation upon such pollutant in the NPDES permit, the director shall revise or modify the permit in accordance with the toxic effluent standard or prohibition and so notify the permittee.

h. If an applicant for an NPDES permit proposes to dispose of pollutants into wells as part of a program to meet the proposed terms and conditions of an NPDES permit, the director shall specify additional terms and conditions of the issued NPDES permit which shall prohibit the proposed disposal or control the proposed disposal in order to prevent pollution of ground and surface water resources and to protect the public health and welfare. (See rule 567—62.9(455B) which prohibits the disposal of pollutants, other than heat, into wells within Iowa.)

i. That the permittee shall take all reasonable steps to minimize or prevent any discharge in violation of the permit which has a reasonable likelihood of adversely affecting human health or the environment.

j. It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the terms of this permit.

64.7(6) *POTW compliance—plan of action required.* The owner of a publicly owned treatment works (POTW) must prepare and implement a plan of action to achieve and maintain compliance with final effluent limitations in its NPDES permit, as specified below:

a. The director shall notify the owner of a POTW of the plan of action requirement, and of an opportunity to meet with department staff to discuss the plan of action requirements. The POTW owner shall submit a plan of action within six months of such notice, unless a longer time is needed and is authorized in writing by the director.

b. The plan of action will vary in length and complexity depending on the compliance history and physical status of the particular POTW. It must identify the deficiencies and needs of the system, describe the causes of such deficiencies or needs, propose specific measures (including an implementation schedule) that will be taken to correct the deficiencies or meet the needs, and discuss the method of financing the improvements proposed in the plan of action.

The plan may provide for a phased construction approach to meet interim and final limitations, where financing is such that a long-term project is necessary to meet final limitations, and shorter term projects may provide incremental benefits to water quality in the interim.

Information on the purpose and preparation of the plan can be found in the departmental document entitled "Guidance on Preparing a Plan of Action," available through the records center of the department.

c. Upon submission of a complete plan of action to the department, the plan should be reviewed and approved or disapproved within 60 days unless a longer time is required and the POTW owner is so notified.

d. The NPDES permit for the facility shall be amended to include the implementation schedule or other actions developed through the plan to achieve and maintain compliance.

This rule is intended to implement Iowa Code chapter 455B, division III, part 1 (455B.171 to 455B.187).

567—64.8(455B) Reissuance of NPDES permits.

64.8(1) *Individual NPDES permits.* Individual NPDES permits will be reissued according to the procedures identified in 64.8(1)*"a"* to *"c."*

a. Any state NPDES permittee who wishes to continue to discharge after the expiration date of the permit shall file an application for reissuance of the permit at least 180 days prior to the expiration of the permit. The application may be a simple written request. However, the applicant for reissuance must submit or have submitted information to show:

(1) That the permittee is in compliance or has substantially complied with all the terms, conditions, requirements and schedules of compliance of the expiring NPDES permit.

(2) Up-to-date information on the permittee's production levels, permittee's waste treatment practices, nature, contents, and frequency of permittee's discharge.

(3) That the discharge is consistent with applicable effluent standards and limitations, water quality standards and other legally applicable requirements listed in 64.7(2), including any additions to, or revision or modifications of, such effluent standards and limitations, water quality standards, or other legally applicable requirements during the term of the permit.

b. The director shall follow the notice and public participation procedures specified in 64.5(455B) in connection with each request for reissuance of an NPDES permit.

c. Notwithstanding any other provision in these rules, any new point source the construction of which is commenced after the date of enactment of the Federal Water Pollution Control Act Amendments of 1972 (October 18, 1972) and which is so constructed as to meet all applicable standards of performance for new sources shall not be subject to any more stringent standard of performance during a ten-year period beginning on the date of completion of such construction or during the period of depreciation or amortization of such facility for the purposes of Section 167 or 169 (or both) of the Internal Revenue Code, as amended through December 31, 1976, whichever period ends first.

64.8(2) *Renewal of coverage under a general permit.* Coverage under a general permit will be renewed subject to the terms and conditions in paragraphs *"a"* to *"d."*

a. If a permittee intends to continue an activity covered by a general permit beyond the expiration date of the general permit, the permittee must reapply and submit a complete Notice of Intent as follows:

(1) For storm water discharge associated with industrial activity, complete Notice of Intent requirements are listed in 64.6(1).

(2) Reserved.

b. A complete Notice of Intent for coverage under a reissued or renewed general permit must be submitted to the department within 180 days after the expiration date of a general permit.

c. A person holding a general permit is subject to the terms of the permit until it expires or a Notice of Discontinuation is submitted in accordance with 64.6(5). If the person holding a general permit continues the activity beyond the expiration date, the conditions of the expired general permit will remain in effect provided the permittee submits a complete Notice of Intent for coverage under a renewed or reissued general permit 180 days after the expiration date of the expired general permit. If the person continues an activity for which the general permit has expired and the general permit has not been reissued or renewed the discharge must be permitted with an individual NPDES permit according to the procedures in 64.3(4)*"a."*

d. The Notice of Intent requirements shall not include a public notification when a general permit has been reissued or renewed provided the permittee has already submitted a complete Notice of Intent including the public notification requirements of 64.6(1). Another public notice is required when any information, including facility location, in the original public notice is changed.

567—64.9(455B) Monitoring, record keeping and reporting by operation permit holders. Operation permit holders are subject to any applicable requirements specified in 567—Chapter 63.

567—64.10(455B) Silvicultural activities. The following is adopted by reference: 40 CFR 122.27 as promulgated April 1, 1983 (48 FR 14153).

567—64.11 and **64.12** Reserved.

567—64.13(455B) Storm water discharges. The following is adopted by reference: 40 CFR 122.26 as promulgated November 16, 1990, (55 FR 47990) and amended March 21, 1991, (56 FR 12098) and April 2, 1992 (57 FR 11394).

567—64.14(455B) Transfer of title. If title to any disposal system or part thereof for which a permit has been issued under 64.2(455B), 64.3(455B) or 64.6(455B) is transferred, the new owners shall be subject to all terms and conditions of said permit. Whenever title to a disposal system or part thereof is changed, the department shall be notified of such change within 30 days.

Rules 567—64.3(455B) to 64.14(455B) are intended to implement Iowa Code section 455B.173.

567—64.15(455B) General permits issued by the department. The following is a list of general permits adopted by the department through the Administrative Procedure Act, Iowa Code chapter 17A, and the term of each permit.

64.15(1) Storm Water Discharge Associated with Industrial Activity, NPDES General Permit No. 1, effective October 1, 1997, to October 1, 2002. Facilities assigned Standard Industrial Classification codes 1442, 2951, 3273, and those facilities assigned Standard Industrial Classification codes 1422 and 1423 which are engaged primarily in rock crushing are not eligible for coverage under General Permit No. 1.

64.15(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2, effective October 1, 1997, to October 1, 2002.

a. Part II, provision F of General Permit No. 2 is amended to read as follows:

F. TRANSFER OF COVERAGE UNDER THIS PERMIT. For storm water discharge associated with industrial activity for construction activities where ownership changes, the Department must be notified of the title transfer within 30 days. If a storm water discharge associated with industrial activity for construction activities is covered by this general permit, the new owner(s) shall be subject to all terms and conditions of this general permit. A copy of the notice of transfer of title that was sent to the Department shall be included in the pollution prevention plan. For construction activity which is part of a larger common plan of development such as a housing or commercial development project, if a permittee transfers ownership of all or any part of property subject to this permit, both the permittee and transferee shall be responsible for compliance with the provisions of this permit for that portion of the project which has been transferred including when the transferred property is less than five acres in area. If the new owner(s) agree in writing to be solely responsible for compliance with the provisions of this permit for the property which has been transferred, then the existing permittee(s) shall be relieved of responsibility for compliance with this permit for the transferred property, from and after the date the Department receives written notice of transfer of responsibility. A copy of the notice of transfer of responsibility shall be included in the pollution prevention plan.

b. Part III, provision B of General Permit No. 2 is amended to read as follows:

B. RELEASES IN EXCESS OF REPORTABLE QUANTITIES. Any owner or operator identified in the pollution prevention plan is subject to the spill notification requirements as specified in 455B.386 of the Iowa Code. Iowa law requires that as soon as possible but not more than six hours after the onset of a "hazardous condition" the Department and local sheriff's office or the office of the sheriff of the affected county be notified.

c. Part V, RETENTION OF RECORDS, provision B of General Permit No. 2 is amended to read as follows:

B. If there is a construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the storm water pollution prevention plan required by this permit at the construction site from the date of project initiation to the date of final stabilization. If there is no construction trailer, shed or other covered structure located on the property, the permittee shall retain a copy of the plan at a readily available alternative site approved by the Department and provide it for inspection upon request. If the plan is maintained at an off-site location such as a corporate office, it shall be provided for inspection no later than two business days after being requested.

64.15(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, Rock Crushing Plants, and Construction Sand and Gravel Facilities, NPDES General Permit No. 3, effective October 1, 1997, to October 1, 2002. General Permit No. 3 authorizes storm water discharges from facilities primarily engaged in manufacturing asphalt paving mixtures and which are classified under Standard Industrial Classification 2951, primarily engaged in manufacturing Portland cement concrete and which are classified under Standard Industrial Classification 3273, those facilities assigned Standard Industrial Classifications 1422 or 1423 which are primarily engaged in the crushing, grinding or pulverizing of limestone or granite, and construction sand and gravel facilities which are classified under Standard Industrial Classification 1442. General Permit No. 3 does not authorize the discharge of water resulting from dewatering activities at rock quarries.

64.15(4) "Discharge from On-Site Wastewater Treatment and Disposal Systems," NPDES Permit No. 4, effective July 1, 1998, to July 1, 2003.

567—64.16(455B) Fees.

64.16(1) A person who applies for an individual permit or coverage under a general permit to construct, install, modify or operate a disposal system shall submit along with the application an application fee and a permit fee as specified in 64.16(3). Fees shall be assessed based on the type of permit coverage the applicant requests, either as general permit coverage or as an individual permit. At the time the application is submitted, the applicant has the option of paying an annual permit fee or a multiyear permit fee.

Fees are nontransferable. If the application is returned to the applicant by the department, the permit fee will be returned. No fees will be returned if the permit or permit coverage is suspended, revoked, or modified, or if the activity is discontinued. Failure to submit the appropriate permit fee renders the application incomplete and the department shall suspend processing of the application until the fee is received.

64.16(2) Payment of fees. Fees shall be paid by check or money order made payable to the "Iowa Department of Natural Resources."

64.16(3) Fee schedule. The following fees have been adopted:

a. For coverage under the NPDES General Permit the following fees apply:

(1) Storm Water Discharges Associated with Industrial Activity, NPDES General Permit No. 1.

Annual Permit Fee .... $150 (per year)

or

Five-year Permit Fee $600
Four-year Permit Fee $450
Three-year Permit Fee $300

(Coverage provided by the five-year, four-year, and three-year permit fees expires no later than the expiration date of the general permit. Maximum coverage is five years, four years, and three years, respectively.)

(2) Storm Water Discharge Associated with Industrial Activity for Construction Activities, NPDES General Permit No. 2. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(3) Storm Water Discharge Associated with Industrial Activity from Asphalt Plants, Concrete Batch Plants, and Rock Crushing Plants, NPDES General Permit No. 3. The fees are the same as those specified for General Permit No. 1 in subparagraph (1) of this paragraph.

(4) "Discharge from On-Site Wastewater Treatment and Disposal Systems," NPDES Permit No. 4. No fees shall be assessed.

b. Individual NPDES permit fees. The following fees are applicable for the described individual NPDES permit:

(1) For storm water discharge associated with industrial activity, submitted on Form 2F, where the storm water is composed entirely of storm water or combined with process wastewater or other non-storm water wastewater.

Annual Permit Fee .... $300 (per year)

or

Five-year Permit Fee $1,250

(2) For storm water discharge from large and medium municipal separate storm sewers (systems serving a population of 100,000 or more).

Annual Permit Fee .... $300 (per year)

or

Five-year Permit Fee $1,250

(3) For participants in an approved group application and EPA has issued a model general permit and no industry-specific general permit is available or being developed.

Annual Permit Fee .... $300 (per year)

or

Five-year Permit Fee $1,250

567—64.17(455B) Validity of rules. If any section, paragraph, sentence, clause, phrase or word of these rules, or any part thereof, be declared unconstitutional or invalid for any reason, the remainder of said rules shall not be affected thereby and shall remain in full force and effect.

567—64.18(455B) Applicability. This chapter shall apply to all waste disposal systems treating or intending to treat sewage, industrial waste, or other waste except waste resulting from livestock or poultry operations. All livestock and poultry operations constituting animal feeding operations as defined in 567—Chapter 65 shall be governed by the requirements contained in Chapter 65. However, if an animal feeding operation is required to apply for and obtain an NPDES permit, the provisions of this chapter relating to notice and public participation, to the terms and conditions of the permit, to the reissuance of the permit and to monitoring, reporting and record-keeping activities shall apply.

These rules are intended to implement Iowa Code chapter 455B, division III, part 1.

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RAINFALL INTENSITY - DURATION - FREQUENCY CURVES
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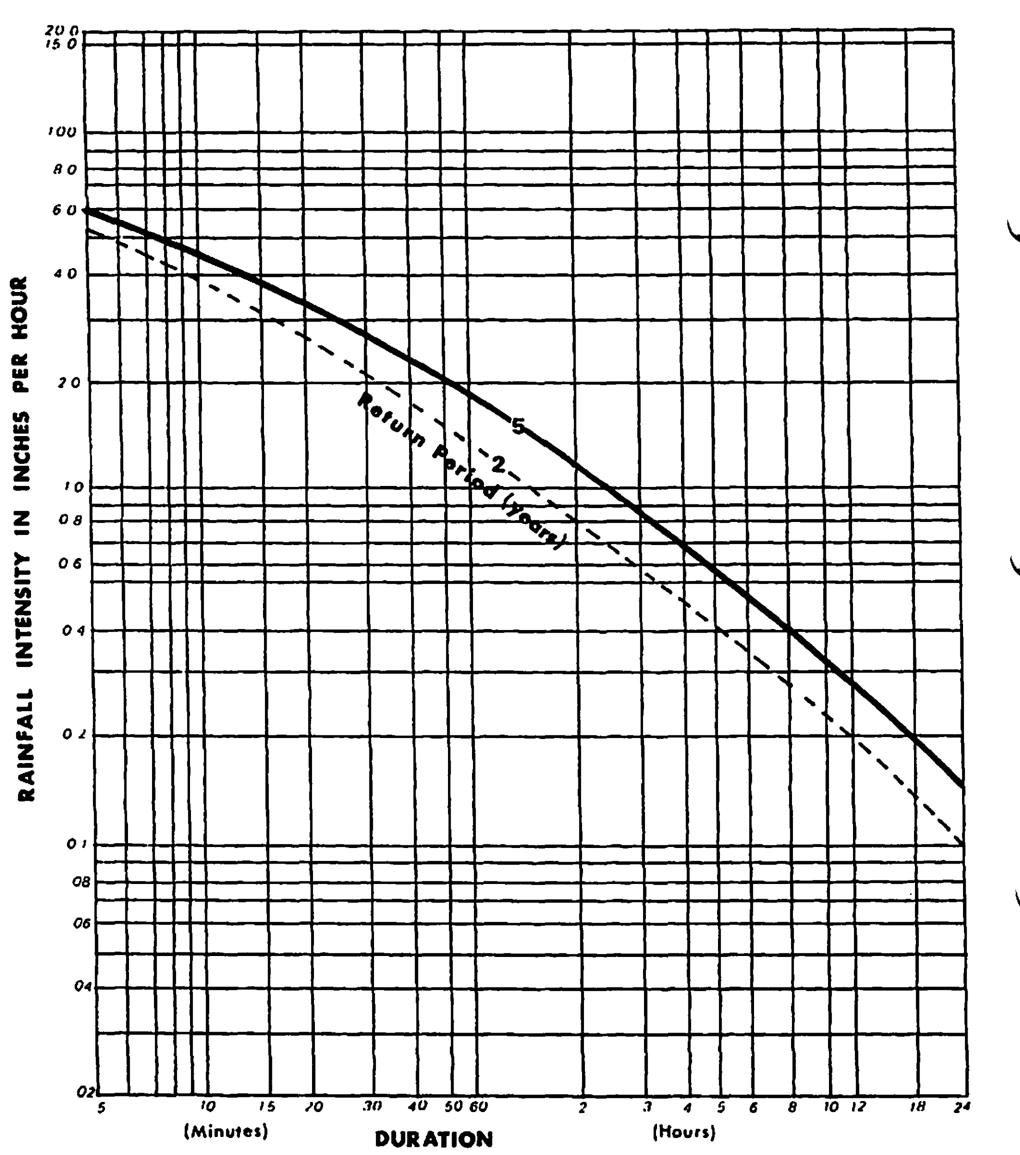

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CHAPTER 15
BENEFITS

[Prior to 8/15/86; See Deferred Compensation Program, 270—Ch 4]

581—15.1(19A) Health benefits. The director is authorized by the executive council of Iowa to administer health benefit programs for employees of the state of Iowa.

15.1(1) An insurance carrier or other entity proposing to provide group benefits or a prepaid group health care plan to state employees must, as an entity or in terms of the plan proposed, be eligible to contract with the state of Iowa as provided in Iowa Code section 509A.6, and shall provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

a. Proposed solicitation brochures, membership literature, and master contracts. The content of these materials shall require prior approval by the department before distribution to any other party. The information about any health benefit plan which has regional or provider restrictions shall include a list of its service counties, a list of available physician providers by name, specialty, and address, and a list of all other contracted providers..

b. Proposed premium rate and administrative service charges.

c. Evidence of agreement to the state's administrative requirements including a defined remittance methodology, negotiated enrollment/eligibility guidelines, ability to direct bill all former employees, a defined coverage methodology for employees electing to change carriers, the ability to offer a conversion health plan, extend coordination of benefits, rules for subrogation, confirmation of compliance with COBRA, TEFRA, OBRA, and any other administrative requirements deemed reasonable.

15.1(2) The executive council of Iowa shall determine the amount of the state's contribution toward each individual non-contract-covered employee's premium cost and shall authorize the remaining premium cost to be deducted from the employee's pay. The state's contribution for each contract-covered employee shall be as provided for in collective bargaining agreements negotiated in accordance with Iowa Code chapter 20.

15.1(3) Health maintenance organizations (HMO) and organized delivery systems (ODS). Beginning with the benefit year starting January 1, 2001, any HMO or ODS seeking approval to offer benefits to state employees shall provide evidence of accreditation by the National Committee for Quality Assurance (NCQA) or the Joint Commission on Accreditation of Health Care Organizations (JCAHO). When an HMO or ODS seeks approval to offer benefits to state employees and has not achieved the required accreditation, the director of the department may waive the accreditation requirement for up to two consecutive benefit years. The granting of such a waiver shall be based, in part, on information submitted by the HMO or ODS that outlines its intent to achieve accreditation. If the HMO or ODS has not achieved the required accreditation by the end of the second benefit year, the director shall report this information to the executive council, and may recommend termination of the contract.

a. Definitions. The following definitions shall apply when used in this rule:

"Employee" means any employee of the state of Iowa covered by Iowa Code chapter 509A.

"HMO" means any health maintenance organization as defined in Iowa Code section 514B.1(3).

"ODS" means any organized delivery system as defined in rule 641—201.2(135,75GA,ch158).

"Operational" means having entered into health care service contracts with enrollees and providers and providing services in accordance with those contracts.

b. HMO minimum qualifications. The state of Iowa may contract to provide health care benefits to state employees with any HMO that provides the following to the department not later than March 1 preceding the plan year for which services are proposed:

(1) Evidence that it is licensed to do business in the state of Iowa by the insurance division of the Iowa department of commerce.

(2) Evidence that it has been operational for not less than one year, unless the requirement is waived by the director.

(3) Evidence that it offers, either itself or by contract, a benefit plan to all Medicare recipients that supplements but does not duplicate Medicare benefits.

(4) Evidence that it has filed with the insurance division of the Iowa department of commerce its most recent quarterly and annual reports in compliance with Iowa Code section 514B.12 and rule IAC 191—40.12(514B).

(5) The dates of its most recent examinations by the insurance division of the Iowa department of commerce and by the Iowa department of public health as required in Iowa Code section 514B.24, an accounting of any discrepancies discovered in such examinations and an indication of the extent to which such discrepancies have been corrected.

(6) A master contract which includes provisions requiring delivery of written termination notice by either party to the contract to the other party not less than 60 calendar days prior to contract termination.

(7) Proposed premium rates supported by:

- Actual claims and utilization experience;
- Quoted trend factors;
- Quality assurance indicators;
- A description of the rating methodology used to develop the rate quote;
- A description of the application of the rating methodology used in developing the rate quote;
- Other potential administrative issues not listed.

(8) Annual data and reports in accordance with the director's specifications. If all other requirements have been met and it is the initial year that an HMO has been authorized to offer benefits to state employees, failure to comply with the state's group-specific data requirement shall not result in the removal of the HMO from the state benefit plan.

c. *ODS minimum qualifications.* The state of Iowa may contract to provide health care benefits to state employees with any ODS which provides evidence to the department that the ODS:

(1) Has received approval of its application from the Iowa department of public health; and

(2) Has been licensed to do business in the state of Iowa by the Iowa department of public health.

If the requirements specified in subparagraphs (1) and (2) have been met, the ODS shall also be required to provide the following to the department not later than March 1 preceding the plan year for which services are proposed:

1. Evidence that the ODS has been operational for not less than one year, unless the requirement is waived by the director.

2. Evidence that the ODS offers, either itself or by contract, a benefit plan to all Medicare recipients which supplements, but does not duplicate, Medicare benefits.

3. Evidence that the ODS has filed its most recent financial statements in compliance with IAC 641—201.12(135,75GA,ch158).

4. The dates of its most recent examination by the commissioner of insurance in compliance with IAC 641—subrule 201.12(5).

5. A master contract which includes provisions requiring delivery of written termination notice by either party to the contract to the other party not less than 60 calendar days prior to contract termination. Such information must also include a list of the counties included in the ODS' service area, a list of available ODS physician providers by name, specialty, and address, and a list of all other contracted providers.

c. Compensation will be provided in cash according to the terms of the demutualization plan. In the event that stocks are issued in lieu of cash, the company shall issue all certificates to the employer on behalf of the affected participants and shall provide a listing which includes participants' names, social security numbers, policy numbers, and number of shares pro rata. The certification(s) will be delivered to the treasurer of the state of Iowa by the plan administrator for safekeeping within five workdays following receipt. The certificate(s) will be retrieved from the treasurer of the state of Iowa when an arrangement has been made with a stockbroker for the sale of the stock.

d. An arrangement will be entered into between the plan administrator and a stockbroker as soon as administratively possible in order to liquidate the stock for cash. The broker shall retain commission fees according to the arrangement entered into from the value obtained at the time of sale. The employer will not realize a tax liability nor will the participating employees.

e. The proceeds of the sale of the stock, less the broker commission, shall be made payable to the company. Cash will be immediately credited to the participating employee's accounts by the company. The company shall credit each participating employee's accounts pro rata based on the allotted shares per contract, and the plan administrator will be provided with a listing of the dollar amount credited to each participating employee's accounts. The company will credit the accounts based on the printout provided to the plan administrator. A statement of this transaction will also be provided by the company to participating employees at their home addresses upon completion of crediting of the accounts. The funds will be remitted to the company on a separate warrant and day from normal contributions. The company will report the investment return credit to the plan administrator in a specified format and show the credit under the earnings column.

f. In the event that dividends are issued prior to the sale of the stock, the dividends will be returned to the company and the company will credit each eligible account with the correct dividend based on the pro-rata shares. The company will also provide a statement to the participating employees at their home addresses which shows the credit of the dividend. The plan administrator shall be provided with a printout which includes a participating employee's name, social security number, policy number, and dollars credited.

581—15.7(19A) Dependent care. The director administers the dependent care program for employees of the state of Iowa. The plan is permitted under IRC Section 125. The plan is also a dependent care assistance plan under IRC Section 129. Administration of the plan shall comply with all applicable federal regulations and the Summary Plan Document. For purposes of this rule, the plan year is a calendar year.

15.7(1) *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the dependent care program. Temporary employees are not eligible to participate in this program.

15.7(2) *Enrollment.* An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing dependent care deduction amounts during the plan year, provided they have a qualifying change in family status as defined in the Summary Plan Document. To continue participation, employees shall reenroll each year during the open enrollment period.

15.7(3) *Termination of participation in the plan.* An employee may terminate participation in the plan provided the employee has a qualifying change in family status as defined in the Summary Plan Document. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the dependent care program until the subsequent plan year.

581—15.8(19A) Premium conversion plan (pretax program). The director administers the premium conversion plan for employees of the state of Iowa. The plan is permitted under IRC Section 125. Pursuant to IRC Section 105, the plan is also an insured health care plan to the extent that participants use salary reduction to pay for health or dental insurance premiums. In accordance with IRC Section 79, the plan is also a group term life insurance plan to the extent that salary reduction is used for life insurance premiums. Administration of the plan shall comply with all federal regulations and the Summary Plan Document. For purposes of this rule, the plan year is January 1 to December 31 of each year.

15.8(1) *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the pretax conversion plan. Temporary employees are not eligible to participate in the plan.

15.8(2) *Enrollment.* An open enrollment period, as designated by the director, shall be held for employees who wish to make changes in their current pretax status. New employees will automatically be enrolled in the plan after satisfying any waiting period requirements for group insurance unless a change form is submitted. Employees also may change their existing pretax status during the plan year if they have a qualifying change in family status as defined in the Summary Plan Document.

15.8(3) *Termination of participation in the plan.* An employee may terminate participation in the plan during an open enrollment period. Otherwise, an employee may terminate participation if the employee has a qualifying change in family status as defined in the Summary Plan Document. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the pretax conversion plan until the subsequent plan year.

581—15.9(19A) Interviewing and moving expense reimbursement.

15.9(1) *Interviewing expenses.* If approved by the appointing authority, a person who interviews for state employment shall be reimbursed for expenses incurred in order to interview at the same rate at which an employee would be reimbursed for expenses incurred during the performance of state business.

15.9(2) *Moving expenses for reassigned employees.* A state employee who is reassigned or transferred at the direction of the appointing authority shall be reimbursed for moving and related expenses in accordance with the policies of the director or the applicable collective bargaining agreement. Eligibility for payment shall occur when all of the following conditions exist:

a. The employee is reassigned at the direction of the appointing authority;

b. The reassignment constitutes a permanent change in duty station beyond 25 miles;

c. The reassignment results in the employee changing the place of residence in order to be living within 25 miles of the new duty station, unless prior approval otherwise has been obtained from the director; and

d. The reassignment is not primarily for the benefit of the employee.

15.9(3) *Moving expenses for newly hired employees.* If approved by the appointing authority, a person newly hired may be reimbursed for moving and related expenses at the same rates used for the reimbursement of a current employee who has been reassigned or transferred. Reimbursement shall not occur until the employee is on the payroll.

15.12(12) *Forfeiture.* Section 403(b)(1)(c) of the IRC provides that an employee's interest in a Section 403(b) contract is nonforfeitable, except for failure to pay future premiums.

15.12(13) *Nontransferability.* The interest of the employee in the contract is nontransferable within the meaning of IRC Section 401(g). The contract may not be sold, assigned, discounted, or pledged as collateral for a loan or as security for the performance of an obligation or for any other purpose.

581—15.13(19A) Health flexible spending account. The director administers the medical spending account program for employees of the state of Iowa. The plan is permitted under IRC § 125. Administration of the plan shall comply with all applicable federal regulations and the plan document. To the extent that the provisions of the plan document or administrative rule conflict with IRC § 125, the provisions of IRC § 125 shall govern. For purposes of this rule, the plan year is a calendar year.

15.13(1) *Employee eligibility.* All nontemporary employees who work at least 1040 hours per calendar year are eligible to participate in the medical spending program. Temporary employees are not eligible to participate in this program. Employees subject to a collective bargaining agreement shall have their eligibility determined by the collective bargaining agreement.

15.13(2) *Enrollment.* An open enrollment period, as designated by the director, shall be held for employees who wish to participate in the plan. New employees may enroll within 30 calendar days following their date of hire. Employees also may enroll or change their existing medical spending salary reduction amounts during the plan year, provided they have a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. To continue participation, employees shall reenroll each year during the open enrollment period.

15.13(3) *Modification or termination of participation in the plan.* An employee may modify or terminate participation in the plan, provided the employee has a qualifying change in status as defined in the plan document, and as permitted under IRC § 125. Employees who have terminated state employment and are later rehired within the same plan year cannot reenroll in the medical spending program until the subsequent plan year.

15.13(4) *Continuation of coverage.* The medical spending account shall provide the opportunity to continue coverage as required by applicable state and federal laws.

15.13(5) *Eligible health care expenses.* The types of expenses eligible for reimbursement shall be consistent with medical expenses as defined under IRC § 213.

15.13(6) *Acceptable proof of eligible expense.* Only those expenses for which appropriate documentation is submitted shall be eligible for reimbursement. Such documentation shall include the date upon which the expense was incurred; sufficient evidence that the expense is an eligible health care expense; evidence that the expense has been incurred and will not be reimbursed under an otherwise qualified health plan authorized by IRC § 105 and 106; and the amount of such expense.

15.13(7) *Appeal process.* In the event that a participant disagrees with a determination as to reimbursement from the health flexible spending account program, a formal appeals mechanism is hereby provided. The participant may submit a formal appeal in writing to the director (or designee). Such appeal must be accompanied by a previous written request for favorable consideration to the designated administrator of the program, along with evidence as to an unfavorable determination in response to this request. Upon receipt of a qualified appeal, the director (or designee) shall provide a written determination within 30 days of receipt. Such determination shall be final and binding. This appeal process is not a contested case proceeding as defined by Iowa Code chapter 17A.

15.13(8) *Third-party administrator.* The director may contract with a third-party administrator to perform such actions as are reasonably necessary to administer the health flexible spending account program.

These rules are intended to implement Iowa Code sections 19A.1 and 19A.9.

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NOTE: First 6 lines of history, see Comptroller, State[270]ch 4

"Board" means the Iowa comprehensive petroleum underground storage tank fund board.

"Certificate of clean" means a document noting that a level of acceptable cleanup has been achieved and approved by the department and as covered in Iowa Code section 455B.304(15).

"Deductible" means the portion of a claim paid by insureds on the policy issued by the board.

"Department" means the Iowa department of natural resources (DNR).

"Governmental action" means an order to do additional testing or corrective action by a governmental agency after a certificate of clean or a monitoring certificate has been issued to a petroleum underground storage tank site regulated by the department.

"Governmental agency" means either the Iowa department of natural resources or the United States Environmental Protection Agency.

"Monitoring certificate" means a document noting that an acceptable level of cleanup has occurred and has been approved by the department as covered in Iowa Code section 455B.474(1)*"h."*

"Self-insured retention" means the portion of a claim paid by insureds on a policy issued by the board, and includes the cost of adjusting, legal fees, court costs and any other investigative cost associated with the claim.

10.1(6) Surcharge.

a. Owners who have not complied with upgrade or replacement requirements as noted in 591—Chapter 10 shall pay a surcharge of $800 per tank per policy year until such time that the tank fully meets upgrade or replacement requirements as noted herein, or the tank has been permanently taken out of service in accordance with rules promulgated by the DNR. The surcharge is fully earned and shall not be refunded, even if an upgrade takes place during the policy term.

b. Owners who certify to the board in writing that all tanks at the insured site will be brought into compliance will not have the surcharge issued on their policy provided:

(1) There is a written contract between the owner and a licensed installer as defined in 591—Chapter 15.

(2) The contract sets forth that the upgrade or replacement will meet all the necessary requirements to meet the standards established in 567—Chapter 135. In addition, site conditions as specified in 591—11.4(455B,455G) as environmentally or not environmentally sensitive shall be stated within the body of the contract.

(3) The contract is binding on both parties and establishes dates of performance, cost and indicates specified information relative to the work to be performed.

(4) That a nonrefundable deposit, to apply toward the cost of the system of at least 5 percent or $1000, whichever is less, be included within the framework of the contract, acknowledged by both parties.

(5) That the work scheduled be started in time sufficient to have the upgrade completed by January 1, 1995.

c. Failure on the part of the installer to meet the January 1, 1995, upgrade or replacement date will subject the installer to loss of license.

d. Failure to meet the December 22, 1998, upgrade or replacement date will subject the owner/operator to cancellation of insurance coverage.

591—10.2(455G) Deductibles. The following deductibles are established under the Iowa plan:

10.2(1) There is a $5,000 deductible.

10.2(2) There is a $10,000 deductible.

591—10.3(455G) Premiums. Premiums are predetermined by Iowa Code chapter 455G. In addition, the following standards shall apply:

10.3(1) Premiums for a site shall be the sum of rates specified in Iowa Code subsection 455G.11(4) times the number of upgraded tanks, plus two times those rates for each nonupgraded tank on the site.

10.3(2) Premiums as promulgated under Iowa Code chapter 455G are applicable from July 1 to June 30. Applications for coverage will pay legislatively mandated premiums for that time frame.

10.3(3) All premiums shall be 100 percent earned upon issuance of insurance coverage. No refunds will be made for any reason after a policy has been issued.

10.3(4) Financial responsibility premiums on new policies shall be due on application for coverage and prior to binding. Premiums shall be made payable to the Iowa UST program. Coverage shall not be bound until premiums are received.

10.3(5) Renewal premiums. Mailing of the premium notice shall be conclusive proof that a billing was received. A ten-day expiration notice will be mailed on any policy for which the invoiced renewal premiums are not timely received. Premiums shall be made payable to the Iowa UST Program in accordance with the following:

a. For sites with premiums which equal or exceed twice the premium of the previous policy year, for an equal or lesser number of tanks as the previous policy year, an initial installment of 50 percent of the premium shall be paid prior to policy renewal with the second 50 percent installment due 180 days after policy renewal. The full premium is earned upon renewal.

b. For sites with premiums which do not equal or exceed twice the premium of the previous policy year for an equal or lesser number of tanks as the previous policy year, 100 percent of the premium shall be paid prior to policy renewal.

10.3(6) Cancellation for nonpayment or misrepresentation shall be effective 10 days after mailing. Cancellation for other reasons will be effective 60 days after mailing.

10.3(7) Premiums for extensions of retroactive coverage shall be equal to 50 percent of the annual premium per policy. Premiums shall be due at the time of the extension request. Nonpayment shall result in immediate termination of coverage, subject to a 10-day nonpayment cancellation notice.

10.3(8) Financial hardship, waiver of insurance premium. The board may waive immediate payments of insurance premiums for an owner of an underground storage tank who is financially unable to pay the insurance premium subject to the following conditions:

a. The owner must apply for financial hardship benefits and document that the owner is unable to pay the necessary premiums;

b. Owners applying for a waiver of insurance premiums must complete the board's insurance premium waiver application;

10.5(4) *Exclusions to coverage.*

a. The property transfer insurance will not pay for corrective action costs for any preexisting condition, unless:

(1) The release was previously reported to the department and the additional corrective action is as a result of a governmental action by a governmental agency,

(2) A certificate of clean or monitoring has been issued by the department.

b. The property transfer policy has no obligation and will not pay corrective action costs, whether requested by a governmental agency or not, for any new release, covering any substance for any reason.

c. Environmental damage requiring monitoring or corrective action caused by any substance other than petroleum, as defined in Iowa Code subsection 455G.2(14) and 591—Chapters 10 and 11, is not covered for any reason, even if the governmental agency requests the activity.

d. Only orders from a governmental agency shall be considered in determining whether the benefits as described in the policy apply. Additional cleanup ordered by any organization, except a court of applicable jurisdiction, other than as defined, shall not be included. Only the additional cleanup required by governmental action shall be paid by the policy.

e. No coverage shall be provided for any third-party liability. As used here, third-party liability is any party other than the insureds on the policy.

f. No coverage shall be provided for loss associated with use of the property, business interruption or loss of profits. Coverage shall only apply to the actual usual, reasonable and necessary corrective action work required to return the site to a monitoring-only site as defined in Iowa Code section 455B.474(1)*"h."*

g. The cost of any annual monitoring or testing required under this chapter, to apply for coverage.

h. Costs of corrective action should a plume of existing contamination migrate off premises.

10.5(5) *Annual requirements and transfer of coverage to other parties.*

a. Each insured under this policy shall apply annually for coverage, using board-provided application forms. The interest of the party applying for coverage shall clearly be delineated.

b. Coverage may be transferred to any other person or organization provided that documentation of the transfer and the transfer fee accompany the request. The retroactive date shall remain the same, unless provisions as noted under this subrule in the event of cancellation or nonrenewal occur.

c. Annual testing as required by the department shall be furnished to the administrator with the application. Failure to supply monitoring records as required by the department shall cause the policy to be nonrenewed or canceled.

10.5(6) *Claims handling.* Claims presented hereunder shall be individually investigated and settled by the board per the terms and conditions of coverage in effect. The administrator will assign an adjuster for the purposes of this rule and may, subject to board approval, retain expert assistance. The administrator will recommend a resolution of the case to the board. Expense incurred in the adjusting or legal defense process shall be included within the self-insured retention portion of the account, should a self-insured retention policy be issued.

10.5(7) *Deductibles and other conditions.*

a. The deductible shall be $10,000.

b. An insured may request a reduction in the deductible to $5000 with the payment of a 50 percent surcharge on the total policy premium. The board is not required to provide this option.

c. No retroactive or "tail" insurance shall be offered.

d. The board or its representative may audit the base underwriting data provided.

e. Cancellation shall be 10 days for nonpayment of premium and 60 days for all other reasons.

These rules are intended to implement Iowa Code chapter 455G.

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(7) A retroactive claim for a release reported to the department prior to May 5, 1989, and after July 1, 1987, shall only be eligible if the owner or operator applying for benefits has not claimed bankruptcy anytime after July 1, 1987; a retroactive claim for a release reported to the department after January 1, 1984, but prior to July 1, 1987, shall only be eligible if the owner or operator applying for benefits has not claimed bankruptcy on or after January 1, 1985.

e. Claims filed with the board prior to February 26, 1994, for releases reported to the department after May 5, 1989, and on or before October 26, 1990, are remedial claims eligible for reimbursement subject to the following guidelines:

(1) After the owner/operator completes the claim form and has it notarized.

(2) When bills and estimates are received along with contracts, description of remedial plan and correspondence for budget approval on the work required by the department.

(3) When the work is complete or, if ongoing, as approved by the administrator and in accordance with priority rules.

(4) After the owner or operator has met deadlines and the department's technical requirements for cleanup. To be eligible, corrective action costs must be reasonable and necessary to complete the work required by the department. The board shall reimburse or pay only those corrective action costs which will cover the work as mandated by Iowa Code section 455B.471 et seq.

(5) Remedial claims shall be subject to copayments consistent with Iowa Code section 455G.9(4).

f. Remedial and retroactive claims may be paid monthly and will include all approved expenses, including tank and piping removal for active systems if the tank and piping removal occurs on or before March 17, 1999, and other costs as provided in Iowa Code chapter 455G. Cost of replacement materials excavated shall be a reimbursable expense. Contractors and groundwater professionals shall confirm that the work meets department of natural resources requirements.

g. The board shall reimburse or pay eligible expenses for remedial or retroactive benefits only if those expenses have been approved prior to the commencement of work, as required by Iowa Code section 455G.12A. No corrective action costs shall be reimbursed unless reasonable, necessary and approved by the board or its designee.

h. When practical to do so, the board shall bid any work associated with this chapter with firms which have indicated to the administrator an interest to be on the board's list of firms supplying goods or services. To be eligible for inclusion in the vendors list, the firm shall have appropriate registration as a groundwater professional. Any firm supplying goods and services including, but not limited to, testing laboratories, cleanup equipment manufacturers and leak detection testing firms may also be included in the vendors list.

i. Reimbursement to the owner, operator or contractor under this chapter is subject to overall site cleanup report prioritization and classification. Sites which are classified as low-risk are eligible for remedial account benefits for monitoring expenses required by Iowa Code section 455B.474(1)*"f"*"5," unless the tank is removed, upgraded, or replaced. If the underground tank system is removed, upgraded or replaced, provisions outlined in IAC 591—11.5(455G) and 591—11.6(455G) shall apply.

j. All claims eligible for funding under Iowa Code section 455B.474 will be subject to available funding.

k. The board may appeal any adverse administrative law decision or court judgment.

l. Rescinded IAB 6/5/96, effective 7/10/96.

m. The board may ratify and approve any actions taken by the board or its designee which were consistent with the provisions of this subrule 11.1(3) without regard to whether this subrule was in effect at the time the actions to be ratified were taken.

n. One hundred percent of corrective action costs and third-party liability not to exceed $1 million shall be reimbursed for a release for which the eligible claimant is subject to financial hardship if all of the following conditions are met:

(1) The claimant has completed the claim form, had it notarized, and submitted it to the board on or before December 1, 1996.

(2) Claimant is a small business as defined in Iowa Code section 455G.2(18) and has submitted self-certification forms documenting small business status.

(3) Claimant does not have a net worth of $15,000 or greater and has submitted documentation of net worth in accordance with Iowa Code section 455G.10(4) and 591—subrule 12.10(3) or the claimant is an individual who is financially unable to pay copayments associated with the cost of corrective action as determined by using the department's evaluation of ability to pay found at 567 IAC 135.17(455B).

(4) The release for which the claim has been made occurred prior to October 26, 1990.

(5) The release for which the claim has been made was reported to the DNR on or before December 1, 1996.

(6) The site for which the claim is made is in compliance with all technical requirements of 567—Chapters 135 and 136.

(7) The site for which the claim is made shall not be deeded or quitclaimed to the state or board in lieu of cleanup.

(8) Property taxes shall not be delinquent, unpaid or otherwise overdue.

(9) A responsible party with the ability to pay corrective action expenses cannot be found.

(10) The release for which the claim is made is one for which the federal Underground Storage Tank Trust Fund or other federal moneys do not provide coverage.

(11) The work is complete or, if ongoing, is approved by the administrator or the board pursuant to the cost containment provisions of Iowa Code section 455G.12A.

(12) All claims and payments are subject to prioritization guidelines set forth in rule 591—11.7(455G).

(13) If the property is acquired via eminent domain by a governmental subdivision.

o. An owner/operator eligible for remedial benefits who complied with 11.1(3)*"b"* by using program insurance authorized pursuant to Iowa Code section 455G.11 will remain eligible for remedial benefits even though the insured tanks were not upgraded by December 22, 1998, under the following conditions:

(1) The owner/operator temporarily closes the tanks in compliance with the closure requirements of the environmental protection commission 567—subrule 135.9(1) while the tanks are still insured under Iowa Code section 455G.11; and

(2) The owner/operator certifies the tanks continuously had financial responsibility coverage acceptable under 567—Chapter 136 from October 26, 1990, until the temporary closure; and

(3) The owner/operator certifies the tanks will be empty during the entire period of the temporary closure. Empty means all materials have been removed from the tanks using commonly approved practices so that no more than 2.5 centimeters (1 inch) of residue, or 0.3 percent of weight of the total capacity of the tank system, remain in the tank system; and

(4) The owner/operator certifies that during the entire period of the temporary closure vent lines will be left open and functioning and all other lines, pumps, manways, and ancillary equipment will be capped and secured.

(5) The owner/operator certifies that within one year from the time the tanks were temporarily closed, the tanks will either be permanently closed, removed and replaced, or upgraded; and

(6) The owner/operator certifies the upgraded tanks and replacement tanks will meet the new tank or upgrade standards of the environmental protection commission rule 567—135.3(455B); and

(4) All costs incurred on or after December 1, 1996, must be preapproved by the board to be eligible for reimbursement.

(5) For claims submitted under this paragraph, the precorrective action value shall be the purchase price paid by the owner after October 26, 1990.

(6) For claims submitted under this paragraph, the purchase must have been an arm's-length transaction.

(7) The owner cannot have claimed bankruptcy on or after the date of the reported release.

e. Other innocent landowner claims. Claims for releases submitted to the board after December 1, 1997, which would have been eligible for benefits pursuant to paragraphs *"a"* through *"d"* of this subrule if filed by December 1, 1997, will be eligible for reimbursement subject to a first-in, first-out priority and the funding limitations of the innocent landowner fund. The owner must demonstrate that the owner has met all other requirements of this subrule in order to receive benefits.

f. Compliance with report submittal deadlines. To be eligible for remedial benefits, claimants must comply with all department deadlines for submittal of Tier 1, Tier 2 and corrective action design report (CADR) requirements and must submit a Tier 1, and Tier 2 if required, by June 30, 2000, or 180 days after confirmation of a release from the site, whichever is later.

g. Costs incurred by a governmental subdivision for treating, handling or disposing of, as required by DNR, petroleum-contaminated soil and groundwater encountered in a public right-of-way during installation, maintenance or repair of a public improvement.

591—11.2(455G) Investigation of claims—remedial, retroactive and financial responsibility.

11.2(1) All remedial, retroactive and financial responsibility claims shall be investigated and overall fund liability estimated.

11.2(2) Costs which are not reasonable, necessary or eligible shall not be paid. The budget for the work shall be submitted prior to the initiation of the work for approval by the board or its designee. Failure to obtain prior approval shall invalidate the board's and the owner's or operator's obligations as provided for under Iowa Code section 455G.12A.

11.2(3) Owner or operator compliance with regulatory and program requirements shall be evaluated as part of the investigation. The failure to meet regulatory and program standards shall not bar recovery hereunder. However, failure to meet regulatory and program requirements which exist at the time of payment may result in cost recovery claims as provided under Iowa Code section 455G.13.

11.2(4) Cause of loss and determination of responsible parties shall be ascertained as a part of the investigation process. Independent environmental consultants may be retained to assist in the determination of the cause of the release and for the application of coverage.

11.2(5) Other financial responsibility in effect at the time a claim is made shall be reviewed. If other coverage that covers environmental damage is in effect at the time a claim is made, the UST financial responsibility program under Iowa Code section 455G.11 shall be excess.

11.2(6) Subrogation and cost recovery opportunities shall be pursued against any responsible party, as deemed appropriate by the board to do so.

11.2(7) The administrator may retain, subject to board bidding requirements, an outside groundwater professional to assist in the evaluation of any financial responsibility claim presented under Iowa Code section 455G.11, up to $3,000. Any expense in excess of that amount must be approved by the board at their next regularly scheduled meeting.

591—11.3(455G) Other terms and conditions.

11.3(1) The board shall publish its financial responsibility policy for public review and inspection.

11.3(2) Terms and conditions are as mandated under 567—Chapter 136, Iowa Administrative Code.

11.3(3) Cancellation for nonpayment is effective ten days after proof of mailing.

11.3(4) Premiums for extended coverage endorsement shall be 50 percent of policy annual premium. For the extended coverage endorsement to be effective, premium must be received prior to the expiration of the ten-day period from the expiration date of the policy. The extended coverage endorsement will cover only releases reported within the time frame outlined in the policy for releases occurring during the policy period. New releases shall not be covered. The board has no obligation of notifying individual insureds of this coverage as it is a part of each policy issued.

11.3(5) Supplementary payments coverage shall be limited to $250,000 maximum per incident and in the aggregate for all losses during the coverage period.

591—11.4(455B,455G) Tank and piping upgrades and replacements.

11.4(1) Definitions.

"Administrator" means the Iowa comprehensive petroleum underground storage tank fund board administrator as provided in Iowa Code section 455G.5.

"Automatic in-tank gauging" means a device used for leak detection and inventory control in tanks that meet the department's standards as set out in 567—paragraph 135.5(4)*"d."*

"Board or UST board" means the Iowa comprehensive petroleum underground storage tank fund board as provided for in Iowa Code section 455G.4.

"Department" means the Iowa department of natural resources.

"Environmentally sensitive site" means, as classified under the Unified Soil Classification System as published by the American Geologic Institute or ASTM designation: D 2487-85, any site where the native soils outside or under the tank zone are materials where more than half of the material is larger than no. 200 sieve size. As used herein, tank zone means the native soils immediately outside the excavation area or nearest native soil under the tank.

The following classifications of soil descriptions are considered environmentally sensitive:

1. Well-graded gravels, gravel-sand mixtures, little or no fines, classified using the group symbol of "GW";
2. Poorly graded gravels, gravel-sand mixtures, little or no fines, classified using the symbol of "GP";
3. Silty gravels, gravel-sand-clay mixtures, classified using the symbol of "GM";
4. Clayey gravels, gravel-sand-clay mixtures, classified using the symbol of "GC";
5. Well-graded sands, gravelly sands, little or no fines, classified using the symbol "SW";
6. Poorly graded sands, gravelly sands, little or no fines, classified using the symbol "SP";
7. Silty sands, sand-silt mixtures, classified using the symbol "SM";

In addition, environmentally sensitive sites include any site which is within 100 feet of a public or private well, other than a monitoring well on a site, and any site where the tank is installed in fractured bedrock or "Karst" formations. Any one of the above-specified conditions shall constitute an environmentally sensitive site under this rule.

A site shall be classified as environmentally sensitive when:

- Fifty percent or more of the soils from a boring or a monitoring well are logged and classified as one or more of the areas noted in paragraphs "1" through "7" and 50 percent of the total wells located on or immediately next to the property show the same or similar conditions. If no testing of the site has occurred and the soil condition as classified under the unified soil classification system in or under the tank zone is one of the conditions as classified, the site shall be considered to be environmentally sensitive. Reports previously prepared on the site and available from DNR may be used to make the soil classification. At least three borings/wells must have been completed. If fewer than three have been completed, an additional well which triangulates the tank zone shall be completed to determine the types of soils present.

b. On sites where monitoring-in-place has not been approved by the department, overexcavation may be approved to a maximum of the actual tank zone, plus six lineal feet out from the tank zone, and two feet below the tank itself, unless normal groundwater heights are above that level, and may be approved to a maximum of two feet deep below the line and three feet total width along the tank line.

11.6(4) If overexcavation occurs prior to completion of the site cleanup report (SCR), the SCR shall no longer be eligible for 100 percent reimbursement up to $20,000 if approval of costs associated with the overexcavation and the scope of the work is not first approved by the board or the administrator. In such situations, the cost of the SCR will be paid as a remediation expense and subject to deductibles and copayments should approval not be obtained prior to proceeding.

11.6(5) Preapproval is required for overexcavation of any site, whether as a part of a remediation project or a tank upgrade or replacement, if the distances exceed board-authorized ranges set forth in subrule 11.6(3).

11.6(6) Rescinded IAB 3/26/97, effective 4/30/97.

591—11.7(455G) Prioritization of remedial account benefits and expenses. Rescinded IAB 1/17/96, effective 12/29/95.

591—11.8(455G) Payments for conducting RBCA analysis on "monitor only" sites.

11.8(1) When reviewing applications for benefits for the cost of completing an RBCA analysis on a site which has an approved SCR requiring "monitoring only," or on a site with an SCR submitted between August 15, 1996, and January 31, 1997, the criteria in this rule shall apply when determining payment eligibility.

11.8(2) Tier 1, Tier 2, and Tier 3 risk-based corrective action analysis must have budgets preapproved by the board or its administrator prior to any costs being incurred.

11.8(3) Benefits shall be limited to those costs associated with activities which are required to be completed in order for a Tier 1, Tier 2, or Tier 3 to be accepted by the department and which will determine the risk associated with the site.

11.8(4) Only sites which are currently eligible for benefits under this chapter are eligible for reimbursement of costs associated with activities under this rule.

11.8(5) One hundred percent of the costs may be preapproved not to exceed $10,000 for all activities associated with the completion of the Tier 1, Tier 2, or Tier 3 analysis. Costs which exceed $10,000 will be subject to the limitations of Iowa Code section 455G.9(1)*"f."*

These rules are intended to implement Iowa Code section 455B.474 and chapter 455G.

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◊Two or more ARCs
*Effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held October 11, 1994.

141.3(3) *Exceptions to minimum education requirements.* Any individual holding one of the following is deemed to meet the requirements of this rule:

a. A valid Iowa license as a nursing home administrator as of January 1, 1999, or

b. Certification as an administrator in good standing with the American College of Health Care Administrators.

This rule is intended to implement Iowa Code sections 155.3 and 155.9.

645—141.4(155) Practicum/internship.

141.4(1) Practicum experience shall be under a preceptor in an Iowa-licensed nursing home in accordance with the following:

a. The facility must have a licensed capacity of no fewer than 25 beds.

b. The facility cannot be owned or operated by a parent, spouse or sibling of the student.

c. The student may not be a provisional administrator of the facility during the time of practicum.

d. The preceptor:

(1) Must hold a current Iowa license in good standing as a nursing home administrator.

(2) Must have at least two years' experience as a licensed nursing home administrator.

(3) Must be present in the facility at least 75 percent of the student's practicum.

(4) Cannot be related to the student as a parent, spouse or sibling.

141.4(2) The board may grant waivers of the total practicum requirement based on previous life experience. Substitution of no less than one year of long-term health care administration experience may be allowed at the discretion of the board. Requests for approval of waivers of practicum must be accompanied by supporting documentation, verified by both the applicant and the applicant's employer under whom the experience was obtained.

141.4(3) Any falsification or misrepresentation contained in any report or document attesting the facts, conditions and activities of the internship or work experience and submitted by the applicant, administrator/preceptor or other participants may be grounds for denial of license or for suspension or revocation of the nursing home administrator license in addition to fines and any other penalties provided by law.

645—141.5(155) Application for licensure as a nursing home administrator.

141.5(1) Each applicant for licensure as a nursing home administrator shall complete an application on a form furnished by the board. The application, which may be obtained from the Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075, supporting data and documents required by the board must be completed and on file at least 30 days prior to the date applicant desires board eligibility determination for the examination. The board shall notify the examination service of applicant eligibility for the examination.

141.5(2) Each applicant who is otherwise qualified and has passed the approved national examination will be notified of eligibility for licensure.

141.5(3) Each applicant who fails the national examination may apply to the board for reexamination. The applicant shall not be examined more than three times for the national examination, except as provided in subrule 141.5(4).

141.5(4) If the applicant fails a third national examination, education in areas established by the board must be obtained before another examination will be allowed or a license is issued.

141.5(5) Application forms are available from the department of public health. License fees are nonrefundable and are sent to: Board of Examiners for Nursing Home Administrators, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

141.5(6) Application forms will be considered current for a period of three years. If the applicant is not licensed within three years from the date that the application is initially received, the application will be destroyed and all fees submitted will be forfeited.

645—141.6(155) Examination. Each applicant for licensure shall be required to pass a national examination.

141.6(1) *National examination.* The passing score is a scaled score, set by the National Association of Boards of Examiners of Long Term Care Administrators. This examination tests knowledge of the domains of practice including:

a. Resident care management;
b. Personnel management;
c. Financial management;
d. Environmental management;
e. Governance and management.

141.6(2) *State examination.* Rescinded IAB 11/17/99, effective 12/22/99.

141.6(3) *Identification.* Rescinded IAB 11/17/99, effective 12/22/99.

141.6(4) *Confidentiality.* Information relating to the content of the examinations is confidential. Willfully communicating or seeking to communicate such information, or willfully requesting, obtaining or seeking to obtain such information, may be grounds for disciplinary action including denial, suspension or revocation of a license to practice nursing home administration in addition to fines and any other penalties provided by law.

This rule is intended to implement Iowa Code subsection 155.3(3).

645—141.7(155) Provisional license. Effective January 1, 1999, under certain limited circumstances, and only upon the filing of an application requesting approval, a provisional administrator may be appointed to serve as the administrator of a nursing home. A provisional administrator is considered a temporary appointment, and the person appointed may serve as an administrator for a period of time not to exceed six months. The six-month appointment runs from the date approved by the board, and the months in service do not need to be consecutive. The person serving as a provisional administrator shall not be permitted to serve more than a total of six months.

141.7(1) The limited circumstances under which the request for a provisional appointment shall be granted include the inability of the licensed administrator to perform the administrator's duties, the death of the licensed administrator or circumstances which prevent the immediate transfer of the licensed administrator's duties to another licensed administrator.

645—141.11(155) Penalties and license fees. All fees are nonrefundable.

141.11(1) The basic application fee required from all applicants for licensure is $50.

141.11(2) Rescinded IAB 11/17/99, effective 12/22/99.

141.11(3) Rescinded IAB 11/17/99, effective 12/22/99.

141.11(4) The fee for a provisional letter is $120 for a maximum six-month period of time.

141.11(5) The fee for biennial renewal of a license is $90 payable on or before December 31 of each odd-numbered year.

141.11(6) The fee for a duplicate license to replace an original or for display in a second facility is $10.

141.11(7) The fee for a biennial renewal of a duplicate license for display in a second facility is $10, payable at the time of renewal for the original license.

141.11(8) The fee for a certified statement that a licensee is licensed in this state is $10.

141.11(9) The penalty fee for failure to obtain required continuing education credits within the compliance period is $30.

141.11(10) The penalty fee for failure to renew a license prior to its expiration is $75 in addition to the renewal fees.

141.11(11) The penalty fee for failure to renew a license after 30 days following the expiration is $150 in addition to renewal fees.

141.11(12) The fee for reinstatement of a license is based on $45 per year, or any portion thereof, from the date of reinstatement to the next December 31 of an odd-numbered year.

141.11(13) The application fee for an approved providership shall be $100.

645—141.12(147,155,272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in rule 645—13.1(272C), including civil penalties in an amount not to exceed $1000, when the board determines that a licensee is guilty of any of the following acts or offenses:

141.12(1) Obtaining or attempting to obtain a license by fraud or deceit.

141.12(2) Professional incompetence.

141.12(3) Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of nursing home administration or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

141.12(4) Habitual intoxication or addiction to the use of drugs.

141.12(5) Conviction of a felony that is substantially related to the qualifications, functions or duties of a nursing home administrator and evidences unfitness to perform as a nursing home administrator in a manner consistent with protecting the public health, safety and welfare, in the courts of this state or any other state territory, country or of the United States. As used in this paragraph, the term "conviction of a felony" shall include a conviction of an offense which if committed in this state would be deemed a felony under either state or federal law, without regard to its designation elsewhere. A copy of the record of conviction or plea of guilty shall be conclusive as evidence.

141.12(6) Having a license to practice nursing home administration or another profession revoked, suspended or annulled by any lawful licensing authority; or had other disciplinary action taken against the license by any lawful licensing authority; or was denied a license or was refused the renewal of a license by any lawful licensing authority pursuant to disciplinary proceedings.

141.12(7) Willful or repeated violations of any statute, rule or regulation regarding a nursing home.

141.12(8) Knowingly aided, assisted, procured, or advised any person to practice nursing home administration contrary to this chapter or to the rules and regulations of the board; or knowingly performed any act which in any way aids, assists, procures, advises, or encourages any unlicensed person or entity to practice nursing home administration.

141.12(9) Failure to report to the board every adverse judgment in a professional or occupational malpractice action to which the licensee is a party, and every settlement of a claim against the licensee alleging malpractice.

141.12(10) Use of untrue or improbable statements in advertisements.

141.12(11) Failure to report to the board in writing a change of name or address within 60 days after the change occurs.

645—141.13(155) Disciplinary procedure. Rescinded IAB 6/30/99, effective 8/4/99.

These rules are intended to implement Iowa Code chapter 155.

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◊Two ARCs

CHAPTER 143
CONTINUING EDUCATION

[Prior to 8/24/88, see Nursing Home Administrators Board of Examiners [600], Ch 3]
[Prior to 9/13/95, see 645—Chapter 142]

645—143.1(272C) Definitions.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing education provider requirements during a specified time period.

"Continuing education" means planned, organized learning activities acquired following initial licensure and designed to maintain, improve, or expand administrators' knowledge and skills or to develop new knowledge and skills relevant to administration for the enhancement of practice, education, or theory development to the end of improving the safety and welfare of the public.

"Formal offering" means an extension course, independent study, or other course which is offered for academic credit by an accredited institution of higher education.

"National Continuing Education Review Service (NCERS)" means the continuing education review service operated by the National Association of Boards of Examiners of Long Term Care Administrators, 1444 I Street NW, Suite 700, Washington, DC 20005-2210.

645—143.2(272C) Continuing education requirements.

143.2(1) Beginning October 1, 1995, each person licensed to practice nursing home administration in this state shall complete a minimum of 40 hours of continuing education approved by the board. Compliance with the requirement of the continuing education is a prerequisite for license renewal in each subsequent license renewal year.

143.2(2) Beginning January 1, 2000, the continuing education compliance period shall be each biennium beginning January 1 of each even-numbered year to December 31 of the next odd-numbered year.

143.2(3) To renew a nursing home administrator's license for the next renewal period the licensee shall submit a completed report form which documents the completion of continuing education requirements or exceptions to the requirements, as outlined in 143.5(272C); incomplete forms and forms which reflect insufficient approved continuing education hours to qualify for license renewal shall be returned to the licensee along with any fees submitted for license renewal.

The board will periodically audit continuing education report forms of licensees for accuracy and attendance verification. This will be done on a random basis of no less than 10 percent of total licensees each renewal period. Additionally, auditing may be done as part of any disciplinary action and on all renewal applications not filed prior to the expiration date of a license.

143.2(4) If a licensee is initially licensed during the first 12 months of the continuing education period, the licensee shall complete at least 20 hours of continuing education for the first renewal. If a licensee is initially licensed during the second year of the continuing education period, the licensee is not required to complete continuing education for the first renewal.

143.2(5) Continuing education hours shall be completed in the compliance period for which the license is issued. Continuing education credits from a previous license period shall not be used, nor shall credits be accumulated for use in a future licensing period. Credit will not be accepted for a duplication of offering within a license period. New licensees may obtain hours beginning with the first day of the month following the licensure examination.

143.2(6) Units of measurement used for continuing education courses shall be as follows:

1 contact hour = 60 minutes of instruction.

1 contact hour = 180 minutes of work on self-study.

1 academic semester hour = 15 contact hours of instruction.

1 academic quarter hour = 12 contact hours of instruction.

143.2(7) The licensee shall retain a transcript of certificate of attendance to verify completion of each continuing education activity for a minimum of four years; notarized copies or original documents shall be provided to the board upon request.

143.2(8) It is the responsibility of licensees to finance their costs of continuing education.

645—143.3(272C) **Standards for approval.** A continuing education activity shall be qualified for approval if the board determines that:

143.3(1) It constitutes an organized program of learning (including a workshop or symposium) which contributes directly to the professional competency of the licensee; and

143.3(2) It pertains to subject matters which integrally relate to the domains of practice of nursing home administration, as identified in 645—subrule 141.6(1).

143.3(3) It is conducted by individuals who have a special education, training and experience by reason of which individuals should be considered experts concerning the subject matter of the program.

143.3(4) Except as may be allowed pursuant to rule 143.5(272C), no licensee shall receive credit exceeding 20 percent of the annual total required hours for self-study, including television viewing, video or sound-recorded programs, correspondence work, or research, or by other similar means which is not directly sponsored by and supervised by an accredited postsecondary college or university or an approved provider.

645—143.4(272C) **Approval of programs and activities.** Continuing education units are the number of actual contact hours of instruction; no credit is given for registration, introduction, intermission or evaluation periods.

143.4(1) *Prior approval of activities.* Offerings and providers approved by the National Continuing Education Review Service (NCERS) are deemed approved by the board. Organizations which desire prior approval of a course, program or other continuing education activity from NCERS may apply for approval to the National Continuing Education Review Service (NCERS), 1444 I Street NW, Suite 700, Washington, DC 20005-2210.

Individual program approval will not be granted except as provided in 143.4(3).

Providers of continuing education may apply to be an Iowa approved provider for continuing education by contacting the Iowa board of examiners for nursing home administrators. Providerships may be approved by the board for a period of four years from the approval date.

c. Date(s) and place of offering;
d. Time schedule including commencement, breaks, and adjournment;
e. Name, title and résumé of the instructor;
f. Number of credit hours requested;
g. Proof of attendance and completion.

Within 60 days after review of such application the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of credit hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

143.4(4) *Review of programs.* The board may monitor or review any approved continuing education program and may, upon evidence of significant variation in the program presented from the program approved, disapprove all or any part of the hours granted.

645—143.5(272C) Exceptions to continuing education requirements. The board may, in individual cases, grant exceptions to the minimum continuing education requirements or grant extensions of time within which to fulfill the same or make the required reports.

143.5(1) A licensee shall be deemed to have complied with the continuing education requirements during periods that the person:

a. Serves honorably on active duty in the military service as specified in Iowa Code section 272C.4.

b. Is a resident of another state or district having a continuing education requirement for the profession and meets all requirements of that state for practice therein.

c. Is a government employee working as a nursing home administrator and assigned to duty outside of the United States.

143.5(2) Waivers of the minimum continuing education requirements or time frames for earning or filing reports may be granted by the board for any period of time not to exceed one calendar year in individual cases involving disability or illness.

a. Written application for waiver or extension of time shall be made on forms provided by the board, signed by the licensee and an appropriate health care professional licensed by the board of medical examiners.

b. In the event that the disability or illness upon which a waiver has been granted continues beyond the period of the waiver, the licensee must reapply for an extension of the waiver.

c. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

These rules are intended to implement Iowa Code chapter 272C.

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CHAPTER 144
CHILD SUPPORT NONCOMPLIANCE
Rescinded IAB 6/30/99, effective 8/4/99

CHAPTER 145
IMPAIRED PRACTITIONER REVIEW COMMITTEE
Rescinded IAB 6/30/99, effective 8/4/99

CHAPTER 146
PETITIONS FOR RULE MAKING
Rescinded IAB 6/30/99, effective 8/4/99

CHAPTER 147
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
[Prior to 9/13/95, see 645—Chapter 149]
Rescinded IAB 6/30/99, effective 8/4/99

CHAPTER 148
DECLARATORY RULINGS
[Prior to 9/13/95, see 645—140.4(135E)]
Rescinded IAB 6/30/99, effective 8/4/99

CHAPTER 149
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 9/13/95, effective 10/18/95; see 645—Chapter 147

CHAPTERS 150 to 159
Reserved

OPHTHALMIC DISPENSERS
CHAPTER 160
OPHTHALMIC DISPENSERS
Rescinded IAB 2/3/93, effective 1/15/93

CHAPTERS 161 to 168
Reserved

CHAPTER 169
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES
Rescinded IAB 2/3/93, effective 1/15/93

CHAPTERS 170 to 179
Reserved

4.2(3) Annual reports.

Form Number	Description
AR-1	Chapter 496A Iowa Domestic Annual Report — required of domestic corporations under the Iowa Business Corporation Act. (Will include instructions sheet designated as AR-25 for reporting year 1981)
AR-2	Chapter 496A Foreign Corporation Annual Report — same as above for foreign corporations. (Will include instruction sheet designated as AR-26 for reporting year 1981)
AR-3	Chapter 504A Iowa Nonprofit Annual Report — required for all Domestic Nonprofit Corporations.
AR-4	Chapter 504A Foreign Nonprofit Annual Report — required to be filed by all Foreign Nonprofit Corporations.
AR-5	Chapter 496C Iowa Professional Annual Report — required to be filed by Domestic Professional Corporations.
AR-6	Chapter 496C Foreign Professional Annual Report — required to be filed by Foreign Professional Corporations.
AR-7	Chapter 491 Iowa Annual Report (old chapter) — required to be filed by profit corporations who still remain under old Chapter 491.
AR-8	Chapter 499 Non Stock Cooperative Annual Report — required to be filed by Chapter 499 non stock corporations.
AR-9	Chapter 499 Stock Cooperative Annual Report — required to be filed by Chapter 499 stock issuing corporations.
AR-10	Chapter 497 Cooperative Annual Report — required to be filed by old Chapter 497 Cooperatives.
AR-11	Chapter 498 Cooperative Annual Report — required to be filed by old Chapter 498 Cooperatives.
AR-12	September 496A Foreign Notice of Revocation — self explanatory.
AR-13	October 496A Domestic Notice of Cancellation — self explanatory.
AR-14	Chapter 496A Domestic Annual Report Instruction Sheet — self explanatory (see AR-1).
AR-15	Chapter 496A Foreign Annual Report Instruction Sheet — self explanatory (see AR-2).
AR-16	Chapter 496C Domestic Professional Corporation Annual Report Instruction Sheet — self explanatory (will become a part of Form AR-5 for reporting year 1982).
AR-17	Chapter 496C Foreign Professional Corporation Annual Report Instruction Sheet — self explanatory (will become a part of Form AR-6 for reporting year 1982).

4.2(4) Farm reporting.

Form Number	Description
FR-1	Agricultural Report
FR-2	Information on Agricultural Reports
FR-3	Pork and Beef Processor Report
FR-4	Registration of Nonresident Alien Land Ownership
FR-5	Nonresident Alien Ownership Report
FR-6	Annual Agricultural Landholding Report

For information concerning availability of forms for farm reporting, contact the Corporations Division, Hoover State Office Building, Des Moines, Iowa 50319, (515)281-8366.

This rule is intended to implement Iowa Code sections 172C.5A, 172C.5B, 172C.8 and 172C.9.

721—4.3(17A) Election forms.

Section 1. Election Day and Canvass Forms

Form Number	Description
1-A(Rev.-95)	Voter's Declaration of Eligibility
1-B	(Reserved)
1-C	(Reserved)
1-D(Rev.-90)	Notice to Voter of Rejection of Absentee or Special Ballot
1-E	(Reserved)
1-F(Rev.-90)	Oath for Officer or Clerk of Election
1-G(Rev.-95)	Statement to Person Casting a Special Ballot
1-H(Rev.-95)	Envelope for Special Ballot
1-I(Rev.-95)	Affidavit of Voter Requesting Assistance
1-J(Rev.-95)	Declaration of Intent to Serve as Election Observer (Public Measure Elections)
1-K(Rev.-90)	Ballot Record and Receipt
1-L(Rev.-95)	County Abstract of Votes
1-M(93)	Accreditation Form—Pollwatchers for Political Parties (Challenging Committees)

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721—21.11(44) Nonparty political organizations—nominations by petition. Rescinded IAB 9/10/97, effective 10/15/97.

721—21.12 to **21.19** Reserved.

721—21.20(62) Election contest costs. In determining the amount of the bond for election contests, the commissioner shall consider the following aspects of the cost of the election contest proceedings:

1. Fees as provided in Iowa Code section 62.22.
2. Fees for judges as provided in Iowa Code section 62.23.
3. The cost of making an official record of the proceedings.

721—21.21(62) Limitations. The amount of the bond shall not include costs not directly related to the contest court proceedings. Specifically, the amount of the bond shall not be intended to replace any potential lost income to the county caused by the delay in implementing the decision of the voters at the election being contested.

Rules 721—21.20(62) and 721—21.21(62) are intended to implement Iowa Code sections 62.6, 62.22, 62.23, and 62.24.

721—21.22 to **21.24** Reserved.

721—21.25(50) Administrative recounts. When the commissioner suspects that voting equipment used in the election malfunctioned or that programming errors may have affected the outcome of the election, the commissioner may request an administrative recount after the day of the election but not later than three days after the canvass of votes. The request shall be made in writing to the board of supervisors explaining the nature of the problem and listing the precincts to be recounted and which offices and questions shall be included in the administrative recount.

The recount shall be conducted by members of the special precinct board following the provisions of Iowa Code sections 50.48 and 50.49. The recount board may use a computer program board which was not used in the election to compare with the suspected defective one.

This rule is intended to implement 1997 Iowa Acts, House File 636, section 59.

721—21.26 to **21.199** Reserved.

DIVISION II
BALLOT PREPARATION

721—21.200(49) Constitutional amendments and public measures.

21.200(1) The order of placement on the ballot for constitutional amendments and statewide public measures to be voted upon at a single election shall be determined by the state commissioner, and a number shall be assigned to each constitutional amendment or statewide public measure by the state commissioner.

a. The number assigned by the state commissioner to each constitutional amendment or statewide public measure to appear on the ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following amendment to the Constitution (or public measure) be adopted?" or the words "Shall there be a Convention to revise the Constitution, and propose amendment or amendments to same?".

b. The number assigned by the state commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one constitutional amendment or statewide public measure is to appear on a ballot to be voted upon at a single election, an identifying number shall be assigned by the state commissioner and shall be printed on the ballot in the prescribed manner.

21.200(2) The order of placement on the ballot for each local public measure to be voted upon at a single election shall be determined by the commissioner, and a letter shall be assigned to each local public measure by the commissioner.

a. The letter assigned by the commissioner to each local public measure to appear on a ballot for a single election shall be printed on the ballot immediately preceding and above the words "Shall the following public measure be adopted?".

b. The letter assigned by the commissioner shall be printed on the ballot at least 1/8 of an inch high in the designated place.

c. Even if only one public measure is to appear on a ballot to be voted upon at a single election, an identifying letter shall be assigned by the commissioner and shall be printed on the ballot in the prescribed manner.

21.200(3) The words describing proposed constitutional amendments and statewide public measures when they appear on the ballot shall be determined by the state commissioner. The state commissioner shall select the words describing the proposed constitutional amendments and statewide public measures in the following manner:

a. Not less than 150 days prior to the election at which a proposed constitutional amendment or statewide public measure is to be voted on by the voters, the state commissioner shall prepare a proposed description to be used on the ballots in administrative rule form and shall file the proposed rules with the administrative rules coordinator for publication in the Iowa Administrative Bulletin.

b. The rules shall provide that written comments regarding the proposed description will be accepted by the state commissioner for a period of time not less than 20 days after the date of publication in the Iowa Administrative Bulletin.

c. The state commissioner shall review any written comments which have been timely received and make any changes deemed to be warranted in the description to be printed on the ballots.

This rule is intended to implement Iowa Code sections 47.1 and 49.44.

721—21.201 to **21.299** Reserved.

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◊Two ARCs

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