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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement chapters to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement chapters 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 chapters 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(6); an effective date delay imposed by the ARRC pursuant to section 17A.4(7) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(8); 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 or the Uniform Rules on Agency Procedure.

INSTRUCTIONS

FOR UPDATING THE

IOWA ADMINISTRATIVE CODE

Agency names and numbers in bold below correspond to the divider tabs in the IAC binders. New and replacement chapters included in this Supplement are listed below. Carefully remove and insert chapters accordingly.

Editor's telephone (515) 281-3355 or (515) 281-8157

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[Created by 1986 Iowa Acts, chapter 1245]
[Prior to 1/14/87, see Iowa Development Commission[520] and Planning and Programming[630]]

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[Prior to 9/6/00, see 261—Ch 65]

DIVISION I
GENERAL PROVISIONS

261—211.1(15F) Purpose. The community attraction and tourism development programs are designed to assist communities in the development and creation of multiple-purpose attraction and tourism facilities. The CATD programs include the CAT fund and the RECAT fund. The rules in this division apply to all applications and awards from the CAT and RECAT funds.

261—211.2(15F) Definitions. When used in this chapter, unless the context otherwise requires:

“*Attraction*” means a permanently located recreational, cultural, educational, or entertainment activity that is available to the general public.

“*Board*” means the vision Iowa board established by Iowa Code section 15F.102.

“*CAT*” means the community attraction and tourism component of the CATD programs.

“*CATD*” means community attraction and tourism development.

“*CATD programs*” means the CAT fund and RECAT fund.

“*CAT fund*” means the community attraction and tourism fund established pursuant to Iowa Code section 15F.204.

“*Community*” or “*political subdivision*” means a city or county, or an entity established pursuant to Iowa Code chapter 28E.

“*Community attraction and tourism program review committee*” or “*CAT review committee*” means the committee established by Iowa Code section 15F.203(2) and identified as the following members of the vision Iowa board: three members of the general public, one from each of the three tourism regions; the mayor of a city with a population of less than 20,000; and the county supervisor from a county that has a population ranking in the bottom 33 counties according to the 1990 census. The chair and vice chair of the vision Iowa board may serve as ex officio members of any subcommittee of the board.

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

“*Economic development organization*” means an entity organized to position a community to take advantage of economic development opportunities and strengthen a community’s competitiveness as a place to work and live.

“*Float loan*” or “*interim financing*” means a short-term loan (maximum of 30 months) from obligated but unexpended funds.

“*Loan*” means an award of assistance with the requirement that the award be repaid with term, interest rate, and other conditions specified as part of the award. A deferred loan is one for which the payment of principal, interest, or both is not required for some specified period. A forgivable loan is one for which repayment is eliminated in part or entirely if the borrower satisfies specified conditions.

“*Local support*” means endorsement by local individuals and organizations that have a substantial interest in a project.

“*Nonfinancial support*” may include, but is not limited to, the value of labor and services which may not total more than 25 percent of a local match. Real property and personal property donated for purposes of the project are considered financial support at their fair market value.

“*Private organization*” means a corporation, partnership, or other organization that is operated for profit.

“*Public organization*” means a not-for-profit economic development organization or other not-for-profit organization including those that sponsor or support community or tourism attractions and activities.

“*RECAT*” means river enhancement community attraction and tourism.

“*RECAT fund*” means the river enhancement community attraction and tourism fund established pursuant to Iowa Code section 15F.205.

“*Recipient*” means the entity under contract with the vision Iowa board to receive CAT or RECAT funds and undertake the funded activity.

“*Recreational and cultural attraction*” means an attraction that enhances the quality of life in the community.

“*River enhancement community attraction and tourism project*” means a project that creates or enhances recreational opportunities and community attractions on and near lakes or rivers or river corridors within cities across the state under the purview of the program.

“*School district*” means a school corporation organized under Iowa Code chapter 274.

“*Subrecipient*” means a private organization or other entity operating under an agreement or contract with a recipient to carry out a funded CAT or RECAT activity.

“*Tourism opportunity*” means a facility that draws people into the community from at least 50 miles (one way) away from home.

“*Vertical infrastructure*” means land acquisition and construction, major renovation and major repair of buildings, all appurtenant structures, utilities, site development, and recreational trails. “Vertical infrastructure” does not include routine, recurring maintenance or operational expenses or leasing of a building, appurtenant structure, or utility without a lease-purchase agreement.

“*Vision Iowa program review committee*” means the committee established by Iowa Code section 15F.304(2) as amended by 2009 Iowa Acts, House File 822, and identified as the following members of the vision Iowa board: four members of the general public, the mayor of a city with a population of 20,000 or more, the director of the Iowa department of economic development or designee, the treasurer of state or designee, and the auditor of state or designee. The chairperson and vice chairperson of the vision Iowa board may serve as ex officio members of any subcommittee of the board.

[ARC 8034B, IAB 8/12/09, effective 7/17/09]

261—211.3(15F) Program components. There are four direct components of the CATD programs. The first component relates to community attraction, tourism or leisure projects that are sponsored by political subdivisions, public organizations, and school districts in cooperation with a city or county. This component is referred to as the community attraction component. The second component provides community attraction and tourism development funds for interim financing for eligible projects under the community attraction component. This component is referred to as the interim financing component. The third component relates to river enhancement community attraction and tourism projects. This component is referred to as the river enhancement component. The fourth component relates to marketing projects that have received funding from the vision Iowa or CATD programs. This component is referred to as the marketing component.

211.3(1) Community attraction component—CAT. The objective of the CAT component is to provide financial assistance for community-sponsored attraction and tourism projects. Community attraction projects may include but are not limited to the following: museums, theme parks, cultural and recreational centers, heritage attractions, sports arenas and other attractions.

211.3(2) Interim financing component.

a. The objective of the interim financing component is to provide short-term financial assistance for eligible community attraction and tourism projects. Financial assistance may be provided as a float loan. A float loan may only be made for projects that can provide the vision Iowa board with an irrevocable letter of credit or equivalent security instrument from a lending institution rated AA or better, in an amount equal to or greater than the principal amount of the loan.

b. Applications for float loans shall be processed, reviewed and considered on a first-come, first-served basis to the extent funds are available. Applications that are incomplete or require additional information, investigation or extended negotiation may lose funding priority. Applications for float loans shall meet all other criteria required for the community attraction component.

211.3(3) River enhancement component—RECAT. The objective of the RECAT component is to provide financial assistance for projects that are related to, closely connected with, and enhance rivers, lakes, or river corridors within cities. River enhancement projects may include but are not limited

to pedestrian trails and walkways, amphitheaters, bike trails, water trails or white water courses for watercraft, and any modifications necessary for the safe mitigation of dams.

211.3(4) Marketing component. The objective of the marketing component is to provide financial assistance for the marketing of vision Iowa or CATD projects.

[ARC 8034B, IAB 8/12/09, effective 7/17/09]

261—211.4(15F) Eligible applicants. Eligible applicants for CAT and RECAT funds include political subdivisions, public organizations, and school districts in cooperation with a city or county.

211.4(1) Any eligible applicant may apply directly or on behalf of a subrecipient.

211.4(2) Any eligible applicant may apply individually or jointly with another eligible applicant or other eligible applicants.

261—211.5(15F) Eligible projects and forms of assistance.

211.5(1) Eligible projects include those which are related to a community or tourism attraction, and which would position a community to take advantage of economic development opportunities in tourism and strengthen a community's competitiveness as a place to work and live. Eligible projects include building construction or reconstruction, rehabilitation, conversion, acquisition, demolition for the purpose of clearing lots for development, site improvement, equipment purchases, and other projects as may be deemed appropriate by the vision Iowa board.

211.5(2) Eligible forms of assistance include grants, interest-bearing loans, non-interest-bearing loans, float loans under the interim financing component, interest subsidies, deferred payment loans, forgivable loans, or other forms of assistance as may be approved by the vision Iowa board.

211.5(3) Financial assistance for an eligible project may be provided in the form of a multiyear award to be paid in increments over a period of years, subject to the availability of funds.

211.5(4) IDED, with the approval of the chair or vice chair of the vision Iowa board, reserves the right to make technical corrections which are within the intent of the terms of a board-approved award.

211.5(5) Applicants must report other sources of funding or pending funding, public or private, for the project including the local recreation infrastructure grants program administered by the Iowa department of natural resources and the Iowa historic site preservation grant program administered by the historical division of the Iowa department of cultural affairs. IDED may consult with appropriate staff from the department of cultural affairs and the department of natural resources to coordinate the review of applications under the programs.

261—211.6(15F) Ineligible projects.

211.6(1) The vision Iowa board shall not approve an application for assistance under this program to refinance an existing loan.

211.6(2) An applicant may not receive more than one award under the CATD programs for a single project. However, previously funded projects may receive an additional award(s) if the applicant demonstrates that the funding is to be used for a significant expansion of the project, a new project, or a project that results from previous project-development assistance.

211.6(3) The vision Iowa board shall not approve an application for assistance in which the combination of RECAT and CAT funding would constitute more than 50 percent of the total project costs. RECAT funding may constitute up to one-third of the total project cost. A portion of the resources provided by the applicant for project costs may be in the form of in-kind or nonfinancial contributions.

261—211.7(15F) Threshold application requirements. To be considered for funding under the CATD programs, an application must meet the following threshold requirements:

211.7(1) There must be demonstrated local support for the proposed activity.

211.7(2) A need for the CAT or RECAT funds must exist after other financial resources have been identified for the proposed project.

211.7(3) The proposed project must primarily involve the creation or renovation of vertical infrastructure with demonstrated substantial regional or statewide economic impact.

211.7(4) The project must provide and pay at least 50 percent of the cost of a standard medical insurance plan for all full-time employees working at the project after the completion of the project for which financial assistance was received.

261—211.8(15F) Application review criteria. Applications meeting the threshold requirements of rule 261—211.7(15F) will be reviewed by IDED staff and passed on to the vision Iowa board. IDED staff shall provide a review, analysis and evaluation of the applications to the CAT and vision Iowa program review committees of the vision Iowa board. All eligible applications will be reviewed by the vision Iowa board. The CAT review committee shall evaluate and rank CAT applications and the vision Iowa program review committee shall evaluate and rank RECAT applications based on the following criteria:

211.8(1) Feasibility (0-25 points). The feasibility of the existing or proposed facility to remain a viable enterprise. The applicant's comprehensive business plan and operational plan will be reviewed as part of this criterion. Rating factors for this criterion include, but are not limited to, the following: analysis of the comprehensive business plan which shall include a description of initial capitalization, sources of funding, project budget, detailed financial projections for five years, marketing analysis, marketing plan, management team, and operational plan that provides detailed information about how the proposed attraction will be operated and maintained including a time line for implementing the project. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.8(2) Economic impact (0-25 points). Number of jobs created and other measures of economic impact including long-term tax generation, but excluding the use of economic multipliers. The evaluation of the economic impact of a proposed project shall also include a review of the wages and benefits (including health benefits) associated with the jobs to be created, safety, and other attributes of the project that would improve the quality of attraction and tourism employment in the community. Additionally, the economic impact of the project shall be reviewed based on the degree to which the project enhances the quality of life in a community; increases the recreational and cultural attraction and tourism opportunities; contributes to the community's efforts to retain and attract a skilled workforce; and creatively uses existing resources in the community. In order to be eligible for funding, proposals must score at least 15 points on this rating factor.

211.8(3) Leveraged activity (0-10 points). The degree to which the facility or project will stimulate the development of other recreational and cultural attractions or tourism opportunities and enhance economic growth and job opportunities. In order to be eligible for funding, proposals must score at least 6 points on this rating factor.

211.8(4) Matching funds (0-25 points). The proportion of nonstate match to be contributed to the project, and the extent of public and private participation. Moneys raised at any time but not yet spent may be considered to be a local match.

211.8(5) Planning principles (0-10 points). The extent to which the project has taken the following planning principles into consideration:

a. Efficient and effective use of land resources and existing infrastructure by encouraging compact development in areas with existing infrastructure or capacity to avoid costly duplication of services and costly use of land. Compact development maximizes public infrastructure investment and promotes mixed uses, greater density, bike and pedestrian networks, and interconnection with the existing street grid.

b. Provision for a variety of transportation choices, including public transit, pedestrian and bicycle traffic.

c. Maintenance of unique sense of place by respecting and enhancing local cultural, historical and natural environmental features.

d. Conservation of open space and farmland and preservation of critical environmental areas.

e. Promotion of the safety, livability, and revitalization of existing urban and rural communities.

f. Construction and promotion of developments, buildings, and infrastructure that conserve natural resources by reducing waste and pollution through efficient use of land, energy, water, and materials.

g. Capture, retention, infiltration and harvesting of rainfall using storm water best management practices such as permeable pavement, bioretention cells, bioswales, and rain gardens to protect water resources.

h. Implementation of the green sustainable design principles described in the CAT and RECAT application green design checklist.

i. Extent to which project design, construction, and use incorporate renewable energy sources including, but not limited to, solar, wind, geothermal, and biofuels, and support the following state of Iowa plans and goals:

(1) Office of energy independence's Iowa energy independence plan.

(2) General reduction of greenhouse gas emissions.

211.8(6) *Technology and values (0-5 points)*. Whether the project has taken the following into consideration:

a. Extent to which the project encourages technologies that allow regional or statewide access for long-distance learning and Internet access to facility resources.

b. Extent to which the project enhances education, wellness (health), and breadth of the project to attract Iowans of all ages.

c. Extent to which facilities are nonsmoking.

d. Extent to which facilities enhance or promote fine arts. For purposes of this paragraph, "fine arts" means "fine arts" as defined in Iowa Code section 304A.8(2) and also includes landscaping.

e. Extent to which facilities promote healthy indoor environments by employing the use of healthy and sustainable building materials, furnishings, cleaning products, and maintenance practices.

A minimum score of 65 points is needed for a project to be recommended for funding.

[ARC 8034B, IAB 8/12/09, effective 7/17/09]

261—211.9(15F) Application procedure. Subject to availability of funds, applications are reviewed by IDEED staff on an ongoing basis and reviewed at least quarterly by the board. Applications will be reviewed by staff for completeness and eligibility. If additional information is required, the applicant shall be provided with notice, in writing, to submit additional information. A review, analysis and evaluation from the IDEED staff will be submitted to the CAT and vision Iowa program review committees of the board, who will then make a final recommendation to the complete board for final approval, denial or deferral. The vision Iowa board has the option of funding a component of a proposed project if the entire project does not qualify for funding.

211.9(1) Application forms shall be available upon request from IDEED, 200 East Grand Avenue, Des Moines, Iowa 50309; telephone (515)725-3197; and on IDEED's Web site at www.iowalifechanging.com.

211.9(2) IDEED may provide technical assistance to applicants as necessary. IDEED staff and board members may conduct on-site evaluations of proposed projects.

211.9(3) Applications shall include, at a minimum, the information detailed in rule 211.8(15F), application review criteria.

[ARC 8034B, IAB 8/12/09, effective 7/17/09]

261—211.10(15F) Administration.

211.10(1) *Administration of awards.*

a. A contract shall be executed between the recipient and the vision Iowa board. These rules and applicable state laws and regulations shall be part of the contract. The board reserves the right to negotiate wage rates as well as other terms and conditions of the contract.

b. The recipient must execute and return the contract to the vision Iowa board within 45 days of transmittal of the final contract from the vision Iowa board. Failure to do so may be cause for the vision Iowa board to terminate the award.

c. Certain projects may require that permits or clearances be obtained from other state or local agencies before the project may proceed. Awards may be conditioned upon the timely completion of these requirements.

d. Awards may be conditioned upon commitment of other sources of funds necessary to complete the project.

e. Awards may be conditioned upon IDED receipt and board approval of an implementation plan for the funded project.

211.10(2) *Requests for funds.* Recipients shall submit requests for funds in the manner and on forms prescribed by IDED. Individual requests for funds shall be made in an amount equal to or greater than \$500 per request, except for the final draw of funds.

211.10(3) *Record keeping and retention.* The recipient shall retain all financial records, supporting documents and all other records pertinent to the community attraction and tourism development activity for three years after contract closeout. Representatives of IDED shall have access to all records belonging to or in use by recipients pertaining to community attraction and tourism development funds.

211.10(4) *Performance reports and reviews.* Recipients shall submit performance reports to IDED in the manner and on forms prescribed by IDED. Reports shall assess the use of funds and progress of activities. IDED may perform any reviews or field inspections necessary to ensure recipient performance.

211.10(5) *Amendments to contracts.* Any substantive change to a contract shall be considered an amendment. Changes include time extensions, budget revisions and significant alteration of the funded project that change the scope, location, objectives or scale of the approved project. Amendments must be requested in writing by the recipient and are not considered valid until approved by the vision Iowa board and confirmed in writing by IDED following the procedure specified in the contract between the recipient and IDED.

211.10(6) *Contract closeout.* Upon contract expiration, IDED shall initiate contract closeout procedures.

211.10(7) *Compliance with state and local laws and regulations.* Recipients shall comply with these rules, with any provisions of the Iowa Code governing activities performed under this program, and with applicable local regulations.

211.10(8) *Remedies for noncompliance.* At any time before contract closeout, the board may, for cause, find that a recipient is not in compliance with the requirements of this program. At the board's discretion, remedies for noncompliance may include penalties up to and including the return of program funds to the board. Reasons for a finding of noncompliance include but are not limited to the recipient's use of funds for activities not described in the contract, the recipient's failure to complete funded projects in a timely manner, the recipient's failure to comply with applicable state or local rules or regulations, or the lack of a continuing capacity of the recipient to carry out the approved project in a timely manner.

261—211.11 to 211.49 Reserved.

DIVISION II
COMMUNITY ATTRACTION AND TOURISM (CAT) FUND

261—211.50(15F) *Applicability.* The rules in this division are in addition to the general provisions of division I and only apply to the CAT fund.

261—211.51(15F) *Allocation of funds.*

211.51(1) Except as otherwise noted in this rule, all CAT funds shall be awarded for projects as specified in rule 211.3(15F).

211.51(2) One-third of the moneys shall be allocated to provide assistance to cities and counties which meet the following criteria:

- a.* A city which has a population of 10,000 or less according to the most recently published census.
- b.* A county which has a population that ranks in the bottom 33 counties according to the most recently published census.

211.51(3) Two-thirds of the moneys shall be allocated to provide assistance to any city and county in the state, which may include a city or county included under subrule 211.51(2).

211.51(4) If two or more cities or counties submit a joint project application for financial assistance from the CAT fund, all joint applicants must meet the criteria of subrule 211.51(2) in order to receive any moneys allocated under that subrule.

211.51(5) If any portion of the allocated moneys under subrule 211.51(2) has not been awarded by April 1 of the fiscal year for which the allocation is made, the portion which has not been awarded may be utilized by the vision Iowa board to provide financial assistance from the CAT fund to any city or county in the state.

261—211.52 to 211.100 Reserved.

DIVISION III
RIVER ENHANCEMENT COMMUNITY ATTRACTION AND TOURISM (RECAT) FUND

261—211.101(15F) Applicability. The rules in this division are in addition to the general provisions of division I and only apply to the RECAT fund.

261—211.102(15F) Allocation of funds.

211.102(1) Except as otherwise noted in this rule, all river enhancement community attraction and tourism funds shall be awarded for projects as specified in rule 211.3(15F).

211.102(2) Application contents. Applications for river enhancement projects shall include, as an exhibit to the standard CATD program application, information about the project's connection and interaction with a river, lake or river corridor.

211.102(3) Application review criteria. In addition to the application review criteria in rule 211.8(15F), river enhancement projects shall be reviewed using the following additional criteria:

a. Connection and interaction with a river, lake or river corridor. The extent that the project relates to, connects with, and enhances a body of water. An explanation of the relevance of the body of water with regard to the project overall (0-5 points).

b. A description of the green sustainable design and construction practices, including storm water best management practices, such as permeable pavement, bioretention cells, and bioswales that will be utilized on the project to protect from pollution the body of water enhanced by the project (0-5 points).

DIVISION IV
CAT AND RECAT WAIVERS

261—211.103(15F) Procedures for waiver of local or private matching moneys.

211.103(1) *General information.* Within the parameters of this rule, the board may, for good cause shown, waive any requirements for local or private matching moneys for CAT and RECAT beginning July 1, 2009, and ending June 30, 2010. 2009 Iowa Acts, Senate File 336, allows a community to apply to the board for a project-specific waiver of any local or private matching moneys required of the applicant by the board pursuant to Iowa Code section 15F.202. This rule also establishes a process for applicants to apply for a waiver of requirements for local or private matching moneys that the department has established by rule for the CATD programs.

211.103(2) *Definitions of "good cause."* For purposes of this rule, "good cause" includes but is not limited to documentation of the following:

a. Disaster area. An applicant can establish good cause by demonstrating that the proposed project is located or plans to locate in an area declared a disaster area by the governor or by a federal official. To qualify for a waiver on the basis of a disaster area, an applicant shall meet all of the following criteria:

(1) The project must be located within an area declared a disaster area by the governor or by a federal official.

(2) The community must apply for the waiver within 36 months of the date of the disaster declaration.

(3) The community must document why a waiver is necessary as a result of the natural disaster.

b. Reserved.

211.103(3) *Waiver procedures and board action.*

a. Waiver requests shall be submitted in writing to the department at the time the CAT or RECAT application is submitted. The request shall include documentation of good cause as defined in subrule 211.103(2).

b. Waiver requests will be reviewed as part of the application review process and acted upon by the board. If a request for a waiver is approved, the board will proceed with a final decision on the application.

c. The board may approve all or a portion of the request or deny or defer action on waiver requests. The board reserves the right to condition its approval upon terms and conditions the board deems appropriate for the specific project.

[ARC 8034B, IAB 8/12/09, effective 7/17/09]

These rules are intended to implement Iowa Code chapter 15F as amended by 2009 Iowa Acts, House File 822, and 2009 Iowa Acts, Senate File 336.

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RACING AND GAMING COMMISSION[491]

[Prior to 11/19/86, Chs 1 to 10, see Racing Commission[693]; Renamed Racing and Gaming

Division [195] under the “umbrella” of Commerce, Department of [181], 11/19/86]

[Prior to 12/17/86, Chs 20 to 25, see Revenue Department[730] Chs 91 to 96]

[Transferred from Commerce Department[181] to the Department of Inspections and Appeals “umbrella”[481]
pursuant to 1987 Iowa Acts, chapter 234, section 421]

[Renamed Racing and Gaming Commission[491], 8/23/89; See 1989 Iowa Acts, ch 67 §1(2), and ch 231 §30(1), 31]

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- 11.4(99F) Approval for distribution, operation, or movement of gambling games and implements of gambling
- 11.5(99F) Gambling games authorized
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CHAPTER 12

ACCOUNTING AND CASH CONTROL

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CHAPTER 1
ORGANIZATION AND OPERATION

[Prior to 11/19/86, Racing Commission[693]]

[Prior to 11/18/87, Racing and Gaming Division[195]]

[Prior to 8/9/00, see also 491—Chs 6, 20 and 21]

491—1.1(99D,99F) Function. The racing and gaming commission was created by Iowa Code chapter 99D and is charged with the administration of the Iowa pari-mutuel wagering Act and excursion boat gambling Act. Iowa Code chapters 99D and 99F mandate that the commission shall have full jurisdiction over and shall supervise all race meetings and gambling operations governed by Iowa Code chapters 99D and 99F.

491—1.2(99D,99F) Organization, meetings, and procedure.

1.2(1) Organization.

a. The racing and gaming commission is located at 717 E. Court, Suite B, Des Moines, Iowa 50309; telephone (515)281-7352. Office hours are 8 a.m. to 4:30 p.m., Monday through Friday.

b. The racing and gaming commission consists of five members. The membership shall elect a chairperson and vice-chairperson in July of each year. No chairperson shall serve more than two consecutive one-year full terms.

1.2(2) Meetings.

a. The commission meets periodically throughout the year and shall meet in July of each year. Notice of a meeting is published on the commission's Web site at www.iowa.gov/irgc/ at least five days in advance of the meeting or will be mailed to interested persons upon request. The notice shall contain the specific date, time, and place of the meeting. Agendas are available to any interested persons not less than five days in advance of the meeting.

b. Persons wishing to appear before the commission should submit a written request to the commission office not less than ten working days prior to the meeting. The administrator or commission may place a time limit on presentations after taking into consideration the number of presentations requested.

c. Special or electronic meetings may be called by the chairperson only upon a finding of good cause and shall be held in strict accordance with Iowa Code section 21.4 or 21.8.

1.2(3) Procedure. All meetings shall be open to the public unless a closed session is voted by four members or all members present for the reasons specified in Iowa Code section 21.5. The operation of commission meetings shall be governed by the following rules of procedure:

a. A quorum shall consist of three members.

b. When a quorum is present, a position is carried by an affirmative vote of the majority of the entire membership of the commission.

c. A commissioner, who is present at a meeting of the commission when action is taken, shall be presumed to have assented to the action unless the commissioner's dissent was requested to be entered in the minutes. A roll-call vote on any motion may be recorded in the minutes. Reconsideration of any action may only be initiated by a commissioner who voted with the prevailing side. The motion to reconsider any action may be made and seconded before the conclusion of the meeting when the action was approved, or it may be made in writing and submitted to the commission office within two business days following the meeting. Only the mover has the option to request that the motion be held in abeyance, when the motion to reconsider is offered during the same meeting. Any commissioner is eligible to call up the motion to reconsider at the next meeting of the commission. The official minutes shall record the offering of any motion to reconsider, whether placed during the meeting or by timely written submission.

d. The presiding officer may exclude any person from the meeting for behavior that disrupts or obstructs the meeting.

e. Cases not covered by this rule shall be governed by the 2000 edition of Robert's Rules of Order Newly Revised.

491—1.3(99D,99F) Administration of the commission. The commission shall appoint an administrator for the racing and gaming commission who is responsible for the day-to-day administration of the commission's activities.

491—1.4(17A,22,99D,99F) Open records. Except as provided in Iowa Code sections 17A.2(11) "f," 22.7, 99D.7(8), and 99F.4(6), all public records of the commission shall be available for public inspection during business hours. Requests to obtain records may be made by mail, telephone, or fax or in person. Minutes of commission meetings, forms, and other records routinely requested by the public may be obtained without charge or viewed on the commission's Web site. Other records requiring more than ten copies may be obtained upon payment of the actual cost for copying. This charge may be waived by the administrator.

491—1.5(17A,99D,99F) Forms. All forms utilized in the conduct of business with the racing and gaming commission shall be available from the commission upon request. These forms include but are not limited to:

1.5(1) *Racing, gambling structure, or excursion gambling boat license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the facility, and description of proposed operation. The form may include other information the commission deems necessary to make a decision on the license application. The qualified nonprofit corporation and the boat operator, if different than the qualified nonprofit corporation, shall pay a nonrefundable application fee to offset the commission's cost for processing the application in the amount of \$25,000. The fee shall be \$5,000 for each subsequent application involving the same operator and the same qualified sponsoring organization. Additionally, the applicant shall remit an investigative fee of \$30,000 to the department of public safety to do background investigations as required by the commission. The department of public safety shall bill the applicant/licensee for additional fees as appropriate and refund any unused portion of the investigative fee within 90 days after the denial or operation begins.

1.5(2) *Renewal application for racing license.* This form shall contain, at a minimum, the full name of the applicant, racing dates, simulcast proposal, feasibility of racing facility, distribution to qualified sponsoring organizations, table of organization, management agreement, articles of incorporation and bylaws, lease agreements, financial statements, information on the gambling treatment program, and description of racetrack operations. The form may include other information the commission deems necessary to make a decision on the license application.

1.5(3) *Renewal application for excursion gambling boat or gambling structure license.* This form shall contain, at a minimum, the full name of the applicant, annual fee, distribution to qualified sponsoring organizations, table of organization, internal controls, operating agreement, hours of operation, casino operations, Iowa resources, contracts, guarantee bond, notarized certification of truthfulness, and gambling treatment program. The form may include other information the commission deems necessary to make a decision on the license application. An annual fee to operate an excursion gambling boat shall be based on the passenger-carrying capacity including crew. For a gambling structure, the annual license fee shall be based on the capacity of the gambling structure. The fee shall be \$5 per person capacity and accompany this application.

1.5(4) *Renewal application for racetrack enclosure license.* This form shall contain, at a minimum, the full name of the applicant, annual fee, casino operations, internal controls, Iowa resources, guarantee bond, and notarized certification of truthfulness. The form may include other information the commission deems necessary to make a decision on the license application. A \$1,000 application fee must accompany this license application.

1.5(5) *Occupational license application.* This form shall contain, at a minimum, the applicant's full name, social security number, residence, date of birth, and other personal identifying information that the commission deems necessary. A fee set by the commission shall apply to this application. (Refer to 491—Chapter 6 for additional information.)

1.5(6) *Application for season approvals.* This form shall contain, at a minimum, a listing of the department heads and racing officials, minimum purse, purse supplements for Iowa-breds, grading system (greyhound racing only), schedule and wagering format, equipment, security plan, certification, and any other information the commission deems necessary for approval. This request must be submitted 45 days prior to the meet. Any changes to the items approved by the commission shall be requested in writing by the licensee and subject to the written approval of the administrator or commission representative before the change occurs.

1.5(7) *Manufacturers and distributors license application.* This form shall contain at a minimum the full name of the applicant, all ownership interests, balance sheets and profit-and-loss statements for three fiscal years immediately preceding the application, pending legal action, location and physical plant of the applicant, and description of proposed operation. The form may include other information the administrator deems necessary to make a decision on the license application. (Refer to 491—Chapter 11 for additional information.)

491—1.6(99D,99F) Limitation on location and number of racetracks and excursion gambling boats. Rescinded IAB 9/29/04, effective 11/3/04.

491—1.7(99D,99F) Criteria for granting licenses, renewing licenses, and determining race dates. The commission sets forth the following criteria which the commission will consider when deciding whether to issue a license to conduct racing or gaming in Iowa. The various criteria may not have the same importance in each instance, and other factors may present themselves in the consideration of an application for a license. The criteria are not listed in order of priority. After the initial consideration for issuing a license, applicable criteria need only be considered when an applicant has demonstrated a deficiency.

1.7(1) *Compliance.* The commission will consider whether or not the applicant is and has been in compliance with the terms and conditions specified in Iowa Code section 99D.9 or 99F.4. The commission will also consider whether the proposed facility is in compliance with applicable state and local laws regarding fire, health, construction, zoning, and other similar matters.

1.7(2) *Gaming integrity.* The commission will consider whether the proposed operation would ensure that gaming is conducted with a high degree of integrity in Iowa and that the officers, directors, partners, or shareholders of the operation are of good repute and moral character. The commission shall decide what weight and effect evidence about an officer, director, partner, or shareholder should have in the determination of whether there is substantial evidence that the individual is not of good reputation and character.

1.7(3) *Economic impact and development.* The commission will consider:

a. The amount of revenue to be provided by the proposed facility to the state and local communities through direct taxation on the facility's operation and indirect revenues from tourism, ancillary businesses, creation of new industry, and taxes on employees and patrons. The commission may engage an independent firm proficient in market feasibility studies in the industry for specific analysis of any application to determine the potential market of any proposed facility as well as the impact on existing licensees.

b. The level of financial and other support the proposed operation will provide to the community in order to improve the quality of life of the residents of the community.

c. The viability and overall net benefit of the proposed operation to the state gaming industry, taking into consideration:

- (1) Investment versus projected adjusted gross revenue.
- (2) Impact on existing operators' adjusted gross revenue versus existing operators' ratio of adjusted gross revenue to investment.
- (3) Ratio of equity to total investment and whether the proposed project is adequately and properly financed.
- (4) Percent of projected adjusted gross revenue from underserved markets.
- (5) Percent of projected adjusted gross revenue from existing Iowa operators.

- (6) Stability and reliability of out-of-state market(s).
- d. The benefits to Iowa tourism.
- e. The number and quality of employment opportunities for Iowans.
- f. The development and sale of Iowa products.
- g. The number and types of developments and amenities associated with the proposed operation in addition to the gaming floor.

1.7(4) *Efficient and safe operation.* The commission will consider whether the proposed facility is planned in a manner that promotes efficient and safe operation of all aspects of the facility including providing adequate security for employees and patrons. Adequate employment to serve patrons' needs, facility scope and design, parking facilities, access to cashier windows, concessions, and restrooms will be considered.

1.7(5) *Community support.* The commission will consider support for the proposed project within the community in which a proposed facility is to be located.

1.7(6) *Nurture of the racing industry.* The commission will consider whether the proposed racetrack operation would serve to nurture, promote, develop, and improve the racing industry in Iowa and provide high-quality racing in Iowa. The commission will also consider if the proposed racetrack operation will maximize purses and is beneficial to Iowa breeders.

1.7(7) *Other factors.* The commission will consider such other factors as may arise in the circumstances presented by a particular application.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—1.8(17A,99D,99F) Granting of a waiver. For purposes of this rule, a waiver or variance means action by the commission that suspends in whole or in part the requirements or provisions of a rule as applied to an identified entity on the basis of the particular circumstances of that entity. For simplicity, the term “waiver” shall include both a waiver and a variance.

1.8(1) *Scope of rule.* This rule outlines generally applicable standards and a uniform process for the granting of a waiver from rules adopted by the commission in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this rule with respect to any waiver from that rule.

1.8(2) *Applicability of rule.* The commission may grant a waiver from a rule only if the commission has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The commission may not waive requirements created or duties imposed by statute.

1.8(3) *Criteria for waiver.* In response to a petition completed pursuant to subrule 1.8(5), the commission may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the commission finds, based on clear and convincing evidence, all of the following:

- a. The application of the rule would impose an undue hardship on the entity for whom the waiver is requested;
- b. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any entity;
- c. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
- d. Substantially equal protection of public health, safety, and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

1.8(4) *Filing of petition.* A petition for a waiver must be submitted in writing to the commission as follows:

- a. *License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.
- b. *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

c. Other. If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the administrator.

1.8(5) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

a. The name, address, and telephone number of the person or entity for whom a waiver is being requested, and the case number of any related contested case.

b. A description and citation of the specific rule from which a waiver is requested.

c. The specific waiver requested, including the precise scope and duration.

d. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in subrule 1.8(3). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition, and a statement of reasons that the petitioner believes will justify a waiver.

e. A history of any prior contacts between the commission and the petitioner relating to the regulated activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the regulated activity or license within the last five years.

f. Any information known to the requester regarding the commission's treatment of similar cases.

g. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the grant of a waiver.

h. The name, address, and telephone number of any person or entity who would be adversely affected by the grant of a waiver.

i. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver.

j. Signed releases of information authorizing persons with knowledge regarding the request to furnish the commission with information relevant to the waiver.

1.8(6) Additional information. Prior to issuing an order granting or denying a waiver, the commission may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the commission may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and the administrator, a committee of the commission, or a quorum of the commission.

1.8(7) Notice. The commission shall acknowledge a petition upon receipt. The commission shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law, within 30 days of the receipt of the petition. In addition, the commission may give notice to other persons.

To accomplish this notice provision, the commission may require the petitioner to serve the notice on all persons to whom notice is required by any provision of law, and provide a written statement to the commission attesting that notice has been provided.

1.8(8) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the commission so provides by rule or order or is required to do so by statute.

1.8(9) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts, reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

1.8(10) Board discretion. The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the commission, upon consideration of all relevant factors. Each petition for a waiver shall be evaluated by the commission based on the unique, individual circumstances set out in the petition.

1.8(11) Burden of persuasion. The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the commission should exercise its discretion to grant a waiver from a commission rule.

1.8(12) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

1.8(13) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the commission shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

1.8(14) *Conditions.* The commission may place any condition on a waiver that the commission finds desirable to protect the public health, safety, and welfare.

1.8(15) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the commission, a waiver may be renewed if the commission finds that grounds for the waiver continue to exist.

1.8(16) *Time for ruling.* The commission shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the commission shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

1.8(17) *When deemed denied.* Failure of the commission to grant or deny a petition within the required time period shall be deemed a denial of that petition by the commission. However, the commission shall remain responsible for issuing an order denying a waiver.

1.8(18) *Service of order.* Within seven days of its issuance, any order issued under this rule shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

1.8(19) *Public availability.* All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying a waiver petition are public records under Iowa Code chapter 22. Some petitions or orders may contain information the commission is authorized or required to keep confidential. The commission may accordingly redact confidential information from petitions or orders prior to public inspection.

1.8(20) *Summary reports.* Semiannually, the commission shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by these rules, and a general summary of the reasons justifying the commission's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

1.8(21) *Cancellation of a waiver.* A waiver issued by the commission pursuant to this rule may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the commission issues an order finding any of the following:

- a.* The petitioner or the person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver;
- b.* The alternative means for ensuring that the public health, safety, and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
- c.* The subject of the waiver order has failed to comply with all conditions contained in the order.

1.8(22) *Violations.* Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this rule who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

1.8(23) *Defense.* After the commission issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

1.8(24) *Judicial review.* Judicial review of the commission's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code section 17A.9A and Iowa Code chapters 99D and 99F.

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◇ Two or more ARCs

¹ Effective date of Item 1, subrule 1.6(4), delayed by the Administrative Rules Review Committee at its meeting held September 8, 1998, until the adjournment of the 1999 Session of the General Assembly.

² Effective date of 1.8 delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000.

CHAPTER 4
CONTESTED CASES AND OTHER PROCEEDINGS

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—4.1(17A) Scope and applicability. This chapter applies to contested case proceedings conducted by the racing and gaming commission. The chapter shall also apply to gaming boards' and board of stewards' proceedings and gaming representatives' actions.

491—4.2(17A) Definitions. Except where otherwise specifically defined by law:

"Board of stewards" means a board established by the administrator to review conduct by occupational and pari-mutuel licensees that may constitute violations of the rules and statutes relating to pari-mutuel racing. The administrator may serve as a board of one.

"Commission" means the racing and gaming commission.

"Contested case" means a proceeding defined by Iowa Code section 17A.2(5) and includes any matter defined as a no factual dispute contested case under 1998 Iowa Acts, chapter 1202, section 14.

"Gaming board" means a board established by the administrator to review conduct by occupational, excursion gambling boat, gambling structure, and gambling game licensees that may constitute violations of the rules and statutes relating to gaming. The administrator may serve as a board of one.

"Gaming representative" means an employee of the commission assigned by the administrator to a licensed pari-mutuel racetrack, excursion gambling boat, or gambling structure to perform the supervisory and regulatory duties of the commission.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge presiding over a contested case hearing or the commission in cases heard by the commission.

"Proposed decision" means the administrative law judge's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the commission did not preside.

"Steward" means a racing official appointed or approved by the commission to perform the supervisory and regulatory duties relating to pari-mutuel racing.

491—4.3(17A) Time requirements.

4.3(1) In computing any period of time prescribed or allowed by these rules or by an applicable statute, the day of the act, event or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday. Legal holidays are prescribed in Iowa Code section 4.1(34).

4.3(2) All documents or papers required to be filed with the commission shall be delivered to any commission office within such time limits as prescribed by law or by rules or orders of the commission. No papers shall be considered filed until actually received by the commission.

4.3(3) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

DIVISION I
GAMING REPRESENTATIVE, GAMING BOARD,
AND BOARD OF STEWARDS

491—4.4(99D,99F) Gaming representatives—licensing and regulatory duties.

4.4(1) The gaming representative shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying a license for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Rescinded IAB 2/5/03, effective 3/12/03.

c. Rescinded IAB 9/29/04, effective 11/3/04.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.4(2) The gaming representative shall monitor, supervise, and regulate the activities of occupational, pari-mutuel racetrack, gambling game, excursion gambling boat, and gambling structure licensees. A gaming representative may investigate any questionable conduct by a licensee for any violation of the rules or statutes. A gaming representative may refer an investigation to the gaming board upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

a. A gaming representative shall make a referral to the gaming board in writing. The referral shall make reference to rules or statutory provisions at issue and provide a factual basis supporting the violation.

b. The gaming representative making the referral to the gaming board, or a designee of the gaming board, shall appear before the gaming board at the hearing to provide any information requested by the board.

4.4(3) A gaming representative shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the gaming representative determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the gaming representative shall take one of the following courses of action:

a. If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the gaming representative shall reinstate the license.

b. If the licensee is convicted of the charges, the gaming representative shall deny the license.

c. If the licensee is convicted of a lesser charge, it is at the discretion of the gaming representative whether to reinstate or deny the license pursuant to 491—Chapter 6.

4.4(4) The gaming representative shall revoke the license of a person reported to the commission as having refused drug testing or as having a confirmed positive drug test result for a controlled substance, for a drug test conducted pursuant to Iowa Code section 730.5 or 99F.4(20).

4.4(5) A gaming representative may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The gaming representative may provide notice of ejection or exclusion orally or in writing. The gaming representative may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The gaming representative may exclude the person for a certain or an indefinite period of time.

4.4(6) The gaming representative may forbid any person from continuing to engage in an activity the representative feels is detrimental to racing or gaming until resolved.

4.4(7) The gaming representative shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

4.4(8) A gaming representative may summarily suspend an occupational licensee in accordance with rule 491—4.47(17A).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—4.5(99D,99F) Gaming board—duties. The gaming board conducts informal hearings whenever the board has reasonable cause to believe that a licensee, an occupational licensee, or other persons have committed an act or engaged in conduct which is in violation of statute or commission rules. The hearings precede a contested case hearing and are investigative in nature. The following procedures will apply:

4.5(1) The gaming board shall consist of three gaming representatives, as assigned by the administrator. The administrator has the discretion to create more than one gaming board, to set terms for gaming board members, to assign alternates, and to make any decisions necessary for the efficient and effective operation of the gaming board. A gaming representative who has made a referral to the gaming board shall not sit on the board that makes a decision on the referral.

4.5(2) The administrator may designate an employee to act as gaming board coordinator. The gaming board coordinator shall have the power to assist and advise the gaming board through all aspects of the gaming board hearing process. The gaming board coordinator may review any referral from gaming representatives prior to setting the matter for hearing before the gaming board. The gaming board coordinator, in consultation with the administrator or the administrator's designee, may return the referral to the initiating gaming representative if the information provided appears insufficient to establish a violation. The gaming board coordinator shall otherwise assist the gaming board in setting the matter for hearing.

4.5(3) The gaming board, upon receipt of a referral, may review the referral prior to the hearing. The gaming board may return a referral to the initiating gaming representative on its own motion prior to hearing if the information provided appears insufficient to establish a violation.

4.5(4) Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder, at which all board members or their appointed representatives shall be present in person or by teleconference. The license holder may request a continuance for good cause in writing not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

4.5(5) The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

4.5(6) The gaming board has complete and total authority to decide all issues concerning the process of the hearing. The gaming board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The gaming board has the right to request witnesses or additional documents that have not been submitted by the initiating gaming representative. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the gaming board.

4.5(7) It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

4.5(8) Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track or on a riverboat is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 4.7(99D,99F).

4.5(9) The gaming board has the power to interpret the rules and to decide all questions not specifically covered by them. The board has the power to determine all questions arising with reference to the conduct of gaming, and the authority to decide any question or dispute relating to racing or gaming in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

4.5(10) The gaming board shall enter a written decision after each hearing. The decision shall find whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual

basis for the finding. The decision shall also establish a penalty for any violation. The gaming board has the authority to impose any penalty as set forth in these rules.

4.5(11) Rescinded IAB 9/29/04, effective 11/3/04.

4.5(12) Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.5(13) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with a gaming representative. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the gaming board. Stipulations are considered final agency action and cannot be appealed.

491—4.6(99D,99F) Stewards—licensing and regulatory duties.

4.6(1) The stewards shall make decisions whether to approve applications for occupational licenses, in accordance with the rules and statutes.

a. Each decision denying an application for an occupational license shall be in writing. The decision must contain a brief explanation of the reason for the decision, including a reference to the statute or rule serving as the basis for the decision.

b. Rescinded IAB 2/5/03, effective 3/12/03.

c. An applicant for an occupational license may appeal a decision denying the application. An appeal must be made in writing to the office of the stewards or the commission's office in Des Moines. The appeal must be received within 72 hours of service of the decision. The appeal must contain numbered paragraphs and set forth the name of the person seeking review, the decision to be reviewed, separate assignments of error, clear and concise statement of relevant facts, reference to applicable statutes, rules or other authority, prayer setting forth relief sought and signature, name, address, and telephone number of the person seeking review or that person's representative, or shall be on a form prescribed by the commission.

d. Upon the filing of a timely and perfected appeal, the applicant has the right to a contested case proceeding, as set forth supra in these rules.

4.6(2) The stewards shall monitor, supervise, and regulate the activities of occupational and pari-mutuel racetrack licensees. A steward may investigate any questionable conduct by a licensee for any violation of the rules or statutes. Any steward may refer an investigation to the board of stewards upon suspicion that a licensee or nonlicensee has committed a violation of the rules or statutes.

4.6(3) A steward shall summarily suspend an occupational license when a licensee has been formally arrested or charged with a crime that would disqualify the licensee, if convicted, from holding a license and the steward determines that the licensee poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F. Upon proof of resolution of a disqualifying criminal charge or formal arrest, regardless of summary suspension of a license, the stewards shall take one of the following courses of action:

a. If the license was summarily suspended and the charges are dismissed or the licensee is acquitted of the charges, the stewards shall reinstate the license.

b. If the licensee is convicted of the charges, the stewards shall deny the license.

c. If the licensee is convicted of a lesser charge, it is at the discretion of the stewards whether to reinstate or deny the license pursuant to 491—Chapter 6.

4.6(4) The stewards may summarily suspend an occupational license in accordance with rule 491—4.47(17A).

4.6(5) Hearings before the board of stewards intended to implement Iowa Code section 99D.7(13) shall be conducted under the following parameters:

a. Upon finding of reasonable cause, the board shall schedule a hearing to which the license holder shall be summoned for the purpose of investigating suspected or alleged misconduct by the license holder. The license holder may request a continuance in writing for good cause not less than 24 hours prior to the hearing except in cases of unanticipated emergencies. The continuance need not necessarily stay any intermediate sanctions.

b. The notice of hearing given to the license holder shall give adequate notice of the time, place and purpose of the board's hearing and shall specify by number the statutes or rules allegedly violated. If a license holder, after receiving adequate notice of a board meeting, fails to appear as summoned, the license holder will be deemed to have waived any right to appear and present evidence to the board.

c. The board has complete and total authority to decide the process of the hearing. The administrator may designate an employee to assist and advise the board of stewards through all aspects of the hearing process. The board shall recognize witnesses and either question the witnesses or allow them to give a narrative account of the facts relevant to the case. The board may request additional documents or witnesses before making a decision. The licensee has no right to present testimony, cross-examine witnesses, make objections, or present argument, unless specifically authorized by the board.

d. It is the duty and obligation of every licensee to make full disclosure at a hearing before the board of any knowledge possessed regarding the violation of any rule, regulation or law concerning racing and gaming in Iowa. No person may refuse to testify before the board at any hearing on any relevant matter within the authority of the board, except in the proper exercise of a legal privilege. No person shall falsely testify before the board.

e. Persons who are not holders of a license or occupational license and who have allegedly violated commission rules or statute, or whose presence at a track is allegedly undesirable, are subject to the authority of the board and to any penalties, as set forth in rule 491—4.7(99D,99F).

f. The board of stewards has the power to interpret the rules and to decide all questions not specifically covered by them. The board of stewards has the power to determine all questions arising with reference to the conduct of racing, and the authority to decide any question or dispute relating to racing in compliance with rules promulgated by the commission or policies approved for licensees, and persons participating in licensed racing or gaming agree in so doing to recognize and accept that authority. The board may also suspend the license of any license holder when the board has reasonable cause to believe that a violation of law or rule has been committed and that the continued performance of that individual in a licensed capacity would be injurious to the best interests of racing or gaming.

g. The board of stewards shall enter a written decision after each hearing. The decision shall state whether there is a violation of the rules or statutes and, if so, shall briefly set forth the legal and factual basis for the finding. The decision shall also establish a penalty for any violation. The board of stewards has the authority to impose any penalty, as set forth in these rules.

h. Rescinded IAB 9/29/04, effective 11/3/04.

i. Upon the filing of a timely and perfected appeal, the licensee has the right to a contested case proceeding, as set forth supra in these rules.

4.6(6) A steward may eject and exclude any person from the premises of a pari-mutuel racetrack, excursion gambling boat, or gambling structure for any reason justified by the rules or statutes. The steward may provide notice of ejection or exclusion orally or in writing. The steward may define the scope of the exclusion to any degree necessary to protect the integrity of racing and gaming in Iowa. The steward may exclude the person for a certain or indefinite period of time.

4.6(7) The stewards shall have other powers and duties set forth in the statutes and rules, and as assigned by the administrator.

4.6(8) Informal settlements. A licensee may enter into a written stipulation representing an informed mutual consent with the stewards. This stipulation must specifically outline the violation and the penalty imposed. Stipulations must be approved by the board of stewards. Stipulations are considered final agency action and cannot be appealed.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—4.7(99D,99F) Penalties (gaming board and board of stewards). All penalties imposed will be promptly reported to the commission and facility in writing. The board may impose one or more of the following penalties: eject and exclude an individual from a facility; revoke a license; suspend a license for up to 365 days from the date of the original suspension; place a license on probation; deny a license; impose a fine of up to \$1000; or order a redistribution of a racing purse or the payment of or the

withholding of a gaming payout. The board may set the dates for which the suspension must be served. The board may also suspend the license of any person currently under suspension or in bad standing in any other state or jurisdiction by a state racing or gaming commission. If the punishment so imposed is not sufficient, in the opinion of the board, the board shall so report to the commission.

491—4.8(99D,99F) Effect of another jurisdiction's order. The commission or board may take appropriate action against a license holder or other person who has been excluded from a track or gaming establishment in another jurisdiction to exclude that person from any track or gaming establishment under the commission's jurisdiction. Proceedings shall be conducted in the same manner as prescribed by these rules for determining misconduct on Iowa tracks or in gaming establishments and shall be subject to the same appeal procedures.

The commission and stewards shall have discretion to honor rulings from other jurisdictions regarding license suspension or revocation or the eligibility of contestants. Whenever the commission decides to honor an order from another jurisdiction, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended or revoked.

491—4.9(99D,99F) Service of administrative actions. Any administrative action taken against an applicant or occupational licensee shall be served on the applicant or occupational licensee by personal service or by certified mail with return receipt requested to the last-known address on the application.

4.9(1) If the applicant or licensee is represented by legal counsel, a copy of the written decision shall also be provided to legal counsel by regular mail. However, the applicant or licensee must still be served in accordance with this rule.

4.9(2) If the administrative action involves an alleged medication violation that could result in disqualification of a contestant, the stewards shall provide by regular mail notice of the hearing and all subsequent rulings to the owner of the contestant.

491—4.10(99D,99F) Appeals of administrative actions. A license applicant or an occupational licensee may appeal a denial, suspension or ruling. An appeal must be made in writing to the office of the gaming representative or the commission office in Des Moines. The appeal must be received within 72 hours of service of the decision and is not considered filed until received by the commission. The appeal must contain numbered paragraphs and set forth the name of the person seeking review; the decision to be reviewed; separate assignments of error; clear and concise statement of relevant facts; reference to applicable statutes, rules or other authority; prayer setting forth relief sought; and signature, name, address, and telephone number of the person seeking review or that person's representative; or shall be on a form prescribed by the commission. If a licensee is granted a stay of a suspension pursuant to 491—4.45(17A) and the ruling is upheld in a contested case proceeding, the board of stewards may reassign the dates of suspension so that the suspension dates are served in the state of Iowa.

491—4.11 to 4.19 Reserved.

DIVISION II
CONTESTED CASES

491—4.20(17A) Requests for contested case proceedings not covered in Division I. Any person or entity claiming an entitlement to a contested case proceeding, which is not otherwise covered by the procedures set forth in Division I, shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the commission action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific commission action which is disputed and, if the requester is represented by a lawyer, identify the provisions of law or precedent requiring or authorizing the holding of a contested case

proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

491—4.21(17A) Notice of hearing.

4.21(1) Delivery. Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

- a. Personal service as provided in the Iowa Rules of Civil Procedure; or
- b. Certified mail, return receipt requested; or
- c. First-class mail; or
- d. Publication, as provided in the Iowa Rules of Civil Procedure.

4.21(2) Contents. The notice of hearing shall contain the following information:

- a. A statement of the time, place, and nature of the hearing;
- b. A statement of the legal authority and jurisdiction under which the hearing is to be held;
- c. A reference to the particular sections of the statutes and rules involved;
- d. A short and plain statement of the matters asserted. If the commission or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;
- e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the commission or the state and of parties' counsel where known;
- f. Reference to the procedural rules governing conduct of the contested case proceeding;
- g. Reference to the procedural rules governing informal settlement;
- h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., agency head, members of multimembered agency head, administrative law judge from the department of inspections and appeals); and
- i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) "a" and rule 491—4.22(17A), that the presiding officer be an administrative law judge.

491—4.22(17A) Presiding officer. Contested case hearings may be heard directly by the commission. The commission, or the administrator, shall decide whether it will hear the appeal or whether the appeal will be heard by an administrative law judge who shall serve as the presiding officer. When the appeal is heard by an administrative law judge, the administrative law judge is authorized to issue a proposed decision.

4.22(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the commission chair, members of the commission or commission employees.

4.22(2) The administrator may deny the request only upon a finding that one or more of the following apply:

- a. Neither the administrator nor any officer of the commission under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.
- b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.
- c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.
- d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.
- e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.
- f. The request was not timely filed.
- g. The request is not consistent with a specified statute.

4.22(3) The administrator shall issue a written ruling specifying the grounds for the decision within 20 days after a request for an administrative law judge is filed.

4.22(4) An administrative law judge assigned to act as presiding officer in a contested case shall have a Juris Doctorate degree unless waived by the agency.

4.22(5) Except as provided otherwise by rules 491—4.41(17A) and 491—4.42(17A), all rulings by an administrative law judge acting as presiding officer are subject to appeal to the commission. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

4.22(6) Unless otherwise provided by law, the commission, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

491—4.23(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the commission in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

491—4.24(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

491—4.25(17A) Disqualification.

4.25(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

- a. Has a personal bias or prejudice concerning a party or a representative of a party;
- b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;
- c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;
- d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;
- e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;
- f. Has a spouse or relative within the third degree of relationship that:
 - (1) Is a party to the case, or an officer, director or trustee of a party;
 - (2) Is a lawyer in the case;
 - (3) Is known to have an interest that could be substantially affected by the outcome of the case; or
 - (4) Is likely to be a material witness in the case; or
- g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

4.25(2) The term “personally investigated” means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term “personally investigated” does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person’s investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other commission functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 4.25(3) and 4.39(9).

4.25(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary,

that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

4.25(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.25(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 491—4.41(17A) and seek a stay under rule 491—4.45(17A).

491—4.26(17A) Consolidation—severance.

4.26(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

4.26(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

491—4.27(17A) Pleadings.

4.27(1) Pleadings, other than the notice of appeal, will not be required in appeals from a licensing decision by a gaming representative, gaming board, or board of stewards. However, pleadings may be required in other contested cases or as ordered by the presiding officer.

4.27(2) Petition.

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

- (1) The persons or entities on whose behalf the petition is filed;
- (2) The particular provisions of statutes and rules involved;
- (3) The relief demanded and the facts and law relied upon for such relief; and
- (4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

4.27(3) Answer. An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer that could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

4.27(4) Amendment. Any notice of appeal, notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

491—4.28(17A) Service and filing of pleadings and other papers.

4.28(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the commission, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

4.28(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

4.28(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the commission at 717 East Court, Suite B, Des Moines, Iowa 50309. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously with the commission.

4.28(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the commission office at 717 East Court, Suite B, Des Moines, Iowa 50309, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

4.28(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States post office mailbox with correct postage properly affixed or state interoffice mail).
(Date) (Signature)

491—4.29(17A) Discovery.

4.29(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be as provided in the Iowa Rules of Civil Procedure.

4.29(2) Any motion relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 4.29(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

4.29(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

491—4.30(17A) Subpoenas.**4.30(1)** *Issuance.*

a. A commission subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

4.30(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

491—4.31(17A) Motions.

4.31(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

4.31(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the commission or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

4.31(3) The presiding officer may schedule oral argument on any motion.

4.31(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the commission or an order of the presiding officer.

4.31(5) Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 491—4.44(17A) and appeal pursuant to rule 491—4.43(17A).

491—4.32(17A) Prehearing conference.

4.32(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than seven days prior to the hearing date. A prehearing conference shall be scheduled not less than three business days prior to the hearing date.

Written notice of the prehearing conference shall be given by the commission to all parties. For good cause the presiding officer may permit variances from this rule.

4.32(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names.

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

4.32(3) In addition to the requirements of subrule 4.32(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters that the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters that will expedite the hearing.

4.32(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

491—4.33(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

4.33(1) A written application for a continuance shall:

- a. Be made at the earliest possible time and no less than seven days before the hearing except in case of unanticipated emergencies;
- b. State the specific reasons for the request; and
- c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The commission may waive notice of such requests for a particular case or an entire class of cases.

4.33(2) In determining whether to grant a continuance, the presiding officer may consider:

- a. Prior continuances;
- b. The interests of all parties;
- c. The likelihood of informal settlement;
- d. The existence of an emergency;
- e. Any objection;
- f. Any applicable time requirements;
- g. The existence of a conflict in the schedules of counsel, parties, or witnesses;
- h. The timeliness of the request; and
- i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

491—4.34(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with commission rules. Unless otherwise provided, a withdrawal shall be with prejudice.

491—4.35(17A) Intervention.

4.35(1) Motion. A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

4.35(2) When filed. Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

4.35(3) Grounds for intervention. The movant shall demonstrate that (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

4.35(4) Effect of intervention. If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

491—4.36(17A) Hearing procedures.

4.36(1) The presiding officer presides at the hearing, and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

4.36(2) All objections shall be timely made and stated on the record.

4.36(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

4.36(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

4.36(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

4.36(6) Witnesses may be sequestered during the hearing.

4.36(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter, and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

491—4.37(17A) Evidence.

4.37(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

4.37(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

4.37(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

4.37(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

4.37(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

4.37(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

491—4.38(17A) Default.

4.38(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

4.38(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

4.38(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final commission action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 491—4.43(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

4.38(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

4.38(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

4.38(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

4.38(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 491—4.41(17A).

4.38(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

4.38(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

4.38(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 491—4.45(17A).

491—4.39(17A) Ex parte communication.

4.39(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the commission or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 4.25(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

4.39(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

4.39(3) Written, oral or other forms of communication are “ex parte” if made without notice and opportunity for all parties to participate.

4.39(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communication shall be provided in compliance with rule 491—4.28(17A) and may be supplemented by telephone, facsimile, E-mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

4.39(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

4.39(6) The administrator or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under subrule 4.25(1) or other law and they comply with subrule 4.39(1).

4.39(7) Communications with the presiding officer involving scheduling or procedural matters uncontested do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 491—4.33(17A).

4.39(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

4.39(9) Promptly after being assigned to serve as presiding officer on a hearing panel, as a member of a full board hearing, on an intra-agency appeal, or other basis, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

4.39(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension, or revocation of the privilege to practice before the commission. Violation of ex parte communication prohibitions by commission personnel shall be reported to the administrator for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

491—4.40(17A) Recording costs. Upon request, the commission shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporters rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

491—4.41(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the commission may review an interlocutory order of the presiding officer. In determining whether to do so, the commission shall weigh the extent to which its granting the interlocutory appeal would expedite

final resolution of the case and the extent to which review of that interlocutory order by the commission at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

491—4.42(17A) Final decision.

4.42(1) When the commission presides over the reception of evidence at the hearing, its decision is a final decision.

4.42(2) When the commission does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the commission without further proceedings unless there is an appeal to, or review on motion of, the commission within the time provided in rule 491—4.43(17A).

4.42(3) The commission has the authority to deny, suspend, or revoke any license applied for or issued by the commission or to fine a licensee or a holder of an occupational license.

491—4.43(17A) Appeals and review.

4.43(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the commission within 10 days after issuance of the proposed decision.

4.43(2) *Review.* The commission may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

4.43(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the commission. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

- a. The parties initiating the appeal;
- b. The proposed decision or order appealed from;
- c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;
- d. The relief sought;
- e. The grounds for relief.

4.43(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The commission may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

4.43(5) *Scheduling.* The commission shall issue a schedule for consideration of the appeal.

4.43(6) *Briefs and arguments.* Unless otherwise ordered, briefs, if any, must be filed within five days of meeting.

491—4.44(17A) Applications for rehearing.

4.44(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

4.44(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 4.43(4), the applicant requests an opportunity to submit additional evidence.

4.44(3) *Time of filing.* The application shall be filed with the commission within 20 days after issuance of the final decision.

4.44(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the commission shall serve copies on all parties.

4.44(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the commission grants the application within 20 days after its filing.

491—4.45(17A) Stays of commission actions.

4.45(1) *When available.*

a. Any party to a contested case proceeding may petition the commission for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the commission. The petition for a stay shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The administrator may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the commission for a stay or other temporary remedies pending judicial review, of all or part of that proceeding. The petition for a stay shall state the reasons justifying a stay or other temporary remedy.

4.45(2) *When granted.* In determining whether to grant a stay, the presiding officer or administrator shall consider the factors listed in Iowa Code section 17A.19(5).

4.45(3) *Vacation.* A stay may be vacated by the issuing authority upon application by the commission or any other party. When a stay has been vacated, the commission or the commission's designee shall implement the original order or sanction which had been stayed. The commission or the commission's designee shall have full authority to determine how the original order or sanction is to be implemented.

491—4.46(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

491—4.47(17A) Emergency adjudicative proceedings.

4.47(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, the commission, gaming representatives, or stewards may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the commission by emergency adjudicative order. Before the issuing of an emergency adjudicative order the commission shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the commission is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the commission is necessary to avoid the immediate danger.

4.47(2) *Issuance.*

a. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the commission;

- (3) Certified mail to the last address on file with the commission;
- (4) First-class mail to the last address on file with the commission; or
- (5) Fax. Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that commission orders be sent by fax and has provided a fax number for that purpose.

b. To the degree practicable, the commission shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

4.47(3) Oral notice. Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the commission shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

4.47(4) Completion of proceedings. Issuance of a written emergency adjudicative order shall include notification of the date on which commission proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further commission proceedings to a later date will be granted only in compelling circumstances upon application in writing.

491—4.48(17A) Contested case hearings before the commission. The commission may initiate a hearing upon its own motion, pursuant to any matter within its jurisdiction.

These rules are intended to implement Iowa Code chapters 17A, 99D and 99F.

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◊ Two or more ARCs

CHAPTER 5
TRACK, GAMBLING STRUCTURE, AND EXCURSION GAMBLING BOAT
LICENSEES' RESPONSIBILITIES

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]
[Prior to 8/9/00, see also 491—Chs 20 and 25]

491—5.1(99D,99F) In general. For purposes of this chapter, the requirements placed upon an applicant shall become a requirement to the licensee once a license to race or operate a gaming facility has been granted. Every license is granted upon the condition that the license holder shall accept, observe, and enforce the rules and regulations of the commission. It is the affirmative responsibility and continuing duty of each officer, director, and employee of said license holder to comply with the requirements of the application and conditions of the license and to observe and enforce the rules. The holding of a license is a privilege. The burden of proving qualifications for the privilege to receive any license is on the licensee at all times. A licensee must accept all risks of adverse public notice or public opinion, embarrassment, criticism, or financial loss that may result from action with respect to a license. Licensees further covenant and agree to hold harmless and indemnify the Iowa racing and gaming commission from any claim arising from any action of the commission in connection with that license.

491—5.2(99D,99F) Annual reports. Licensees shall submit audits to the commission as required by Iowa Code sections 99D.20 and 99F.13. The audit of financial transactions and condition of licensee's operation shall include an internal control letter, documentation that the county board of supervisors selected the auditing firm, a balance sheet, and a profit-and-loss statement pertaining to the licensee's activities in the state, including a breakdown of expenditures and subsidies. If the licensee's fiscal year does not correspond to the calendar year, a supplemental schedule indicating financial activities on a calendar-year basis shall be included in the report. In the event of a license termination, change in business entity, or material change in ownership, the administrator may require the filing of an interim report, as of the date of occurrence of the event. The filing due date shall be the later of 30 calendar days after notification to the licensee or 30 calendar days after the date of the occurrence of the event, unless an extension is granted.

5.2(1) The annual audit report required by Iowa Code section 99D.20 shall include a schedule detailing the following information: number of performances; attendance; regulatory fee; total mutuel handle and taxes paid to state, city, county and gambler's treatment fund; unclaimed winnings; purses paid indicating sources; total breakage and disbursements; and the disbursements of 1 percent of exotic wagers on three or more racing animals.

5.2(2) The annual audit report required by Iowa Code section 99F.13 shall include:

- a. A schedule detailing a weekly breakdown of adjusted gross revenue; taxes paid to the state, city, county, county endowment fund, and gambler's treatment fund; and regulatory fees.
- b. A report on whether material weaknesses in internal accounting control exist.
- c. A report on whether the licensee has followed the system of internal accounting control approved by the administrator.

491—5.3(99D,99F) Information. The licensee shall submit all information specifically requested by the commission or commission representative.

491—5.4(99D,99F) Uniform requirements.

5.4(1) Maintenance of premises and facilities. Each licensee shall at all times maintain its premises and facilities so as to be neat and clean, well landscaped, painted and in good repair, handicapped accessible, with special consideration for the comfort and safety of patrons, employees, and other persons whose business requires their attendance.

5.4(2) Facilities for commission. Each licensee shall provide reasonable, adequately furnished office space, including utilities, direct long-distance access for voice and data lines, custodial services, and necessary office equipment, and, if applicable, work space on the boat for the exclusive use of the

commission employees and officials. The licensee shall also make available appropriate parking places for commission staff.

5.4(3) Sanitary facilities for patrons. Each licensee shall, on every day of operation, provide adequate and sanitary toilets and washrooms and furnish free drinking water for patrons and persons having business on the licensee's premises.

5.4(4) First-aid room. Each licensee shall equip and maintain adequate first-aid facilities and have in attendance, during live racing at racetracks and while excursion gaming boats are cruising, either a physician, a physician assistant, a registered nurse, a licensed practical nurse, a paramedic, or an emergency medical technician, all properly licensed according to requirements of the Iowa department of public health. During all other hours of operation, the licensee shall have, at a minimum, one employee trained in CPR, in first aid, and in the use of the automated external defibrillator (AED). Each licensee is required to have an AED at the licensee's facility.

5.4(5) Security force.

a. Peace officer. Each licensee shall ensure that a person who is a certified peace officer is present during all gaming hours, unless permission is otherwise granted by the administrator. A certified peace officer pursuant to this rule must be employed by a law enforcement agency and have police powers.

b. Employ adequate security. Each licensee shall employ sufficient security to remove from the licensed premises a person violating a provision of Iowa Code chapter 99D or 99F, commission rules, or orders; any person deemed to be undesirable by racing and gaming commission officials; or any person engaging in a fraudulent practice. Security shall also be provided in and about the premises to secure restricted areas including, but not limited to, the barn area, kennel area, paddock, and racing animal drug testing area.

c. Incident reports. The licensee shall be required to file a written report, within 72 hours, detailing any incident in which an employee or patron is detected violating a provision of Iowa Code chapter 99D or 99F, a commission rule or order, or internal controls; or is removed for reasons specified under paragraph 5.4(5) "b." In addition to the written report, the licensee shall provide immediate notification to the commission and DCI representatives on duty or, if representatives are not on duty, provide notification on each office's messaging system if the incident involved employee theft, criminal activity, Iowa Code chapter 99D or 99F violations, or gaming receipts.

d. Ejection or exclusion. A licensee may eject or exclude any person, licensed or unlicensed, from the premises or a part thereof of the the licensee's facility, solely of the licensee's own volition and without any reason or excuse given, provided ejection or exclusion is not founded on constitutionally protected grounds such as race, creed, color, disability, or national origin.

Reports of all ejections or exclusions for any reason, other than voluntary exclusions, shall be made promptly to the commission representative and DCI and shall state the circumstances. The name of the person must be reported when the person is ejected or excluded for more than one gaming day.

The commission may exclude any person ejected by a licensee from any or all pari-mutuel facilities, gambling structures, or excursion gambling boats controlled by any licensee upon a finding that attendance of the person would be adverse to the public interest.

5.4(6) Firearms possession within casino.

a. No patron or employee of the licensee, including the security department members, shall possess or be permitted to possess any pistol or firearm within a casino without the express written approval of the administrator unless:

- (1) The person is a peace officer, on duty, acting in the peace officer's official capacity; or
- (2) The person is a peace officer possessing a valid peace officer permit to carry weapons who is employed by the licensee and who is authorized by the administrator to possess such pistol or firearm while acting on behalf of the licensee within that casino.

b. Each casino licensee shall post in a conspicuous location at each entrance to the casino a sign that may be easily read stating, "Possession of any firearm within the casino without the express written permission of the Iowa racing and gaming commission is prohibited".

5.4(7) Video recording. Licensees shall conduct continuous surveillance with the capability of video recording all gambling activities under Iowa administrative rules 661—Chapter 141, promulgated by the department of public safety.

a. “Gambling activities” means participating in or wagering on gambling games on the gaming floor; the movement, storage, and handling of uncounted gambling revenues; manual exchange of moneys for forms of wagering credit on the gaming floor; entrance of the public onto the gaming floor; and any other activity as determined by the commission administrator or administrator’s designee.

b. Commission and DCI representatives shall have unrestricted access to and use of, including independent access capabilities, both live and recorded views and images of the surveillance system.

c. A commission representative may allow a gambling game to be placed in operation pending approval under 661—Chapter 141.

5.4(8) Commission approval of contracts and business arrangements.

a. Qualifying agreements.

(1) All contracts and business arrangements entered into by a facility are subject to commission jurisdiction. Written and verbal contracts and business arrangements involving a related party or in which the term exceeds three years or the total value in a calendar year exceeds \$100,000 are agreements that qualify for submission to and approval by the commission. For the purpose of this subrule, a qualifying agreement shall be limited to:

1. Any obligation that expends, encumbers, or loans facility assets to anyone other than a not-for-profit entity or a unit of government for the payment of taxes or utilities.

2. Any disposal of facility assets or provision of goods and services at less than market value to anyone other than a not-for-profit entity or a unit of government.

3. A previously approved qualifying agreement, if consideration exceeds the approved amount in a calendar year by the greater of \$100,000 or 25 percent.

4. Any type of contract, regardless of value or term, where a third party provides electronic or mechanical access to cash or credit for a patron of the facility. The contract must contain a clause that provides for immediate notification and implementation when technology becomes available to allow a person to voluntarily bar the person’s access to receive cash or credit from such devices located on the licensed premises.

(2) A qualifying agreement must be submitted within 30 days of execution. Commission approval must be obtained prior to implementation, unless the qualifying agreement contains a written clause stating that the agreement is subject to commission approval. Qualifying agreements that are ongoing or open-ended need only be submitted on initiation, unless there is a material change in terms or noncompliance with 5.4(8) “b”(4).

b. Purpose of review. The commission conducts reviews to serve the public interest to ensure that:

(1) Gaming is free from criminal and corruptive elements.

(2) Gaming-related funds are directed to the lawful recipient.

(3) Gaming profits are not improperly distributed.

(4) Iowa resources, goods and services are utilized. Resources, goods, and services shall be considered to be made in Iowa, be provided by Iowans, or emanate from Iowa if one or more of the following apply:

1. Goods are manufactured in Iowa.

2. Goods are distributed through a distributor located in Iowa.

3. Goods are sold by a retailer/wholesaler located in Iowa.

4. Resources are produced or processed in Iowa.

5. Services are provided by a vendor whose headquarters/home office is in Iowa.

6. Goods, resources or services are provided by a vendor whose headquarters/home office is located outside Iowa, but which has a tangible business location (not simply a post office box) and does business in Iowa.

7. Services beyond selling are provided by employees who are based in Iowa.

A facility shall be considered to have utilized a substantial amount of Iowa resources, goods, services and entertainment in compliance with Iowa Code sections 99D.9 and 99F.7(4) as amended by 2004

Iowa Acts, House File 2302, section 11 and section 43, respectively, if the facility demonstrates to the satisfaction of the commission that preference was given to the extent allowed by law and other competitive factors.

c. Related parties. Other submittal requirements notwithstanding, agreements negotiated between the facility and a related party must be accompanied by an economic and qualitative justification. For the purpose of this subrule, related party shall mean any one of the following having any beneficial interest in any other party with whom the facility is seeking to negotiate an agreement:

- (1) Any corporate officer or member of a facility's board of directors.
- (2) Any owner with more than a 5 percent interest in a facility.
- (3) A member of either the qualified sponsoring organization or the qualifying organization under Iowa Code section 99D.8 associated with a facility.

d. Review criteria. The commission shall approve all qualifying agreements that, in the commission's sole opinion, represent a normal business transaction and may impose conditions on an approval. The commission may deny approval of any agreement that, in the commission's sole opinion, represents a distribution of profits that differs from commission-approved ownership and beneficial interest. This subrule does not prohibit the commission from changing the approved ownership or beneficial interest.

5.4(9) Checks. The acceptance of personal checks shall be allowed; however, "counter" checks shall not be allowed. All checks accepted must be deposited in a bank by the close of the banking day following acceptance.

5.4(10) Taxes and fees.

a. Annual taxes and fees. All taxes and fees, whose collection by the state is authorized under Iowa Code chapters 99D and 99F, shall be accounted for on a fiscal-year basis, each fiscal year beginning on July 1 and ending on June 30.

b. Submission of taxes and fees. All moneys collected for and owed to the commission or state of Iowa under Iowa Code chapter 99F shall be accounted for and itemized on a weekly basis in a format approved by the commission. A week shall begin on Monday and end on Sunday. The reporting form must be received in the commission office by noon on Wednesday following the week's end. The moneys owed, according to the reporting form, must be received in the treasurer's office by 11 a.m. on the Thursday following the week's end. Additionally, each licensee shall file a monthly report indicating adjusted gross receipts received from gambling games, total number of admissions, and amount of regulatory fees paid. These reports shall be by calendar month and filed by noon on the first Wednesday following the end of the month unless the end of the month is a Monday or Tuesday, in which case the reports shall be filed by noon on the second Wednesday following the end of the month.

5.4(11) Rate of tax revenue. Each licensee shall prominently display at the licensee's gambling facility the annual percentage rate of state and local tax revenue collected by state and local government from the gambling facility annually.

5.4(12) Problem gambling.

a. The holder of a license to operate gambling games shall adopt and implement policies and procedures designed to:

- (1) Identify problem gamblers; and
- (2) Allow persons to be voluntarily excluded for life from all facilities. Each facility will disseminate information regarding the exclusion to all other facilities.

b. The policies and procedures shall be developed in cooperation with the gambling treatment program and shall include without limitation the following:

- (1) Training of key employees to identify and report suspected problem gamblers;
- (2) Procedures for recording and tracking identified problem gamblers;
- (3) Policies designed to prevent serving alcohol to intoxicated casino patrons;
- (4) Steps for removing problem gamblers from the casino; and
- (5) Procedures for preventing reentry of problem gamblers.

c. A licensee shall include information on the availability of the gambling treatment program in a substantial number of its advertisements and printed materials.

5.4(13) *Records regarding ownership.*

a. In addition to other records and information required by these rules, each licensee shall maintain the following records regarding the equity structure and owners:

(1) If a corporation:

1. A certified copy of articles of incorporation and any amendments thereto.
2. A copy of bylaws and amendments thereto.
3. A current list of officers and directors.
4. Minutes of all meetings of stockholders and directors.
5. A current list of all stockholders and stockholders of affiliates, including their names and the names of beneficial shareholders.
6. A complete record of all transfers of stock.
7. A record of amounts paid to the corporation for issuance of stock and other capital contributions and dates thereof.
8. A record, by stockholder, of all dividends distributed by the corporation.
9. A record of all salaries, wages, and other remuneration (including perquisites), direct and indirect, paid by the corporation during the calendar or fiscal year to all officers, directors, and stockholders with an ownership interest at any time during the calendar or fiscal year, equal to or greater than 5 percent of the outstanding stock of any class of stock.

(2) If a partnership:

1. A schedule showing the amounts and dates of capital contributions, the names and addresses of the contributors, and percentage of interest in net assets, profits, and losses held by each.
2. A record of the withdrawals of partnership funds or assets.
3. A record of salaries, wages, and other remuneration (including perquisites), direct and indirect, paid to each partner during the calendar or fiscal year.
4. A copy of the partnership agreement and certificate of limited partnership, if applicable.

(3) If a sole proprietorship:

1. A schedule showing the name and address of the proprietor and the amount and date of the original investment.
2. A record of dates and amounts of subsequent additions to the original investment and withdrawals therefrom.
3. A record of salaries, wages, and other remuneration (including perquisites), direct or indirect, paid to the proprietor during the calendar or fiscal year.

b. All records regarding ownership shall be located in a place approved by the commission.

c. If the licensee is publicly held, upon the request of the administrator, the licensee shall submit to the commission one copy of any report required to be filed by such licensee or affiliates with the Securities and Exchange Commission or other domestic or foreign securities regulatory agency. If the licensee is privately held, upon the request of the administrator, the licensee shall submit financial, ownership, or other entity records for an affiliate.

5.4(14) *Retention, storage, and destruction of books, records, and documents.*

a. Except as otherwise provided, all original books, records, and documents pertaining to the licensee's operations shall be:

- (1) Prepared and maintained in a complete and accurate form.
- (2) Retained at a site approved by the administrator until audited.
- (3) Held immediately available for inspection by the commission during business hours of operations.
- (4) Organized and indexed in such a manner as to provide immediate accessibility to the commission.

b. For the purpose of this subrule, "books, records, and documents" shall be defined as any book, record, or document pertaining to or prepared or generated by the licensee including, but not limited to, all forms, reports, accounting records, ledgers, subsidiary records, computer-generated data, internal audit records, correspondence, contracts, and personnel records, including information concerning a refusal to submit to drug testing and test results conducted pursuant to Iowa Code section 730.5.

c. All original books, records, and documents may be copied and stored on microfilm, microfiche, or other suitable media system approved by the administrator.

d. No original book, record, document, or suitable media copy may be destroyed by a licensee, for three years, without the prior approval of the administrator.

5.4(15) Remodeling. For any change to be made to the facility itself directly associated with racing or gaming or in the structure of the boat itself, the licensee must first submit plans to and receive the approval of the administrator.

5.4(16) Officers, agents, and employees. Licensees are accountable for the conduct of their officers, agents, and employees. The commission or commission representative reserves the right to impose penalties against the license holder or its officer, agent, employee, or both as the commission or commission representative determines appropriate. In addition, the licensee shall be responsible for the conduct of nonlicensed persons in nonpublic areas of the excursion gambling boat, gambling structure, or racetrack enclosure.

5.4(17) Designated gaming floor. The designated gaming floor is all areas occupied by or accessible from a gambling game, not otherwise obstructed by a wall, door, partition, barrier, or patron entrance. A patron entrance shall be identified by a sign visible to patrons approaching the gaming floor. The sign shall denote entrance to the gaming floor and specify that the gaming floor is not accessible to persons under the age of 21. A floor plan identifying the area shall be filed with the administrator for review and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

5.4(18) State fire and building codes.

a. Barges, as defined in 5.6(1)“c,” and other land-based gaming facilities and such facilities that undergo major renovation shall comply with the state building code created by Iowa Code chapter 103A, if there is no local building code in force in the local jurisdiction in which the facility is located. A licensee shall submit construction documents and plans to the state building code commissioner and receive approval prior to construction, if a facility is subject to the state building code.

b. If there is no enforcement of fire safety requirements by a local fire department, a licensee shall also submit construction plans and documents to the state fire marshal and receive approval prior to construction. The fire marshal may cause a facility subject to this paragraph to be inspected for compliance with fire marshal rules prior to operation of the facility and shall notify the commission and the licensee of the results of any such inspection.

c. If a proposed new or renovated facility is subject to both paragraphs “a” and “b,” a single submission of construction plans and documents to the building code commissioner, with a cover letter stating that review and approval are required with respect to both the state building code and rules of the fire marshal, is sufficient to meet both requirements. Facilities subject to both paragraphs “a” and “b” shall have received approval from both the fire marshal and the building code commissioner prior to construction.

5.4(19) Gambling setoff. Each licensee shall adopt and implement policies and procedures designed to set off winnings of patrons who have a valid lien established under Iowa Code chapters 99D and 99F. [ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—5.5(99D) Pari-mutuel uniform requirements.

5.5(1) Insect and rodent control. The licensee shall provide systematic and effective insect and rodent control, including control of flies, mosquitoes, fleas, and mice, to all areas of licensee’s premises at all times during a race meeting.

5.5(2) Results boards, totalizers required. Each licensee shall provide and maintain computerized totalizers and electronic boards showing odds, results, and other racing information located in plain view of patrons.

5.5(3) Photo finish camera. A licensee shall provide two electronic photo finish devices with mirror image to photograph the finish of each race and record the time of each racing animal in at least hundredths of a second. The location and operation of the photo finish device must be approved by the commission before its first use in a race. The licensee shall promptly post a photograph, on a monitor,

of each photo finish for win, place or show, or for fourth place in superfecta races, in an area accessible to the public. The licensee shall ensure that the photo finish devices are calibrated before the first day of each race meeting and at other times as required by the commission. On request by the commission, the licensee shall provide, without cost, a print of a photo finish to the commission. A photo finish of each race shall be maintained by the licensee for not less than six months after the end of the race meeting, or such other period as may be requested by the commission.

5.5(4) *Electric timing device.* Any electric timing device used by the licensee shall be approved by the commission.

5.5(5) *Official scale.* The licensee shall provide and maintain in good working order official scales or other approved weighing devices. The licensee shall provide to the stewards certification of the accuracy of the scales at the beginning of each race meeting or more frequently if requested by the stewards.

5.5(6) *Lighting.* Each licensee shall provide and maintain adequate illumination in the barn/kennel area, parking area, and racetrack area.

5.5(7) *Fencing.* The stable and kennel areas should be properly fenced as defined by the commission and admission permitted only in accord with rules of the commission.

5.5(8) *Guest passes.* The licensee shall develop a policy to be approved by the stewards for the issuance of guest passes for entrance to the kennel or stable area. The guest pass is not an occupational license and does not permit the holder to work in any capacity or in any way confer the benefits of an occupational license to participate in racing. The license holder sponsoring or escorting the guest shall be responsible for the conduct of the guest pass holder.

5.5(9) *Stewards.* There shall be three stewards for each racing meet, two appointed by the commission and one nominated by the licensee for approval by the commission. The names of licensees' nominees for steward and biographical information describing the experience and qualifications of the nominees shall be submitted no later than 45 days before commencement of a race meeting. The commission may consider for appointment or approval a person who meets all of the following requirements. The person shall have:

- a. Engaged in pari-mutuel racing in a capacity and for a period satisfactory to the commission.
- b. Satisfactorily passed an optical examination within one year prior to approval as a steward evidencing corrected 20/20 vision and the ability to distinguish colors correctly.
- c. Satisfied the commission that income, other than salary as a steward, is independent of and unrelated to patronage of or employment by any occupational licensee under the supervision of the steward, so as to avoid the appearance of any conflict of interest or suggestion of preferential treatment of an occupational licensee.

5.5(10) *Purse information.* Each licensee shall provide to the commission at the close of each racing meet the following purse information:

- a. The identity of each person or entity to which purse money is paid by the licensee for purses won by racing animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.
- b. The identity of each person or entity to which purse money is paid by the licensee for purses won by Iowa-bred animals at the facility. This report shall include the name, residential or business address and amount paid to that person or entity in supplemental funds for ownership of Iowa-bred animals. The data should be assembled separately for Iowa and non-Iowa addressees, and aggregates should be presented in descending order of magnitude.

5.5(11) *Designated wagering area.* The designated wagering area is a rectangular area within a minimum of five feet from the front and from either side of a stationary wagering window or self-service wagering device, not otherwise obstructed by a wall or other barrier. The facility shall either section off or clearly delineate the floor of the area and post a sign near the area, which is visible to patrons approaching the area, denotes the wagering area and specifies that the wagering area is not accessible to persons under the age of 21. The designation applies only when the wagering window or device is open to transact wagering. A floor plan identifying the area shall be filed with the administrator for review

and approval. Modification to a previously approved plan must be submitted for approval at least ten days prior to implementation.

491—5.6(99F) Excursion gambling boat uniform requirements.

5.6(1) Excursion gambling boat.

a. Capacity. The minimum passenger capacity necessary for an excursion gambling boat is 250.

b. Excursion boat. A self-propelled, floating “vessel” as defined by the U.S. Coast Guard may contain more than one vessel. In order to be utilized for gaming purposes, the vessel containing the casino must either contain a permanent means of propulsion or have its means of propulsion contained in an attached vessel. In the event that the vessel containing the casino is propelled by a second vessel, the boat will be considered self-propelled only when the vessels are designed, constructed, and operated as a single unit.

c. Moored barge. “Barge” means any stationary structure approved by the commission, where the entire gaming floor is located on or near a body of water as defined under Iowa Code section 99F.7, subsection 1, and which facility is subject to land-based building codes rather than maritime or Iowa department of natural resources inspection laws and regulations.

5.6(2) Excursions.

a. Length. The excursion season shall be from April 1 through October 31 of each calendar year. An excursion boat must operate at least one excursion during the excursion season to operate during the off-season, although a waiver may be granted by the commission in the first year of a boat’s operation if construction of the boat was not completed in time for the boat to qualify. Excursions shall consist of a minimum of one hour in transit during the excursion season. The number of excursions per day is not limited. During the excursion season and the off-season, while the excursion gambling boat is docked, passengers may embark or disembark at any time during business hours pursuant to Iowa Code section 99F.4(17).

b. Dockside completion of excursions. If, during the excursion season, the captain determines that it would be unsafe to complete any portion of an excursion, or if mechanical problems prevent the completion of any portion of an excursion, the boat may be allowed to remain at the dock or, if the excursion is underway, return to the dock and conduct the gaming portion of the excursion while dockside, unless the captain determines that passenger safety is threatened.

c. Notification. If an excursion is not completed due to reasons specified in paragraph 5.6(2) “b,” a commission representative shall be notified as soon as is practical.

5.6(3) Drug testing of boat operators. Captains, pilots, and physical operators of excursion gambling boats shall be drug tested, as permitted by Iowa Code section 730.5, on a continuous basis with no more than 60 days between tests. The testing shall be conducted by a laboratory certified by the United States Department of Health and Human Services or approved under the rules adopted by the Iowa department of public health. The facility shall report positive test results to a commission representative.

These rules are intended to implement Iowa Code chapters 99D and 99F.

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CHAPTER 6
OCCUPATIONAL AND VENDOR LICENSING

[Prior to 11/19/86, Racing Commission[693]]
[Prior to 11/18/87, Racing and Gaming Division[195]]

491—6.1(99D,99F) Definitions.

“*Applicant*” means an individual applying for an occupational license.

“*Beneficial interest*” means any and all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

“*Board*” means either the board of stewards or the gaming board, as appointed by the administrator, whichever is appropriate. The administrator may serve as a board of one.

“*Commission*” means the Iowa racing and gaming commission.

“*Commission representative*” means a gaming representative, steward, or any person designated by the commission or commission administrator.

“*Conviction*” means the act or process of judicially finding someone guilty of a crime; the state of a person’s having been proved guilty; the judgment that a person is guilty of a crime or criminal offense, which includes a guilty plea entered in conjunction with a deferred judgment, and a juvenile who has been adjudicated delinquent. The date of conviction shall be the date the sentence and judgment is entered.

“*Deceptive practice*” means any deception or misrepresentation made by the person with the knowledge that the deception or misrepresentation could result in some benefit to the person or some other person.

“*Facility*” means an entity licensed by the commission to conduct pari-mutuel wagering or gaming operations in Iowa.

“*Jockey*” means a person licensed to ride a horse in a race.

“*Kennel/stable name*” means any type of name other than the legal name or names used by an owner or lessee and registered with the commission.

“*Licensee*” means a person licensed by the commission to perform an occupation which the commission has identified as requiring a license for a person to work in the pari-mutuel, gambling structure, or excursion gambling boat industry in Iowa.

“*Occupation*” means a license category listed on the commission’s occupational license application form.

“*Owner*” means a person or entity that holds any title, right or interest, whole or partial, in a racing animal.

“*Rules*” means the rules promulgated by the commission to regulate the racing and gaming industries.

“*Theft*” includes, but is not limited to:

1. The act of taking possession or control of either facility property or the property of another without the express authorization of the owner;
2. The use, disposition, or destruction of property in a manner which is inconsistent with or contrary to the owner’s rights in such property;
3. Misappropriation or misuse of property the person holds in trust for another; or
4. Any act which constitutes theft as defined by Iowa Code chapter 714. No specific intent requirement is imposed by rule 6.5(99D,99F) nor is it required that there be any showing that the licensee received personal gain from any act of theft.

“*Year*” means a calendar year.

491—6.2(99D,99F,252J) Occupational licensing.

6.2(1) All persons participating in any capacity at a racing or gaming facility, with the exception of certified law enforcement officers while they are working for the facility as uniformed officers, are required to be properly licensed by the commission.

a. License applicants may be required to furnish to the commission a set of fingerprints and may be required to be refingerprinted or rephotographed periodically.

b. License applicants must supply current photo identification and proof of their social security number and date of birth.

c. License applicants must complete and sign the application form prescribed and published by the commission. An incomplete application shall not be processed. The application shall state the full name, social security number, residence, date of birth, and other personal identifying information of the applicant that the commission deems necessary. The application shall include, in part, whether the applicant has any of the following:

(1) A record of conviction of a felony or misdemeanor, including a record involving the entry of a deferred judgment and adjudications of delinquency;

(2) An addiction to alcohol or a controlled substance;

(3) A history of mental illness or repeated acts of violence;

(4) Military convictions;

(5) Adjudication of delinquency; or

(6) Overdue income taxes, fines, court-ordered legal obligations, or judgments.

d. License applicants for designated positions of higher responsibility may be required to complete a division of criminal investigation (DCI) background form.

e. A fee set by the commission shall be assessed to each license applicant. Once a license is issued, the fee cannot be refunded.

f. License applicants must pay an additional fee set by the Federal Bureau of Investigation (FBI) and by the department of public safety (DCI and bureau of identification) to cover the cost associated with the search and classification of fingerprints.

g. All racing and gaming commission fees for applications or license renewals must be paid by applicants or licensees before a license will be issued or renewed or, if the applicant is an employee of a facility, the commission fees will be directly billed to the facility.

h. An applicant who knowingly makes a false statement on the application is guilty of an aggravated misdemeanor.

i. Participation in racing and gaming in the state of Iowa is a privilege and not a right. The burden of proving qualifications to be issued any license is on the applicant at all times. An applicant must accept any risk of adverse public notice, embarrassment, criticism, or other action, as well as any financial loss that may result from action with respect to an application.

j. All licenses are conditional until completion of a necessary background investigation including, but not limited to, fingerprint processing through the DCI and the FBI and review of records on file with national organizations, courts, law enforcement agencies, and the commission.

k. Any licensee who allows another person use of the licensee's license badge for the purpose of transferring any of the benefits conferred by the license may be fined, have the license suspended or revoked, or be subject to any combination of the above-mentioned sanctions. No license shall be transferable and no duplicate licenses shall be issued except upon submission of an application form and payment of the license fee.

l. It shall be the affirmative responsibility and continuing duty of each applicant to provide all information, documentation, and assurances pertaining to qualifications required or requested by the commission or commission representatives and to cooperate with commission representatives in the performance of their duties. A refusal by any person to comply with a request for information from a commission representative shall be a basis for fine, suspension, denial, revocation, or disqualification.

m. Non-U.S. citizens must supply documentation authorizing them to work in the United States or supply documentation demonstrating compliance with the North American Free Trade Agreement.

n. Portions of all completed applications accepted by the commission are confidential. The following persons have the explicit right to review all information contained on the application: the applicant, all commission officials and employees, the track steward, and DCI agents or other law enforcement officers serving in their official capacity.

o. A license may not be issued or held by an applicant who is unqualified, by experience or otherwise, to perform the duties required.

p. A license may not be issued to applicants who have not previously been licensed in the following occupations except upon recommendation by the commission representative: trainers, assistant trainers, jockeys, apprentice jockeys, exercise persons, and other occupations the commission may designate. The commission representative may, for the purpose of determining a recommendation under this subrule, consult a representative of the facility, horsemen, or jockeys.

6.2(2) All facility board members shall undergo a background investigation and be licensed immediately upon appointment.

6.2(3) Multiple license restrictions.

a. A person may work outside the licensed occupation as long as the person is licensed in an equal or higher occupation.

b. In horse racing only, the following restrictions apply:

(1) A person licensed as a jockey or veterinarian may not be licensed in another capacity.

(2) A person may not be licensed as an owner and a jockey agent.

(3) No racing official may serve or act in another capacity at a race meeting at which that person is licensed as an official except if there is no conflict of interest or duties as determined by the commission representative.

6.2(4) Application endorsements. The responsibility of licensing an employee rests with the employer. Therefore, a license may not be issued to any employee unless the application includes prior endorsement of the facility's authorized representative. All facilities must submit a list of representatives authorized to sign applications. This list shall not exceed six names. This authorization list shall be sent to the commission licensing office associated with each facility.

6.2(5) An applicant who has not held a license for the previous calendar year shall be considered a first-time applicant.

6.2(6) Interim identification badge.

a. All interim identification badges issued by a facility must be recorded in a logbook, which is available for inspection by commission or DCI representatives. The logbook must reflect the following information: date issued; user's name and date of birth (verified by photo ID); occupation; badge number; issuer; time issued; and time returned. Badges shall only be issued on a daily basis and must be returned before the employee leaves facility premises. A badge shall be effective only until the commission licensing office's next day of business, and may not be used to avoid obtaining a duplicate license.

b. A badge shall only be issued if:

(1) An employee is hired during a time that the commission licensing office is closed; or

(2) An employee is not in possession of the employee's occupational license.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—6.3(99D,99F) Waiver of privilege. An applicant may claim a privilege afforded by the Constitution of the United States or of the state of Iowa in refusing to answer questions of the commission. However, a claim of privilege with respect to any testimony or evidence pertaining to an application may constitute sufficient grounds for denial.

491—6.4(99D,99F) License acceptance.

6.4(1) *Occupational license (license).* The license shall be displayed in a conspicuous manner on the licensee's clothing at all times while the licensee is on duty unless otherwise permitted by the commission representative. A licensee is prohibited from defacing, altering, or modifying a license.

6.4(2) *Knowledge of rules.* By acceptance of a license from the commission, the licensee agrees to follow and comply with the rules of the commission and Iowa statutes pertaining to racing and gaming, to report immediately to the commission representative any known irregularities or wrongdoing involving racing or gaming and to cooperate in subsequent investigations. Commission rules are available on the commission's Web site at www.iowa.gov/irgc/.

6.4(3) Search and seizure. Acceptance of a license from the commission by any licensee is deemed consent to search and inspection by a commission or DCI representative and to the seizure of any prohibited medication, drugs, paraphernalia or devices.

6.4(4) Misuse of license. No person shall exercise or attempt to exercise any of the powers, privileges, or prerogatives of a license unless and until the appropriate licensing form has been executed and filed with the commission except under subrule 6.2(6). The commission shall exercise the power to regulate the conduct of all persons holding licenses or participating in racing or gaming.

491—6.5(99D,99F) Grounds for denial, suspension, or revocation of a license or issuance of a fine. The commission or commission representative shall deny an applicant a license or, if already issued, a licensee shall be subject to probation, fine, suspension, revocation, or other disciplinary measures, if the applicant or licensee:

6.5(1) Does not qualify under the following screening policy:

a. Applicants must be at least 18 years of age to work in areas where gaming or wagering is conducted.

b. Applicants must be at least 16 years of age to be eligible to be licensed to work for a trainer of racing animals.

c. A license shall be denied if, within the last five years, an applicant has had:

(1) A felony conviction;

(2) A conviction for an offense involving theft or fraudulent practice in excess of \$500;

(3) A conviction for an offense involving the use of an alias in connection with fraud; or

(4) A conviction for an offense involving ownership, operation, or an interest in any bookmaking or other illegal enterprise or if the applicant is or has been connected with or associated with any illegal enterprise.

If the conviction occurred more than five years before application, a license shall not be issued unless the commission representative determines that sufficient evidence of rehabilitation exists.

d. Unless sufficient evidence of rehabilitation exists, a license shall be denied if any applicant has had:

(1) A conviction of a serious or aggravated misdemeanor or the equivalent; or

(2) Multiple convictions of simple misdemeanors.

e. A license shall be temporarily denied or suspended until the outcome of any pending charges is known if conviction would disqualify the applicant and the commission representative determines that the applicant poses an immediate danger to the public health, safety, or welfare of the patrons, participants, or animals associated with a facility licensed under Iowa Code chapter 99D or 99F.

f. A license shall be denied if the applicant has an addiction to alcohol or a controlled substance without sufficient evidence of rehabilitation, has a history of mental illness without demonstrating successful treatment by a licensed medical physician, or has a history of repeated acts of violence without sufficient evidence of rehabilitation.

g. A license may be temporarily denied or a probationary license may be issued until outstanding, overdue court-ordered obligations are satisfied. These obligations include, but are not limited to, criminal or civil fines, state or federal taxes, or conditions imposed upon the applicant by a court of law that the applicant has failed to meet in a timely manner.

h. A license may be denied if an applicant is ineligible to participate in gaming in another state and it would not be in the best interest of racing or gaming to license the applicant in Iowa. A license shall be denied if an applicant is ineligible to participate in racing in another state whose regulatory agency is recognized by and reciprocates in the actions of this state.

i. A license shall be denied and not reinstated if an applicant has been denied patron privileges by order of the commission.

j. A license shall be denied if the applicant falsifies the application form and would be ineligible for licensure under one or more of the provisions set forth in paragraphs “a” through “i” above. In other cases of falsification, a license may be issued and the applicant shall be subject to a suspension, fine, or both.

k. A license shall be denied if an applicant is not of good repute and moral character. Any evidence concerning a licensee's current or past conduct, dealings, habits, or associations relevant to that individual's character and reputation may be considered. The commission representative shall decide what weight and effect evidence shall have in the determination of whether there is substantial evidence that the individual is not of good reputation and character. Applicants who hold positions of higher responsibility may be held to a more stringent standard of conduct and reputation than others with a less significant interest or role.

6.5(2) Has not demonstrated financial responsibility or has failed to meet any monetary obligation in the following circumstances connected with racing or gaming:

a. Issuance or passing of bad checks. No person shall write, issue, make, or present any check in payment for any license fee, nomination fee, entry fee, starting fee, or purse payment when that person knows or should reasonably know that the check will be refused for payment by the bank upon which it is written, or that the account upon which it is written does not contain sufficient funds for payment of the check, or that the check is written on a closed or nonexistent account.

b. Judgments. Whenever any person licensed to engage in racing suffers a final judgment entered against that person in any court of competent jurisdiction within the United States, when that judgment is based wholly upon an indebtedness incurred by that person for supplies, equipment, or services furnished in connection with racing, the commission representatives shall schedule a hearing at which the licensee shall be required to show cause as to why the license should not be suspended.

c. Timely payment. Should an owner fail to make timely payment of any jockey fee, nomination fee, entry fee, starting fee, or any other reasonable charge normally payable to the facility, the facility shall notify the commission representatives who shall in turn give notice to the owner that a hearing will be held where the owner will be required to show cause why the license should not be suspended for failure to make the required payments.

6.5(3) Has been involved in any fraudulent or corrupt practices, including, but not limited to:

a. Offering, promising, giving, accepting, or soliciting a bribe in any form, directly or indirectly, to or by a person licensed by the commission to violate these rules or the laws of the state related to racing or gaming.

b. Failing to report any bribe or solicitation as in 6.5(3) "a" above.

c. Soliciting by any licensee, except the facility, of bets by the public.

d. Violation of any law of the state or rule of the commission, or aiding or abetting any person in the violation of any such law or rule.

e. Theft or deceptive practice of any nature on the premises of a facility.

f. Giving under oath any false statement or refusing to testify, after proper notice, to the commission representative about any matter regulated by the commission, except in the exercise of a lawful legal privilege.

g. Failing to comply with any request for information or any order or ruling issued by the commission representative pertaining to a racing or gaming matter.

h. Disorderly or offensive conduct; use of profane, abusive, or insulting language to, or interference with, commission representatives or racing or gaming officials while they are discharging their duties.

i. Conduct in Iowa or elsewhere has been dishonest, undesirable, detrimental to, or reflects negatively on, the integrity or best interests of racing and gaming.

j. Illegal sale, possession, receipt, or use of a controlled substance or drug paraphernalia; intoxication; use of profanity; fighting; making threatening or intimidating statements; engaging in threatening or intimidating behavior; or any conduct of a disorderly nature on facility premises.

k. Discontinuance of or ineligibility for activity for which the license was issued.

l. Possessing a firearm on facility property without written permission from the commission representative.

m. Improperly influencing or attempting to improperly influence the results of a race or a gambling game, singularly or in combination with any person.

n. Failing to report any attempt to improperly influence the result of a race or a gambling game as in 6.5(3) “*m*” above.

o. Having had two rulings related to attempts to affect a race result or odds (rulings for electrical devices, serious positives, for example) in a lifetime or one ruling within the last three years. A license may be issued if one ruling has occurred outside of three years if sufficient evidence of rehabilitation exists. A license may be denied if a lengthy record of rulings from other jurisdictions exists.

p. Possessing any equipment for hypodermic injection, any substance for hypodermic administration, or any container designed to hold an injectable substance (narcotics, medications, drugs, or substances which could be used to alter the speed of racing animals) by anyone other than a veterinarian licensed by the commission. Notwithstanding the provisions of this subrule, any person may have possession of any chemical or biological substance for the person’s own treatment within a restricted area, provided that, if the chemical substance is prohibited from being dispensed without a prescription by any federal law or law of this state, the person is in possession of documentary evidence that a valid prescription has been issued to the person. Notwithstanding the provisions of this subrule, any person may have in possession within any restricted area any hypodermic syringe or needle for the purpose of self-administering to the person a chemical or biological substance, provided that the person has notified the commission representatives of the possession of the device, the size of the device, and the chemical substance to be administered and has obtained written permission for possession and use from the commission representative. A restricted area is a designated area for sample collection, paddock, racetrack, or any other area where officials carry out the duties of their positions.

q. Subjecting an animal to cruel and inhumane treatment by failing to supply it with adequate food, water, medical treatment, exercise, bedding, sanitation, and shelter; or by neglect or intentional act causing an animal to suffer unnecessary pain.

r. Offering or receiving money or other benefit for withdrawing a racing animal from a race.

s. Making a wager for a jockey by any person other than the owner or trainer of the horse ridden by the jockey.

t. Making a wager for a jockey on a horse by an owner or trainer other than that ridden by the jockey. This shall not be construed to include bets on another horse in combination with the horse ridden by the jockey in multiple wagering bets.

u. Offering or giving a jockey money or other benefit concerning a race, except by the owner or trainer of the horse to be ridden.

v. Entering or starting a racing animal known or believed to be ineligible or disqualified.

w. Possessing any device designed to increase or decrease the speed of a racing animal during a race other than an ordinary riding whip without written permission from the commission representative. [ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—6.6(99D,99F) Applications for license after denial, revocation, or suspension.

6.6(1) Any person whose license was denied or revoked may reapply for a license in accordance with the commission’s rules governing applications. However, the applicant must satisfy the following conditions:

a. The applicant shall bear the burden of proof of establishing satisfaction with all license criteria and shall provide proof of satisfaction of any terms or conditions imposed as a part of the commission’s order denying or revoking the license;

b. The applicant shall allege facts and circumstances establishing, to the commission’s satisfaction, sufficient evidence of rehabilitation and that the basis for the denial or revocation no longer exists;

c. The applicant shall establish that the public interest and the integrity of racing and gaming would not be adversely affected if a license is granted; and

d. If the license was revoked, a new application shall not be filed until five years have elapsed from the date of the order of revocation.

6.6(2) Any person whose license was suspended for 365 days may file a new application for a license upon the expiration of the period of suspension but must satisfy all of the conditions set forth in 6.6(1) “*a*,”

“b,” and “c” above. If a person’s license has not expired after the 365-day suspension, the person must have a hearing before a board to determine if the person has satisfied all of the conditions set forth in 6.6(1) “a,” “b,” and “c” above prior to that individual’s participating in racing or gaming.

491—6.7(99D,99F) Probationary period placed on a license. The commission representative or the board may place a probationary period on a license. The terms of the probationary period shall include the effective dates, conditions placed on the licensee and any penalty for failure to follow those conditions, including fine, suspension, denial, or revocation.

491—6.8(99D,99F) Duration of license. A license issued by the commission is valid for two calendar years. The license shall expire at the end of the second calendar year, unless an extension is granted by the administrator.

491—6.9(99D,99F) Licensed employees moving from one location to another.

6.9(1) Once an applicant obtains an occupational license from the commission and is in good standing, the applicant is eligible to work at any of the facilities in the state of Iowa.

6.9(2) When a facility hires a person who is already in possession of a current occupational license, a list of the person(s) hired must be filed weekly with the local commission office. The list should contain the license number, name, social security number, and birth date of each person hired.

491—6.10(99D,99F) Required report of discharge of licensed employee. Upon discharge of any licensed employee by any licensed employer for violation of rules or laws within the jurisdiction of the commission, the employer must report that fact in writing, within 72 hours, to the local commission office including the name and occupation of the discharged licensee.

491—6.11(99D,99F,252J) Receipt of certificate of noncompliance from the child support recovery unit.

6.11(1) Upon the commission’s receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

6.11(2) The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.11(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.11(4) Upon receipt of a withdrawal of a certificate of noncompliance from the child support recovery unit, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.11(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.12(99D,99F,261) Receipt of a certificate of noncompliance from the college student aid commission.

6.12(1) Upon the commission’s receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

6.12(2) The effective date of the suspension or revocation, or denial of the issuance or renewal of a license, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.12(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.12(4) Upon receipt of a withdrawal of a certificate of noncompliance from the college student aid commission, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.12(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

491—6.13(99D,99F,272D) Receipt of certificate of noncompliance from the centralized collection unit of the department of revenue.

6.13(1) Upon the commission's receipt of a certificate of noncompliance, a commission representative shall initiate procedures for the suspension, revocation, or denial of issuance or renewal of licensure to an individual. A notice of intended action shall be served by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305.

6.13(2) The effective date of suspension or revocation, or denial of the issuance or renewal of a license, as specified in the notice, shall be no sooner than 30 days following service of the notice upon the licensee or applicant.

6.13(3) The filing of a district court action by a licensee or applicant challenging the issuance of a certificate of noncompliance shall automatically stay any administrative action. Upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the commission, the intended action will proceed as described in the notice. For purposes of determining the effective date of suspension or revocation, or denial of the issuance or renewal of a license, only the number of days before the action was filed and the number of days after the action was disposed of by the court will be counted.

6.13(4) Upon receipt of a withdrawal of a certificate of noncompliance from the centralized collection unit, the commission representative shall immediately reinstate, renew, or issue a license if the individual is otherwise in compliance with licensing requirements.

6.13(5) All commission fees for applications or license renewals must be paid by licensees or applicants before a license will be issued or renewed.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.14(99D,99F) Vendor's license.

6.14(1) A vendor's license is required of any entity not licensed as a manufacturer or distributor that conducts operations on site at a facility.

6.14(2) An applicant for a vendor's license must complete the appropriate commission form. An authorized representative from the facility for which the vendor wishes to do continuous business must sign the form. A letter from the facility authorizing the vendor to do business shall replace a signature on the application form.

6.14(3) Any employee who works for a licensed vendor and will be supplying the goods or services to the facility must have a vendor employee license. A vendor license must be issued before a vendor employee can be issued a license to represent that company. The authorized signature on the vendor employee's application must be the signature of the person authorized by the vendor application to sign vendor employee applications.

6.14(4) Rescinded IAB 9/29/04, effective 11/3/04.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.15(99D,99F) Applicability of rules—exceptions. Rules pertaining to and rulings against licensees shall apply in like force to the spouse and members of the immediate family or household of the licensee if the continuation of participation in racing or gaming by the affected person circumvents the intent of the rule or affects the ruling by permitting a person under the control or direction of the licensee to serve in essence as a substitute for a suspended licensee, or a person ineligible to participate in a particular activity.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.16(99D) Disclosure of ownership of racing animals. All entities of ownership (individual, lessee, lessor, general partnership, or corporation) and all trainers are responsible for making full and accurate disclosure of the ownership of all racing animals registered or entered for racing. Disclosure shall identify in writing all individuals or entities that, directly or indirectly, through a contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise hold any interest in a racing animal, and those individuals or entities who by virtue of any form of interest might exercise control over the racing animal or may benefit from the racing of the animal. The degree and type of ownership held by each individual person shall be designated. The transfer of a racing animal to avoid application of a commission rule or ruling is prohibited and constitutes grounds for discipline.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.17(99D) Owners of racing animals.

6.17(1) Each greyhound owner must obtain an owner's license from the commission to enter an animal in an official schooling race or a purse race at an Iowa racetrack.

6.17(2) Each owner is subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by a facility or upon making entry to run on its track. Owners shall accept the decision of the commission representative on any and all questions, subject to the owner's right of appeal to the commission.

6.17(3) An owner who is under the age of 18 must have a parent or guardian cosign any contractual agreements.

6.17(4) No person or entity that is not the owner of record of a properly registered racing animal that is in the care of a licensed trainer may be licensed as an owner.

6.17(5) Temporary horse owner license. Rescinded IAB 11/5/08, effective 12/10/08.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.18(99D) Kennel/stable name.

6.18(1) Licensed owners and lessees wishing to race under a kennel/stable name may do so by applying for a license with the commission on forms furnished by the commission. All kennel/stable names must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D).

6.18(2) A kennel/stable name license is only necessary if the kennel/stable name is a name other than the licensed owner's legal name (first and last name), the owner's full name followed by the word "kennel" or "stable," or a licensed partnership or corporation.

6.18(3) In applying to race under a kennel/stable name, the applicant must disclose the identities behind the name and, if applicable, comply with partnership and corporation rules. The application form must appoint one person to act as the agent for the kennel/stable name.

6.18(4) Changes in identities involved in a kennel/stable name must be reported immediately to and approved by the commission representative.

6.18(5) A licensed owner who has registered under a kennel/stable name may at any time cancel the kennel/stable name after giving written notice to the commission.

6.18(6) A kennel/stable name may be changed by registering a new name.

6.18(7) A licensed owner may not register a kennel/stable name that the commission determines to be either misleading to the public or unbecoming to the sport.

6.18(8) Neither sole owners nor partners, after adopting use of a kennel/stable name, may use their real names to reflect ownership that is reflected in the kennel/stable name.

6.18(9) A fee set by the commission shall be assessed for each application for a kennel/stable name license.

6.18(10) No person may register with any racing authority a stable name which has already been registered by another person, or which is the real name of another owner of race horses, or which is the real or stable name of any prominent person who does not own race horses, or which is not plainly distinguishable from that of another registered stable name.

6.18(11) Contract kennels must be licensed with the commission, on forms furnished by the commission, in the name of the kennel booking contract entered into between the contract kennel and the facility; this name shall be listed in the official program as “kennel.”

6.18(12) A licensed kennel owner shall not be a party to more than one kennel name at the same facility.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.19(99D) Leases (horse racing only).

6.19(1) No licensee shall lease a racing animal for the purpose of racing at facilities in this state without prior approval of the commission representatives.

6.19(2) Both lessor and lessee must be licensed as owners.

6.19(3) Each licensee who leases a racing animal must submit a copy of that lease to the commission representatives. The lease must contain the conditions of the lease arrangement and the names of all parties and racing animals related to the lease. Failure to submit accurate and complete information under this rule is a violation of these rules.

6.19(4) Both seller and purchaser, or their agents or representatives, of a racing animal that is sold after being registered for racing with a racing association shall immediately notify the commission representatives of the sale and transfer. The commission representatives may require a declaration of the facts of the sale and transfer under oath and penalty of perjury.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.20(99D) Partnerships owning racing animals.

6.20(1) A partnership is defined as a formal or informal arrangement between two or more persons to own a racing animal. All partnerships, excluding husband and wife, must be licensed with the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D).

6.20(2) The managing partner(s) listed on the application and all parties owning 5 percent or more must be licensed as individual owners.

a. The commission representative may request a partnership to have on file with the commission an agreement whereby the managing partner(s) is designated to be responsible for each racing animal. This agreement must be notarized and must be signed by all partners. A copy of this agreement must be attached to the registration certificate on file in the racing secretary’s office.

b. It will be the responsibility of the managing partner(s) to make sure that all parties are eligible for licensure. The commission representative shall deny, suspend, or revoke the license of any partnership in which a member (either qualified or limited by rights or interests held, or controlled by any individual or entity) would be ineligible to be licensed as an owner or to participate in racing.

c. Any owner who is a member of a partnership may be required to list all racing animals that the owner intends to race in Iowa in which an interest is owned (either in whole or in part).

d. All parties to a partnership shall be jointly and severally liable for all stakes, forfeits, and other obligations.

e. An authorized agent may be appointed to represent the partnership in all matters and be responsible for all stakes, forfeits, entries, scratches, signing of claim slips, and other obligations in lieu of the managing partner(s).

6.20(3) A partnership name under which a racing animal races shall be considered a kennel/stable name for purposes of these rules. It will not be necessary for the partnership to obtain a kennel/stable name license.

6.20(4) Any partner's share or partial share of a partnership that owns a racing animal shall not be assigned without the written consent of the other partner(s), the commission representative's approval, and filing with the racing secretary. Any alteration in a partnership structure or percentages must be reported promptly in writing, notarized, signed by all members of the partnership, and filed with the commission.

6.20(5) The commission representative may review the ownership of each racing animal entered to race and shall ensure that each registration certificate or eligibility certificate is properly endorsed by the transferor to the present owner(s). The commission representative may determine the validity for racing purposes of all liens, transfers and agreements pertaining to ownership of a racing animal and may call for adequate evidence of ownership at any time. The commission representative may declare any animal ineligible to race if its ownership, or control of its ownership, is in question.

6.20(6) A fee set by the commission shall be assessed for each application for a partnership license. [ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.21(99D) Corporations owning racing animals.

6.21(1) All corporations must be duly licensed by the commission on forms furnished by the commission, and in accordance with the requirements of 491—6.17(99D). In addition, any stockholder owning a beneficial interest of 5 percent or more of the corporation must be licensed as an owner. The corporation must submit a complete list of stockholders owning a beneficial interest of 5 percent or more.

6.21(2) The corporation stockholders owning less than 5 percent of the stock of a corporation need not be licensed; however, the commission may request a list of these stockholders. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. These stockholders shall not have access to the backstretch, to the paddock area, or to the winner's circle other than as guests of a facility, commission representatives, or designated licensees and may be required to submit additional information as requested by the commission representative, which may include a release for confidential information and submission of fingerprint cards; and the commission may assess costs, as required, for criminal history checks. This information shall be supplied to the commission representative within 30 days of the date of the request.

6.21(3) Any and all changes in either the corporation structure or the respective interest of stockholders as described above must be notarized and promptly filed with the commission representatives.

6.21(4) The corporate name under which the corporation does business in Iowa shall be considered a kennel/stable name for purposes of these rules. It shall not be necessary for the corporation to obtain a kennel/stable name license.

6.21(5) A corporation, in lieu of an executive officer, may appoint a racing manager or an authorized agent for the purposes of entry, scratches and the signing of claim slips, among other obligations.

6.21(6) The commission representative may deny, suspend, or revoke the license of a corporation for which a beneficial interest includes or involves any person or entity that is ineligible (through character, moral fitness or any other criteria employed by the commission) to be licensed as an owner or to participate in racing, regardless of the percentage of ownership interest involved.

6.21(7) Any stockholder holding a beneficial interest of 5 percent or more of a corporation must, in addition to being licensed, list any interest owned in all racing animals in which any beneficial interest is owned.

6.21(8) The corporation must pay a prescribed fee to the commission. [ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.22(99D) Authorized agents for owner entities of racing animals.

6.22(1) Any persons represented by a kennel name, stable name, corporation, partnership, or single person entity may assign an agent for the kennel name, stable name, corporation, partnership, or single

person entity. The assigned agent is then authorized to handle matters pertaining to racing, which may include authorization to collect all purses or other moneys.

6.22(2) The application for a license as an authorized agent must be signed by the principal and clearly set forth the powers of the agent, including whether the agent is empowered to collect money from the facility. The application must be notarized and a copy must be filed with the facility.

6.22(3) Changes in an agent's powers or revocation of an agent's authority must be in writing, notarized, and filed with the commission's licensing office and the facility.

6.22(4) The authorized agent must pay a prescribed fee to the commission.
[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.23(99D) Trainers and assistant trainers of racing animals.

6.23(1) All trainers and assistant trainers of racing animals and their employees are subject to the laws of Iowa and the rules promulgated by the commission immediately upon acceptance and occupancy of accommodations from or approved by the facility or upon making entry to run on its track. Trainers, assistant trainers, and their employees shall accept the decision of the commission representative on any and all questions, subject to their right of appeal to the commission.

6.23(2) Licensing of trainers and assistant trainers. Eligibility:

a. An applicant must be at least 18 years of age to be licensed by the commission as a trainer or assistant trainer.

b. An applicant must be qualified, as determined by the commission representative, by reason of experience, background, and knowledge of racing. A trainer's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or more of the following:

(1) A written examination.

(2) An interview or oral examination.

(3) A demonstration of practical skills in a "barn test" (horse racing only).

c. An applicant must have a racing animal eligible to race and registered to race at the current race meeting.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.24(99D) Jockeys and apprentice jockeys.

6.24(1) *Eligibility.*

a. An applicant for a jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have the written consent of a parent or guardian.

b. A jockey shall pass a physical examination given within the previous 12 months by a licensed physician affirming fitness to participate as a jockey. The commission representatives may require that any jockey be reexamined and may refuse to allow any jockey to ride pending completion of such examination.

c. An applicant shall show competence by prior licensing, demonstration of riding ability, or temporary participation in races. An applicant may participate in a race or races, with the commission representative's prior approval for each race, not to exceed five races.

d. A jockey shall not be an owner or trainer of any horse competing at the race meeting where the jockey is riding.

e. A person who has never ridden in a race at a recognized meeting shall not be granted a license as jockey or apprentice jockey.

6.24(2) *Apprentice jockeys.*

a. The conditions of an apprentice jockey license do not apply to quarter horse racing. A jockey's performance in quarter horse racing does not apply to the conditions of an apprentice jockey license.

b. An applicant with an approved apprentice certificate may be licensed as an apprentice jockey.

c. An applicant for an apprentice jockey license must be at least 16 years of age, and if under 18 years of age, the applicant must have written consent of parent or guardian. Before such license is granted, the gaming representative shall ascertain that the applicant has suitable qualifications and

aptitude to hold an apprentice jockey's license and that the applicant has not been previously licensed as a jockey under any jurisdiction.

d. Rescinded IAB 1/30/08, effective 3/5/08.

6.24(3) *Jockeys from foreign countries.* Upon making application for a license in this jurisdiction, jockeys from a foreign country shall declare that they are holders of valid licenses in their countries, not under suspension, and bound by the rules and laws of this state. To facilitate this process, the jockey shall present a declaration sheet to the commission representative in a language recognized in this jurisdiction. [ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.25(99D) Jockey agent.

6.25(1) An applicant for a license as a jockey agent shall:

a. Provide written proof of agency with at least one jockey licensed by the commission; and
b. Be qualified, as determined by the commission representative, by reason of experience, background, and knowledge. A jockey agent's license from another jurisdiction may be accepted as evidence of experience and qualifications. Evidence of qualifications may require passing one or both of the following:

- (1) A written examination.
- (2) An interview or oral examination.

c. An applicant not previously licensed as a jockey agent shall be required to pass a written and oral examination.

6.25(2) A jockey agent may serve as agent for no more than two jockeys and one apprentice jockey. [ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.26(99D) Driver. In determining eligibility for a driver's license, the board shall consider:

1. Whether the applicant has obtained the required U.S.T.A. license.
2. Evidence of driving experience and ability to drive in a race.
3. The age of the applicant. No person under 18 years of age shall be licensed by the commission as a driver. However, a person under 18 years of age, but at least 16 years of age who has the written consent of a parent or guardian, may be licensed to drive in qualifying races only.
4. Evidence of physical and mental ability.
5. Results of a written examination to determine qualifications to drive and knowledge of commission rules.
6. Record of rule violations.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.27(99D) Practicing veterinarians. Every veterinarian practicing on facility premises must have an unrestricted and current license to practice veterinary science issued by the state of Iowa veterinary regulatory authority and shall be licensed by the commission in accordance with the commission rules governing occupational licensing.

6.27(1) Every veterinarian seeking to be licensed by the commission shall submit verification of a current and unrestricted license to practice veterinary science issued by the state of Iowa veterinary regulatory authority.

6.27(2) A veterinarian seeking to be licensed by the commission shall disclose in the veterinarian's application to the commission all disciplinary action taken against any licenses to practice veterinary science held by the applicant.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.28(99D,99F) Alcohol and drug testing.

6.28(1) *Alcohol prohibition/preliminary breath test.* Licensees whose duties require them to be in a restricted area of a racing facility shall not have present within their systems an amount of alcohol of 0.05 percent or more. A restricted area is a designated area for sample collection, paddock, racetrack, or other area where racing officials carry out the duties of their positions.

Acting with reasonable cause, a commission representative may direct the above licensees to submit to a preliminary breath test. A licensee shall, when so directed, submit to examination.

If the results show a reading of 0.05 percent alcohol content or more, the licensee shall not be permitted to continue duties for that day. For a second violation, the licensee shall not be permitted to continue duties for that day and then shall be subject to fine or suspension by the board or commission representative. For a subsequent violation, the licensee may be subject to procedures following positive chemical analysis (see 6.28(3)).

If the results show a reading of 0.10 percent alcohol content or more, the licensee is subject to fine or suspension by the board or commission representative. For a subsequent violation, the licensee may be subject to procedures following positive chemical analysis (see 6.28(3)).

6.28(2) *Drug prohibition/body fluid test.* Licensees whose duties require them to be in a restricted area, as defined in subrule 6.28(1), of a racing facility shall not have present within their systems any controlled substance as listed in Schedules I to V of U.S.C. Title 21 (Food and Drug Section 812), Iowa Code chapter 124 or any prescription drug unless it was obtained directly or pursuant to valid prescription or order from a duly licensed physician who is acting in the course of professional practice. Acting with reasonable cause, a commission representative may direct the above licensees to deliver a specimen of urine or subject themselves to the taking of a blood sample or other body fluids at a collection site approved by the commission. In these cases, the commission representative may prohibit the licensee from participating in racing until the licensee evidences a negative test result. Sufficient sample should be collected to ensure a quantity for a split sample when possible. A licensee who refuses to provide the samples herein described shall be in violation of these rules and shall be immediately suspended and subject to disciplinary action by the board or commission representative. All confirmed positive test costs and any related expenses shall be paid for by the licensee. Negative tests shall be at the expense of the commission.

With reasonable cause noted, an on-duty commission representative may direct a licensee to deliver a test. The commission representative shall call the approved laboratory or hospital and provide information regarding the person who will be coming; that the licensee will have a photo ID; the name and number to call when the licensee arrives; to whom and where to mail the results; and who should be called with the results. The licensee will be directed to immediately leave the work area and proceed to an approved laboratory or hospital for testing with the following directions:

1. If under impairment, the licensee must have another person drive the licensee to the laboratory or hospital.
2. On arrival at the laboratory or hospital, the licensee must show the license to the admitting personnel for verification.
3. On arrival at the laboratory or hospital, the licensee shall be required to sign a consent for the release of information of the results to a commission representative.

6.28(3) *Procedures following positive chemical analysis.*

a. After professional evaluation, if the licensee's condition proves nonaddictive and not detrimental to the best interest of racing, and the licensee can produce a negative test result and agrees to further testing at the discretion of the commission representative to ensure unimpairment, the licensee may be allowed to participate in racing.

b. After professional evaluation, should the licensee's condition prove addictive or detrimental to the best interest of racing, the licensee shall not be allowed to participate in racing until the licensee can produce a negative test result and show documented proof of successful completion of a certified alcohol/drug rehabilitation program approved by the commission. The licensee must also agree to further testing at the discretion of the commission representative to ensure unimpairment.

c. For a second violation, a licensee shall be suspended and allowed to enroll in a certified alcohol/drug rehabilitation program approved by the administrator and to apply for reinstatement only at the discretion of the administrator.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

491—6.29(99D) Time by which owner and trainer must be licensed. The owner (includes stable names, partnerships, and corporations) and the trainer of a horse entered to race must both be licensed by the first post time of the race card for the day in which the horse is entered.

[ARC 7658B, IAB 3/25/09, effective 3/23/09]

These rules are intended to implement Iowa Code chapters 99D and 99F.

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CHAPTER 11
GAMBLING GAMES

491—11.1(99F) Definitions.

“*Administrator*” means the administrator of the commission.

“*Coin*” means tokens, nickels, and quarters of legal tender.

“*Commission*” means the racing and gaming commission.

“*Currency*” means any coin or paper money of legal tender and paper forms of cashless wagering.

“*Discount rate*” means either the current prime rate as published in the Wall Street Journal or a blended rate computed by obtaining quotes for the purchase of qualified investments at least three times per month.

“*Distributor’s license*” means a license issued by the administrator to any entity that sells, leases, or otherwise distributes gambling games or implements of gambling to any entity licensed to conduct gambling games pursuant to Iowa Code chapter 99F.

“*Facility*” means an entity licensed by the commission to conduct gaming operations in Iowa.

“*Facility grounds*” means all real property utilized by the facility in the conduct of its gaming activity, including the grandstand, concession stands, offices, parking lots, and any other areas under the jurisdiction of the commission.

“*Gambling game*” means any game of chance approved by the commission for wagering, including, but not limited to, gambling games authorized by this chapter.

“*Government sponsored enterprise debt instrument*” means a negotiable, senior, noncallable debt obligation issued by an agency of the United States or an entity sponsored by an agency of the United States that on the date of funding possesses an issuer credit rating equivalent to the highest investment grade rating given by Standard & Poor’s or Moody’s Investment Services.

“*Implement of gambling*” means any device or object determined by the administrator to directly or indirectly influence the outcome of a gambling game; collect wagering information while directly connected to a slot machine; or be integral to the conduct of a commission-authorized gambling game, possession or use of which is otherwise prohibited by statute.

“*Manufacturer’s license*” means a license issued by the administrator to any entity that assembles, fabricates, produces, or otherwise constructs a gambling game or implement of gambling used in the conduct of gambling games pursuant to Iowa Code chapter 99F.

“*Present value*” means the current value of a future payment or series of payments, discounted using the discount rate.

“*Qualified investment*” means an Iowa state issued debt instrument, a United States Treasury debt instrument or a government sponsored enterprise debt obligation.

“*Reserve*” means an account with an independent financial institution or brokerage firm consisting of cash and qualified investments used to satisfy periodic payments of prizes.

“*Slot machine*” means a mechanical or electronic gambling game device into which a player may deposit currency or forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

“*Storage media*” means EPROMs, ROMs, flash-ROMs, DVDs, CD-ROMs, compact flashes, hard drives and any other types of program storage device.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.2(99F) Conduct of all gambling games.

11.2(1) *Commission policy.* It is the policy of the commission to require that all facilities conduct gambling games in a manner suitable to protect the public health, safety, morals, good order, and general welfare of the state. Responsibility for the employment and maintenance of suitable methods of operation rests with the facility. Willful or persistent use or toleration of methods of operation deemed unsuitable in the sole discretion of the commission will constitute grounds for disciplinary action, up to and including license revocation.

11.2(2) *Activities prohibited.* A facility is expressly prohibited from the following activities:

- a. Failing to conduct advertising and public relations activities in accordance with decency, dignity, good taste, and honesty.
 - b. Permitting persons who are visibly intoxicated to participate in gaming activity.
 - c. Failing to comply with or make provision for compliance with all federal, state, and local laws and rules pertaining to the operation of a facility including payment of license fees, withholding payroll taxes, and violations of alcoholic beverage laws or regulations.
 - d. Possessing, or permitting to remain in or upon any facility grounds, any associated gambling equipment which may have in any manner been marked, tampered with, or otherwise placed in a condition or operated in a manner which might affect the game and its payouts.
 - e. Permitting, if the facility was aware of, or should have been aware of, any cheating.
 - f. Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any cheating device whatsoever; or conducting, carrying on, operating, or dealing any cheating or thieving game or device on the grounds.
 - g. Possessing or permitting to remain in or upon any facility grounds, if the facility was aware of, or should have been aware of, any gambling device which tends to alter the normal random selection of criteria which determines the results of the game or deceives the public in any way.
 - h. Failing to conduct gaming operations in accordance with proper standards of custom, decorum, and decency; or permitting any type of conduct that reflects negatively on the state or acts as a detriment to the gaming industry.
 - i. Denying a commissioner or commission representative, upon proper and lawful demand, information or access to inspect any portion of the gaming operation.
- 11.2(3) *Gambling aids.*** No person shall use, or possess with the intent to use, any calculator, computer, or other electronic, electrical, or mechanical device that:
- a. Assists in projecting the outcome of a game.
 - b. Keeps track of cards that have been dealt.
 - c. Keeps track of changing probabilities.
- 11.2(4) *Wagers.*** Wagers may only be made:
- a. By a person present at a facility.
 - b. In the form of chips, coins, or other cashless wagering.
 - c. By persons 21 years of age or older.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.3(99F) *Gambling games approved by the commission.* The commission may approve a gambling game by administrative rule, resolution, or motion.

491—11.4(99F) *Approval for distribution, operation, or movement of gambling games and implements of gambling.*

11.4(1) *Approval.* Prior to distribution, a distributor shall request that the administrator inspect, investigate, and approve a gambling game or implement of gambling for compliance with commission rules and the standards required by a commission-designated independent testing facility. The distributor, at its own expense, must provide the administrator and independent testing facility with information and product sufficient to determine the integrity and security of the product, including independent testing conducted by a designated testing facility. The commission shall designate up to two independent testing facilities for the purpose of certifying electronic gambling games or implements of gambling.

11.4(2) *Trial period.* Prior to or after commission approval and after completing a review of a proposed gambling game, the administrator may require a trial period of up to 180 days to test the gambling game in a facility. During the trial period, minor changes in the operation or design of the gambling game may be made with prior approval of the administrator. During the trial period, a gambling game distributor shall not be entitled to receive revenue of any kind from the operation of that gambling game.

11.4(3) *Gambling game submissions.* Prior to conducting a commission-authorized gambling game or for a trial period, a facility shall submit proposals for game rules, procedures, wagers, shuffling procedures, dealing procedures, cutting procedures, and payout odds. The gambling game submission, or requests for modification to an approved submission, shall be in writing and approved by the administrator or a commission representative prior to implementation.

11.4(4) *Public notice.* The public shall have access to the rules of play, payout schedules, and permitted wagering amounts. Signage shall be conspicuously posted on the gaming floor to direct patrons to the gaming floor area where this information can be viewed. All participants in all licensed gambling games are required to know and follow the rules of play. No forms of cheating shall be permitted.

11.4(5) *Operation.* Each gambling game shall operate and play in accordance with the representation made to the commission and the public at all times. The administrator or commission representative may order the withdrawal of any gambling game suspected of malfunction or misrepresentation, until all deficiencies are corrected. The administrator or commission representative may require additional testing by an independent testing facility at the expense of the licensee or distributor for the purpose of complying with this subrule.

11.4(6) *Distribution, movement and disposal.*

a. Any entity providing slot machines, gambling games or implements of gambling to a licensed facility must file written notice with the commission at least five calendar days prior to receipt by the facility. A licensed facility selling or an owner removing slot machines, gambling games or implements of gambling from the facility must file written notice with the commission at least one day prior to removal. All methods of disposal for slot machines, gambling games or implements of gambling are subject to administrator approval. Notification by facsimile or electronic mail shall be considered written notice.

b. The administrator may approve licensee transfers of slot machines, gambling games, or implements of gambling among subsidiaries of the licensee's parent company.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.5(99F) Gambling games authorized.

11.5(1) Dice, craps, roulette, twenty-one (blackjack), big six—roulette, red dog, baccarat, and poker are authorized as table games. The administrator is authorized to approve multiplayer electronic devices simulating these games, subject to the requirements of rule 491—11.4(99F) and subrule 11.5(3).

11.5(2) Slot machines, video poker, and other video games of chance, both progressive and nonprogressive, shall be allowed as slot machine games, subject to the administrator's approval of individual slot machine prototypes and game variations. For racetrack enclosures without a table games license, video machines which simulate table games of chance shall not be allowed.

11.5(3) The administrator is authorized to approve variations of approved gambling games and bonus features or progressive wagers associated with approved gambling games, subject to the requirements of rule 11.4(99F).

11.5(4) Gambling games of chance involving prizes awarded to participants through promotional activities at a facility.

a. Proposals. Gambling games of chance involving prizes awarded to participants through promotional activities occurring at a facility shall be authorized and approved by the commission. Before a facility may conduct such gambling games, all proposals for terms, game rules, prizes, dates of operation and procedures for any gambling games of chance involving prizes awarded through promotional activities occurring at a facility shall be submitted in writing to a commission representative for approval. The written submission shall be submitted to the commission representative at least 14 days in advance of the planned activity. Any changes to an approved gambling game of chance involving prizes awarded to participants through promotional activities shall also require the approval of the commission representative. Gambling games of chance involving prizes awarded to participants through promotional activities occurring at a facility shall meet the following requirements:

- (1) All rules of play shall be in writing and posted for public inspection;

- (2) Such games shall be limited to participants 21 years of age or older;
- (3) All games shall be conducted in a fair and honest manner, and all prizes advertised shall be awarded in accordance with the posted rules of play;
- (4) All such games shall be conducted within the regulated area of the facility and shall be conducted in accordance with the submission approved by the commission representative;
- (5) No entry fees shall be permitted; and
- (6) All employees of the facility shall be prohibited from participation.

b. Limits. Gambling games of chance involving prizes awarded to participants through promotional activities conducted at a facility shall be subject to the wagering tax pursuant to Iowa Code section 99F.11. However, in determining the adjusted gross receipts, the facility may consider all nonmonetary consideration expended by a participant and shall certify to the commission that the nonmonetary consideration is at least equal to the value of the prizes awarded.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.6(99F) Gambling game-based tournaments.

11.6(1) Proposals. Proposals for terms, game rules, entry fees, prizes, dates, and procedures must be submitted in writing and approved by a commission representative before a facility conducts any tournament. Any changes to approved tournaments must be submitted to the commission representative for review and approval prior to being implemented. The written proposal or change shall be submitted to a commission representative at least 14 days in advance of the planned activity. Rules, fees, and a schedule of prizes must be made available to the player prior to entry.

11.6(2) Limits. Tournaments must be based on gambling games authorized by the commission. Entry fees, less prizes paid, are subject to the wagering tax pursuant to Iowa Code section 99F.11. In determining adjusted gross receipts, to the extent that prizes paid out exceed entry fees received, the facility shall be deemed to have paid the fees for the participants.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.7(99F) Table game requirements.

11.7(1) Removable storage media in a table game device which controls the randomness of card shufflers or progressive table game meters shall be verified and sealed with evidence tape by a commission representative prior to implementation.

11.7(2) Wagers. All wagers at table games shall be made by placing gaming chips or coins on the appropriate areas of the layout.

11.7(3) Craps. Wagers must be made before the dice are thrown. "Call bets," or the calling out of bets between the time the dice leave the shooter's hand and the time the dice come to rest, not accompanied by the placement of gaming chips, are not allowed.

11.7(4) Twenty-one.

a. Before the first card is dealt for each round of play, each player shall make a wager against the dealer. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager on the insurance line, a wager to double down, or a wager to split pairs has been made and confirmed by the dealer, no player shall handle, remove, or alter the wagers until a decision has been rendered and implemented with respect to that wager, except as explicitly permitted. A facility or licensee shall not permit any player to engage in conduct that violates this paragraph.

b. At the conclusion of a round of play, all cards still remaining on the layout shall be picked up by the dealer in a prescribed order and in such a way that they can be readily arranged to indicate each player's hand in case of question or dispute. The dealer shall pick up the cards beginning with those of the player to the far right and moving counterclockwise around the table. The dealer's hand will be the last hand collected. The cards will then be placed on top of the discard pile. No player or spectator shall remove or alter any cards used to game at twenty-one or be permitted to do so by a casino employee.

c. Each player at the table shall be responsible for correctly computing the point count of the player's hand. No player shall rely on the point counts announced by the dealer without checking the accuracy of such announcement.

11.7(5) Roulette.

a. No person at a roulette table shall be issued or permitted to game with nonvalue gaming chips that are identical in color and design to value gaming chips or to nonvalue gaming chips being used by another person at that same table.

b. Each player shall be responsible for the correct positioning of the player's wager on the roulette layout, regardless of whether the player is assisted by the dealer. Each player must ensure that any instructions the player gives to the dealer regarding the placement of the player's wager are correctly carried out.

c. Each wager shall be settled strictly in accordance with its position on the layout when the ball falls to rest in a compartment of the wheel.

11.7(6) Big six—roulette.

a. Each player shall be responsible for the correct positioning of the player's wager on the layout regardless of whether the player is assisted by the dealer.

b. Each wager shall be settled strictly in accordance with its position on the layout when the wheel stops with the winning indicator in a compartment of the wheel.

11.7(7) Poker.

a. When a facility conducts poker with an impress dealer gaming chip bank, the rules in 491—Chapter 12 for closing and distributing or removing gaming chips to or from gaming tables do not apply. The entire amount of the table rake is subject to the wagering tax pursuant to Iowa Code section 99F.11. Proposals for impress dealer gaming chip banks must be submitted in writing and approved by a commission representative prior to use.

b. All games shall be played according to table stakes game rules as follows:

(1) Only gaming chips or coins on the table at the start of a deal shall be in play for that pot.

(2) Concealed gaming chips or coins shall not play.

(3) A player with gaming chips may add additional gaming chips between deals, provided that the player complies with any minimum buy-in requirement.

(4) A player is never obliged to drop out of contention because of insufficient gaming chips to call the full amount of a bet, but may call for the amount of gaming chips the player has on the table. The excess part of the bet made by other players is either returned to the players or used to form a side pot.

c. Each player in a poker game is required to act only in the player's own best interest. The facility has the responsibility of ensuring that any behavior designed to assist one player over another is prohibited. The facility may prohibit any two players from playing in the same game.

d. Poker games where winning wagers are paid by the facility according to specific payout odds or pay tables are permitted.

11.7(8) Red dog. Before the first card is dealt for each round of play, each player shall make a wager against the dealer. Once the first card of any hand has been dealt by the dealer, no player shall handle, remove, or alter any wagers that have been made until a decision has been rendered and implemented with respect to that wager. Once a wager to double down has been made and confirmed by the dealer, no player shall handle, remove, or alter the wagers until a decision has been rendered and implemented with respect to that wager, except as explicitly permitted.

491—11.8(99F) Keno.

11.8(1) Keno shall be conducted using an automated ticket writing and redemption system where a game's winning numbers are selected by a random number generator.

11.8(2) Each game shall consist of the selection of 20 numbers out of 80 possible numbers, 1 through 80.

11.8(3) For any type of wager offered, the payout must be at least 80 percent.

11.8(4) Multigame tickets shall be limited to 20 games.

11.8(5) Writing or voiding tickets for a game after that game has closed is prohibited.

11.8(6) All winning tickets shall be valid up to a maximum of one year from the date of purchase. The dollar value of all expired and unclaimed winning tickets shall be added to existing keno jackpots in a manner approved by the administrator.

11.8(7) The administrator shall determine minimum hardware and software requirements to ensure the integrity of play. An automated keno system must be proven to accurately account for adjusted gross receipts to the satisfaction of the administrator.

11.8(8) Adjusted gross receipts from keno games shall be the difference between dollar value of tickets written and dollar value of winning tickets as determined from the automated keno system. The wagering tax pursuant to Iowa Code section 99F.11 shall apply to adjusted gross receipts of keno games.

491—11.9(99F) Slot machine requirements.

11.9(1) Payout percentage. A slot machine game must meet the following maximum and minimum theoretical percentage payouts during the expected lifetime of the game.

a. A slot machine game's theoretical payout must be at least 80 percent and no more than 100 percent of the amount wagered. The theoretical payout percentage is determined using standard methods of probability theory.

b. A slot machine game shall have a probability of obtaining the highest single advertised payout, which must statistically occur at least once in 50 million games.

11.9(2) Features. Unless otherwise authorized by the administrator, each slot machine in a casino shall have the following features:

a. A casino number at least two inches in height permanently imprinted, affixed, or impressed on the outside of the machine so that the number may be observed by the surveillance camera.

b. A clear description displayed on the slot machine of any merchandise or thing of value offered as a payout including the cash equivalent value of the merchandise or thing of value offered, the dates the merchandise or thing of value will be offered if the facility establishes a time limit upon initially offering the merchandise or thing of value, and the availability or unavailability to the patron of the optional cash equivalent value. A cash equivalent value shall be at least 75 percent of the fair market value of the merchandise or thing of value offered.

c. Devices, equipment, features, and capabilities, as may be required by the commission, that are specific to each slot machine after the prototype model is approved by the commission.

11.9(3) Storage media. Hardware media devices which contain game functions or characteristics, including but not limited to pay tables and random number generators, shall be verified and sealed with evidence tape by a commission representative prior to being placed in operation, as determined by the administrator.

11.9(4) Posting of the actual aggregate payout percentage. The actual aggregate payout percentage to the nearest one-tenth of 1 percent (0.1%) of all slot machine games in operation during the preceding three calendar months shall be posted at the main casino entrance, cashier cages, and slot booths by the fifteenth day of each calendar month. For the purpose of this calculation, the actual aggregate payout percentage shall be the slot revenue reported to the commission during the preceding three calendar months divided by the slot coin-in reported to the commission during the preceding three calendar months subtracted from 100 percent.

11.9(5) Communication equipment. Equipment must be installed in each slot machine that allows for communication to an online monitoring and control system accessible to the commission representatives using a communications protocol provided to each licensed manufacturer by the commission for the information and control programs approved by the administrator.

11.9(6) Meter clears. Prior to the clearing of electronic accounting meters detailed in paragraph 11.10(2) "c," a licensee must notify a commission representative. All meters must be recorded before and after being cleared.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.10(99F) Slot machine hardware and software specifications.

11.10(1) Hardware specifications.

a. Electrical and mechanical parts and design principles shall not subject players to physical hazards.

b. The battery backup, or an equivalent, for the electronic meters must be capable of maintaining accuracy of all required information for 30 days after power is discontinued from a slot machine. The backup shall be kept within the locked logic board compartment.

c. An identification badge permanently affixed by the manufacturer to the exterior of the cabinet shall include the following information:

- (1) The manufacturer;
- (2) A unique serial number;
- (3) The gaming device model number; and
- (4) The date of manufacture.

d. The operations and outcomes of each slot machine must not be adversely affected by influences from outside the device.

e. The internal space of a slot machine shall not be readily accessible when the front door is both closed and locked.

f. Logic boards and software storage media which significantly influence the operation of the game must be in a locked compartment within the slot machine.

g. The currency drop container must be in a locked compartment within or attached to the slot machine. Access to the currency storage areas shall be secured by separate locks which shall be fitted with sensors that indicate door open/closed or stacker removed.

h. No hardware switches may be installed that alter the pay tables or payout percentages in the operation of a slot machine. Hardware switches may be installed to control graphic routines, speed of play, and sound.

i. A display which automatically illuminates when a player has won a jackpot or other award not paid automatically and totally by the slot machine and which advises players that they will be paid by an attendant shall be located conspicuously on the slot machine.

j. A payglass/video display shall be clearly identified and shall accurately state the rules of the game and the award that will be paid to the player when the player obtains a specific combination of symbols or other criteria. All information required in this paragraph must be available and readable at all times the slot machine is in service.

k. A light that automatically illuminates when a player has won an amount or is redeeming credits that the machine cannot automatically pay, an error condition has occurred, or a "Call attendant" condition has been initiated by the player shall be located conspicuously on top of the gaming device. At the discretion of the administrator, tower lights may be shared among certain machines or substituted by an audible alarm.

l. If credits are collected and the total credit value is unable to be paid automatically by the gaming device, the device shall lock up until the credits have been paid and the amount collected has been cleared by an attendant handpay or normal operation has been restored.

11.10(2) Software specifications.

a. *Random number generator.* Each slot machine must have a random number generator to determine the results of the game symbol selections or production of game outcomes. The selection shall:

- (1) Be statistically independent.
- (2) Conform to the desired random distribution.
- (3) Pass various recognized statistical tests.
- (4) Be unpredictable.
- (5) Have a testing confidence level of 99 percent.

b. *Continuation of game after malfunction is cleared.* Each slot machine must be capable of continuing the current game with all current game features after a malfunction is cleared. This paragraph does not apply if a slot machine is rendered totally inoperable; however, the current wager and all credits appearing on the screen prior to the malfunction must be returned to the player.

c. *Electronic accounting meters.* Each slot machine must maintain electronic accounting meters at all times, regardless of whether the slot machine is being supplied with power. For each meter recording values, the slot machine must be capable of maintaining no fewer than ten digits. For each

meter recording occurrences, the slot machine must be capable of maintaining no fewer than eight digits. No slot machine may have a mechanism that will cause the electronic accounting meters to automatically clear due to an error. The electronic meters must record, at a minimum, the following:

- (1) Coin-in.
- (2) Coin-out.
- (3) Drop.
- (4) Attendant-paid jackpots.
- (5) Currency in.
- (6) Currency out.
- (7) External door.
- (8) Bill validator door.
- (9) Machine-paid external bonus payout.
- (10) Attendant-paid external bonus payout.
- (11) Attendant-paid progressive payout.
- (12) Machine-paid progressive payout.

d. Error conditions. Each slot machine shall display and report error conditions to the online monitoring system. For machines that display only a code, definitions for all codes must be permanently affixed to the interior of the slot machine. Error conditions that must be displayed and reported include but are not limited to:

- (1) Currency in.
- (2) Currency out.
- (3) Door open.
- (4) RAM.
- (5) Low battery.
- (6) Program authentication.
- (7) Reel spin.
- (8) Power reset.

11.10(3) Previous slot machine models. Subject to administrator approval of specific gaming devices, slot machines may be used that do not meet the requirements of subrules 11.10(1) and 11.10(2) but have been certified under previously approved specifications by a commission-designated independent testing facility and maintain a current certification.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.11(99F) Slot machine specifications. Rescinded IAB 8/12/09, effective 9/16/09.

491—11.12(99F) Progressive slot machines.

11.12(1) Meter required. A progressive machine is a slot machine game with an award amount that increases based on a function of credits bet on the slot machine. A progressive slot machine or group of linked progressive slot machines must have a meter showing the progressive jackpot payout.

11.12(2) Progressive controllers. The reset or base value and the rate of increment of a progressive jackpot game must be filed with a commission representative prior to implementation. A reset or base value must equal or exceed the equivalent nonprogressive jackpot payout.

11.12(3) Limits. A facility may impose a limit on the progressive jackpot payout of a slot machine if the limit imposed is greater than the progressive jackpot payout at the time the limit is imposed. The facility must prominently display a notice informing the public of the limit. No progressive meter may be turned back to a lesser amount unless one of the following circumstances occurs:

- a.* The amount shown on the progressive meter is paid to a player as a jackpot.
- b.* It is necessary to adjust the progressive meter to prevent it from displaying an amount greater than the limit imposed by the facility.
- c.* It is necessary to change the progressive indicator because of game malfunction.

11.12(4) Transfer of jackpots. In the event of malfunction, replacement, or other reason approved by the commission, a progressive jackpot that is removed shall be transferred, less the reset value, to

other progressive slot machine jackpots of similar progressive wager and probability at the same facility within 30 days from the removal date. In the event a similar progressive jackpot at the same facility is unavailable, other transfers shall be allowed. A commission representative shall be notified in writing prior to a removal or transfer.

11.12(5) *Records required.* Records must be maintained that record the amount shown on a progressive jackpot meter. Supporting documents must be maintained to explain any reduction in the payoff amount from a previous entry. The records and documents must be retained for a period of three years unless permission to destroy them earlier is given in writing by the administrator.

11.12(6) *Transfer of progressive slot machines.* A progressive slot machine, upon permission of the administrator, may be moved to a different facility if a bankruptcy, loss of license, or other good cause warrants.

11.12(7) *Linked machines.* Each machine on the link shall have the same probability of winning the progressive jackpot, adjusted for the total amount wagered. The product of the odds of winning the progressive jackpot multiplied by the maximum amount wagered shall be equal for all games on the link.

11.12(8) *Wide area progressive systems.* A wide area progressive system is a method of linking progressive slot machines or electronic gaming machines across telecommunication lines as part of a network connecting participating facilities. The purpose of a wide area progressive system is to offer a common progressive jackpot (system jackpot) at all participating locations. The operation of a wide area progressive system (multilink) is permitted subject to the following conditions:

a. The method of communication over the multilink must consist of dedicated on-line communication lines (direct connect) or equivalent as determined by the administrator, dial-tone lines, or wireless communication which may be subject to certain restrictions imposed by the administrator.

b. All communication between each facility location and the central system site must be encrypted.

c. All meter reading data must be obtained in real time in an on-line automated fashion. When requested to do so, the system must return meter readings on all slot machines or electronic gaming machines attached to the multilink within a reasonable time of the meter acquisition request. Manual reading of meter values may not be substituted for these requirements. There is no restriction as to the acceptable method of obtaining meter reading values, provided that the methods consist of either pulses from any machine computer board or associated wiring, or the use of serial interface to the machine's random access memory (RAM) or other nonvolatile memory.

d. The multilink must have the ability to monitor entry into the front door of the machine as well as the logic area of the machine and report such data to a central system.

e. The central system site must be located in the state of Iowa, be equipped with a noninterruptible power supply, and the central computer must be capable of on-line data redundancy should hard disk peripherals fail during operation. The office containing the central computer shall be equipped with a surveillance system that has been approved by the administrator. Any person authorized to provide a multilink shall be required to keep and maintain an entry and exit log for the office containing the central computer. Any person authorized to provide a multilink shall provide access to the office containing the central computer to the administrator and shall make available to the administrator all books, records, and information required by the administrator in fulfilling its regulatory purpose.

f. Any person authorized to provide a multilink must suspend play on the multilink if a communication failure of the system cannot be corrected within 24 consecutive hours.

g. Approval by a commission representative of any multilink shall occur only after the administrator has reviewed the multilink software and hardware and is satisfied that the operation of the system meets accepted industry standards for multilink products, as well as any other requirements that the administrator may impose to ensure the integrity, security, and legal operation of the multilink.

h. A meter that shows the amount of the system jackpot must be conspicuously displayed at or near the machines to which the jackpot applies. The system jackpot meter need not precisely show the actual moneys in the system jackpot award at each instant. Nothing shall prohibit the use of odometer or other paced updating progressive displays. In the case of the use of paced updating displays, the system jackpot meter must display the winning value after the jackpot broadcast is received from the central system, providing the remote site is communicating to the central computer. If a system jackpot

is recognized in the middle of a systemwide poll cycle, the system jackpot display may contain a value less than the aggregated amount calculated by the central system. The coin values from the remaining portion of the poll cycle will be received by the central system but not the local site, in which case the system jackpot amount paid will always be the higher of the two reporting amounts.

i. When a system jackpot is won, a person authorized to provide the multilink shall have the opportunity to inspect the machine, storage media, the error events received by the central system, and any other data which could reasonably be used to ascertain the validity of the jackpot.

(1) The central system shall produce reports that will clearly demonstrate the method of arriving at the payoff amount. This shall include the coins contributed beginning with the polling cycle immediately following the previous jackpot and will include all coins contributed up to, and including, the polling cycle, which includes the jackpot signal. Coins contributed to and registered by the system before the jackpot message is received will be deemed to have been contributed to the progressive amount prior to the current jackpot. Coins contributed to the system subsequent to the jackpot message's being received as well as coins contributed to the system before the jackpot message is received by the system, but registered after the jackpot message is received at the system, will be deemed to have been contributed to the progressive amount of the next jackpot.

(2) The system jackpot may be disbursed in periodic payments as long as each machine clearly displays the fact that the jackpot will be paid in such periodic payments. In addition, the number of periodic payments and time between payments must be clearly displayed on the face of the slot machine in a nonmisleading manner.

(3) Two system jackpots which occur in the same polling cycle before the progressive amount can reset will be deemed to have occurred simultaneously; therefore, each winner shall receive the full amount shown on the system jackpot meter.

j. Any person authorized to provide a multilink must supply to the commission, as requested, reports which support and verify the economic activity of the system.

(1) Any person authorized to provide a multilink must supply to the commission, as requested, reports and information indicating the amount of, and basis for, the current system jackpot. Such reports may include an aggregate report and a detail report. The aggregate report may show only the balancing of the system with regard to systemwide totals. The detail report shall be in such form as to indicate for each machine, summarized by location, the coin-in totals as such terms are commonly understood in the industry.

(2) In addition, upon the invoicing of any facility participating in a multilink, each such facility must be given a printout of each machine operated by that facility, the coins contributed by each machine to the system jackpot for the period for which an invoice is remitted, and any other information required by the commission to confirm the validity of the facility's contributions to the system jackpot.

k. In calculating adjusted gross receipts, a facility may deduct its pro-rata share of the present value of any system jackpots awarded. Such deduction shall be listed on the detailed accounting records provided by the person authorized to provide the multilink. A facility's pro-rata share is based on the number of coins in from that facility's machines on the multilink, compared to the total amount of coins in on the whole system for the time period(s) between jackpot(s) awarded.

l. In the event a facility ceases operations and a progressive jackpot is awarded subsequent to the last day of the final month of operation, the facility may not file an amended wagering tax submission or make a claim for a wagering tax refund based on its contributions to that particular progressive prize pool.

m. A facility, or an entity that is licensed as a manufacturer or distributor, shall provide the multilink, in accordance with a written agreement which shall be reviewed and approved by the commission prior to offering the jackpots.

n. The payment of any system jackpot offered on a multilink shall be administered by the person authorized to provide the multilink, and such person shall have primary liability for payment of any system jackpot the person administers. In addition, any facility shall have secondary liability for the payment of system jackpots won on a multilink in which the licensee is or was a participant if and to the extent that the person authorized to provide the multilink fails to make payment when due.

- o.* A person who is authorized to provide the multilink shall comply with the following:
- (1) A reserve shall be established and maintained by the provider of the multilink in an amount of not less than the sum of the following amounts:
 1. The present value of the aggregate remaining balances owed on all jackpots previously won by patrons on the multilink.
 2. The present value of the amount currently reflected on the jackpot meters of the multilink.
 3. The present value of one additional reset (start amount) of the multilink.
 - (2) The reserve shall continue to be maintained until all payments owed to winners of the system jackpots have been made.
 - (3) For system jackpots disbursed in periodic payments, any qualified investment shall be purchased within 90 days following notice of the win of the system jackpot, and a copy of such qualified investment will be provided to the commission office within 30 days of purchase. Any qualified investment shall have a surrender value at maturity, excluding any interest paid before the maturity date, equal to or greater than the value of the corresponding periodic jackpot payment, and shall have a maturity date prior to the date the periodic jackpot payment is required to be made.
 - (4) The person authorized to provide the multilink shall not be permitted to sell, trade, or otherwise dispose of any qualified investments prior to their maturity unless approval to do so is first obtained from the commission.
 - (5) Upon becoming aware of an event of noncompliance with the terms of the reserve requirement mandated by subparagraph (1) above, the person authorized to provide the multilink must immediately notify the commission of such event. An event of noncompliance includes a nonpayment of a jackpot periodic payment or a circumstance which may cause the person authorized to provide the multilink to be unable to fulfill, or which may otherwise impair the person's ability to satisfy, the person's jackpot payment obligations.
 - (6) On a quarterly basis, the person authorized to provide the multilink must deliver to the commission office a calculation of system reserves required under subparagraph (1) above. The calculation shall come with a certification of financial compliance signed by a duly authorized financial officer of the person authorized to provide the multilink, on a form prescribed by the commission, validating the calculation.
 - (7) The reserve required under subparagraph (1) must be examined by an independent certified public accountant according to procedures approved by the commission. Two copies of the report must be submitted to the commission office within 90 days after the conclusion of the fiscal year of the person authorized to provide the multilink.
- p.* For system jackpots disbursed in periodic payments, subsequent to the date of the win, a winner may be offered the option to receive, in lieu of periodic payments, a discounted single cash payment in the form of a "qualified prize option," as that term is defined in Section 451(h) of the Internal Revenue Code. The person authorized to provide the multilink shall calculate the single cash payment based on the discount rate. Until the new discount rate becomes effective, the discount rate selected by the person authorized to provide the multilink shall be used to calculate the single cash payment for all qualified prizes that occur subsequent to the date of the selected discount rate.

[ARC 7757B, IAB 5/6/09, effective 6/10/09; ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—11.13(99F) Licensing of manufacturers and distributors of gambling games or implements of gambling.

11.13(1) *Impact on gambling.* In considering whether a manufacturer or distributor applicant will be licensed or a specific product will be distributed, the administrator shall give due consideration to the economic impact of the applicant's product, the willingness of a licensed facility to offer the product to the public, and whether its revenue potential warrants the investigative time and effort required to maintain effective control over the product.

11.13(2) *Licensing standards.* Standards which shall be considered when determining the qualifications of an applicant shall include, but are not limited to, financial stability; business ability

and experience; good character and reputation of the applicant as well as all directors, officers, partners, and employees; integrity of financial backers; and any effect on the Iowa economy.

11.13(3) Application procedure. Application for a manufacturer's or a distributor's license shall be made to the commission for approval by the administrator. In addition to the application, the following must be completed and presented when the application is filed:

a. Disclosure of ownership interest, directors, or officers of licensees.

(1) An applicant or licensee shall notify the administrator of the identity of each director, corporate officer, owner, partner, joint venture participant, trustee, or any other person who has any beneficial interest of 5 percent or more, direct or indirect, in the business entity. For any of the above, as required by the administrator, the applicant or licensee shall submit background information on forms supplied by the division of criminal investigation and any other information the administrator may require.

For purposes of this rule, beneficial interest includes all direct and indirect forms of ownership or control, voting power, or investment power held through any contract, lien, lease, partnership, stockholding, syndication, joint venture, understanding, relationship (including family relationship), present or reversionary right, title or interest, or otherwise.

(2) For ownership interests of less than 5 percent, the administrator may request a list of these interests. The list shall include names, percentages owned, addresses, social security numbers, and dates of birth. The administrator may request the same information required of those individuals in subparagraph (1) above.

b. Investigative fees.

(1) Advance payment. The department of public safety may request payment of the investigative fee in advance as a condition to beginning investigation.

(2) Payment required. The administrator may withhold final action with respect to any application until all investigative fees have been paid in full.

c. A bank or cashier's check made payable to the Iowa Racing and Gaming Commission for the annual license fee as follows:

(1) A manufacturer's license shall be \$250.

(2) A distributor's license shall be \$1,000.

d. A copy of each of the following:

(1) Articles of incorporation and certificate of incorporation, if the business entity is a corporation.

(2) Partnership agreement, if the business entity is a partnership.

(3) Trust agreement, if the business entity is a trust.

(4) Joint venture agreement, if the business entity is a joint venture.

(5) List of employees of the aforementioned who may have contact with persons within the state of Iowa.

e. A copy of each of the following types of proposed distribution agreements, where applicable:

(1) Purchase agreement(s).

(2) Lease agreement(s).

(3) Bill(s) of sale.

(4) Participation agreement(s).

f. Supplementary information. Each applicant shall promptly furnish the administrator with all additional information pertaining to the application or the applicant which the administrator may require. Failure to supply the information requested within five days after the request has been received by the applicant shall constitute grounds for delaying consideration of the application.

g. Any and all changes in the applicant's legal structure, directors, officers, or the respective ownership interests must be promptly filed with the administrator.

h. The administrator may deny, suspend, or revoke the license of an applicant or licensee in which a director, corporate officer, or holder of a beneficial interest includes or involves any person or entity which would be, or is, ineligible in any respect, such as through want of character, moral fitness, financial responsibility, professional qualifications, or due to failure to meet other criteria employed by the administrator, to participate in gaming regardless of the percentage of ownership interest involved. The administrator may order the ineligible person or entity to terminate all relationships with the

licensee or applicant, including divestiture of any ownership interest or beneficial interest at acquisition cost.

i. Disclosure. Disclosure of the full nature and extent of all beneficial interests may be requested by the administrator and shall include the names of individuals and entities, the nature of their relationships, and the exact nature of their beneficial interest.

j. Public disclosure. Disclosure is made for the benefit of the public, and all documents pertaining to the ownership filed with the administrator shall be available for public inspection.

11.13(4) Temporary license certificates.

a. A temporary license certificate may be issued at the discretion of the administrator.

b. Temporary licenses—period valid. Any certificate issued at the discretion of the administrator shall be valid for a maximum of 120 calendar days from the date of issue.

Failure to obtain a permanent license within the designated time may result in revocation of the license eligibility, fine, or suspension.

11.13(5) Withdrawal of application. A written notice of withdrawal of application may be filed by an applicant at any time prior to final action. No application shall be permitted to be withdrawn unless the administrator determines the withdrawal to be in the public interest. No fee or other payment relating to any application shall become refundable by reason of withdrawal of the application.

11.13(6) Record keeping.

a. Record storage required. Distributors and manufacturers shall maintain adequate records of business operations, which shall be made available to the administrator upon request. These records shall include:

(1) All correspondence with the administrator and other governmental agencies on the local, state, and federal level.

(2) All correspondence between the licensee and any of its customers who are applicants or licensees under Iowa Code chapter 99F.

(3) A personnel file on each employee of the licensee, including sales representatives.

(4) Financial records of all transactions with facilities and all other licensees under these regulations.

b. Record retention. The records listed in 11.13(6)“a” shall be retained as required by 491—subrule 5.4(14).

11.13(7) Violation of laws or regulations. Violation of any provision of any laws of the state or of the United States of America or of any rules of the commission may constitute an unsuitable method of operation, subjecting the licensee to limiting, conditioning, restricting, revoking or suspending the license, or fining the licensee, or any combination of the above.

11.13(8) Consent to inspections, searches, and seizures. Each manufacturer or distributor licensed under this chapter shall consent to inspections, searches, and seizures deemed necessary by the administrator and authorized by law in order to enforce licensing requirements.

These rules are intended to implement Iowa Code chapter 99F.

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CHAPTER 12
ACCOUNTING AND CASH CONTROL

491—12.1(99F) Definitions.

“*Casino*” means all areas of a facility where gaming is conducted.

“*Coin*” means tokens, nickels, and quarters of legal tender.

“*Commission*” means the racing and gaming commission.

“*Container*” means:

1. A box attached to a gaming table in which shall be deposited all currency in exchange for gaming chips, fill and credit slips, requests for fill forms, and table inventory forms.

2. A canister in a slot machine cabinet in which currency is retained by slot machines and not used to make change or automatic jackpot payouts.

“*Count room*” means an area in the facility where contents of containers are counted and recorded.

“*Currency*” means any coin or paper money of legal tender and paper forms of cashless wagering.

“*Drop*” means removing the containers from the casino to the count room.

“*Facility*” means an entity licensed by the commission to conduct gaming operations in Iowa.

“*Hopper*” means a payout reserve container in which coins are retained by a slot machine to automatically pay jackpots.

“*Internal controls*” means the facility’s system of internal controls.

“*Request*” means a request for credit slip, request for fill slip, or request for jackpot payout slip.

“*Slip*” means a credit slip, fill slip, or jackpot payout slip.

“*Slot machine*” means a mechanical or electronic gambling game device into which a player may deposit currency or other forms of cashless wagering and from which certain numbers of credits are awarded when a particular configuration of symbols or events is displayed on the machine.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.2(99F) Accounting records.

12.2(1) Each facility shall maintain complete and accurate records of all transactions pertaining to revenues and costs.

12.2(2) General accounting records shall be maintained on a double entry system of accounting with transactions recorded on an accrual basis.

12.2(3) Detailed, supporting, and subsidiary records shall be maintained. The records shall include, but are not limited to:

- a. Statistical game records by gaming day to reflect drop and win amounts by table for each game.
- b. Records of all investments, advances, loans, and receivable balances due the facility.
- c. Records related to investments in property and equipment.
- d. Records which identify the handle, payout, win amounts and percentages, theoretical win amounts and percentages; and differences between theoretical and actual win amounts and percentages for each slot machine on a week-to-date, month-to-date, and year-to-date basis.
- e. Records of all loans and other amounts payable by the facility.
- f. Records that identify the purchase, receipt, and disposal of gaming chips and tokens. All methods of disposal are subject to administrator approval.

12.2(4) Whenever forms or serial numbers are required to be accounted for or copies of forms are required to be compared for agreement and exceptions are noted, such exceptions shall be reported immediately and in writing to the commission.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.3(99F) Facility internal controls.

12.3(1) Each facility shall submit a description of internal controls to the commission. The submission shall be made at least 90 days before gaming operations are to commence unless otherwise directed by the administrator. The submission shall include and provide for the following:

a. Administrative control that includes, but is not limited to, the plan of organization and the procedures and records that are concerned with the decision processes leading to management's levels of authorization of transactions.

b. Accounting control that includes the plan of organization and the procedures and records that are concerned with the safeguarding of assets and the reliability of financial records. The accounting control shall be designed to provide reasonable assurance that:

(1) Transactions are executed in accordance with management's general and specific authorization, which shall be consistent with the requirements of this chapter.

(2) Transactions are recorded as necessary to permit preparation of financial statements in conformity with generally accepted accounting principles and to maintain accountability for assets.

(3) Access to assets is permitted only in accordance with management authorization, which shall be consistent with the requirements of this chapter.

(4) The recorded accountability for assets is compared with existing assets at reasonable intervals and appropriate action is taken with respect to any differences.

c. Competent personnel with integrity and an understanding of prescribed internal controls.

d. The segregation of incompatible functions so that no employee is in a position to perpetrate and conceal errors or irregularities in the normal course of the employee's duties.

e. Surveillance control governing the administration of the network for the purpose of utilizing and transmitting live or recorded views or images of a video surveillance system for asset protection, loss prevention, investigation of tort/liability claims, game protection, employee oversight, resolution of patron disputes, corporate governance, management analysis, or other use consistent with a licensee's statutory responsibilities as approved by the administrator. Capabilities within the surveillance system for video recording of other areas of a facility and grounds may be included provided that commission and DCI access is unrestricted.

12.3(2) A commission representative shall review each submission required by subrule 12.3(1) and determine whether it conforms to the requirements of Iowa Code chapter 99F and is consistent with the intent of this chapter and whether the internal controls submitted provide adequate and effective control for the operations of the facility. If the commission representative finds any insufficiencies, the insufficiencies shall be specified in writing to the facility, which shall make appropriate alterations. No facility shall commence gaming operations unless and until the internal controls are approved.

12.3(3) Each facility shall submit to the commission any changes to the internal controls previously approved at least 15 days before the changes are to become effective unless otherwise directed by a commission representative. The proposed changes shall be submitted to the commission and the changes may be approved or disapproved by the commission representative. No facility shall alter its internal controls until the changes are approved.

12.3(4) It shall be the affirmative responsibility and continuing duty of each occupational licensee to follow and comply with all internal controls.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.4(99F) Accounting controls within the cashier's cage.

12.4(1) The assets for which the cashiers are responsible shall be maintained on an impress basis. At the end of each shift, the cashiers assigned to the outgoing shift shall record on a cashier's count sheet the face value of each cage inventory item counted and the total of the opening and closing cage inventories and shall reconcile the total closing inventory with the total opening inventory.

12.4(2) At the conclusion of gaming activity each gaming day, a copy of the cashiers' count sheets and related documentation shall be forwarded to the accounting department for agreement of opening and closing inventories; agreement of amounts thereon to other forms, records, and documents required by this chapter; and the recording of all transactions.

12.4(3) Each facility shall place on file with the commission the names of all persons authorized to enter the cashier's cage, persons who possess the combination or keys to the locks securing the entrance to the cage, and persons who possess the ability to operate alarm systems.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.5(99F) Gaming table container. Each gaming table in a casino shall have attached to it a container.

12.5(1) Each container shall have:

- a. A lock securing the contents of the container, the key to which shall be checked out by the drop team.
- b. A separate lock securing the container to the gaming table, the key to which shall be different from each of the keys to locks securing the contents of the container.
- c. A slot opening through which currency, forms, records, and documents can be inserted.
- d. A mechanical device that will close and lock the slot opening upon removal of the container from the gaming table.

12.5(2) Keys referred to in this rule shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.6(99F) Accepting currency at gaming tables. Whenever currency is presented by a patron at a gaming table in exchange for gaming chips, the following procedures and requirements shall be observed:

12.6(1) The dealer or boxperson accepting the currency shall spread the currency on the top of the gaming table.

12.6(2) The dealer or boxperson shall verbalize the currency value in a tone of voice necessary to be heard by the patron and the casino supervisor assigned to the gaming table.

12.6(3) The dealer or boxperson shall take the currency from the top of the gaming table and place it into the container immediately after verbalizing the amount.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.7(99F) Procedures for the movement of gaming chips to and from gaming tables.

12.7(1) Slips. Each slip shall be sequentially numbered, shall be simultaneously printed in two or three copies, and shall discharge in the cashier's cage. Casino supervisors or casino clerks shall input data for each slip, and each prepared copy shall contain the following information:

- a. The type of transfer.
- b. The sequentially ordered slip number.
- c. The date and time of preparation.
- d. The total amount of each denomination.
- e. The total amount of all denominations.
- f. The game and table number.

12.7(2) Distribution of chips to a gaming table. On receipt of a slip in the cashier's cage for distribution of gaming chips to a table, the following procedures shall apply:

a. A cashier shall prepare the gaming chips and sign all copies of the slip attesting to the accuracy of the totals.

b. A security employee, or other employee authorized by the internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy. One copy of the slip shall remain with the cashier, if applicable, while two copies are transported with the gaming chips to the gaming table.

c. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall sign all copies of the slip attesting to the accuracy of the fill.

d. Upon verification and placement of the gaming chips, the employee responsible for transporting the chips to the gaming table shall observe as the dealer or boxperson places one copy of the slip in the container of the gaming table. The employee shall then transport the remaining copy of the slip to the cashier's cage to be maintained and controlled by a cashier.

12.7(3) Removal of chips from a gaming table. On receipt of a slip in the cashier's cage for removal of gaming chips from a table, the following procedures shall apply:

a. A security employee, or other employee authorized by the internal controls, shall transfer all copies of the slip to the gaming table.

b. The dealer or boxperson assigned to the gaming table and the casino supervisor assigned to the gaming table shall prepare the removal and sign all copies of the slip attesting to the accuracy.

c. The security employee, or other employee authorized by internal controls, shall compare the slip to the gaming chips prepared and sign all copies of the slip attesting to the accuracy.

d. When using three copies, one copy of the slip shall be placed in public view on the gaming table from which the gaming chips were removed. The copy shall not be removed until a slip is returned from the cashier.

e. The security employee, or other employee authorized by internal controls, shall transport the chips and the remaining two copies of the slip to the cashier's cage.

f. The cashier shall compare the slip to the gaming chips received and shall sign both remaining copies attesting to the accuracy. One slip shall be maintained and controlled by the cashier.

g. The security employee, or other employee authorized by internal controls, shall transport the slip to the gaming table and shall observe as the dealer or boxperson places both this copy and the copy required by paragraph 12.7(3) "d" into the container of the gaming table.

12.7(4) Slip reconciliation. At the end of each gaming day, copies of each of the slips maintained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of the slips obtained by the count team from the gaming table containers. Copies shall also be compared for agreement with the stored data.

12.7(5) Stored data. All information required by subrule 12.7(1) shall be stored in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of a slip.

12.7(6) Manual process. In the event the online monitoring and control system is unavailable, the facility staff shall perform transfers of gaming chips to and from gaming tables using manual requests and slips.

a. Requests shall be prepared by the casino supervisor or casino clerk. For the distribution of chips to the gaming table, the request shall be signed by the security employee, or other employee authorized by the internal controls, and shall be left with the cashier prior to the transfer of gaming chips and slips required by paragraph 12.7(6) "b." For the removal of chips from the gaming table, the request shall be signed at the gaming table by the security employee, or other employee authorized by the internal controls, prior to the transfer of gaming chips and slips required by paragraph 12.7(6) "b" and shall be placed in the container when the slip signed by the cashier has been returned to the gaming table.

b. Slips shall be prepared by cashiers in the cage using a three-part serially prenumbered form in a locked dispenser. The dispenser shall discharge two copies of the slip that have been filled out and signed by the cashier and shall retain the third copy in a continuous form in the dispenser. The same procedures shall be followed and the same set of signatures shall be utilized as required by subrules 12.7(2) and 12.7(3).

c. The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for gaming chip movements and to replace the stored data used pursuant to subrule 12.7(4). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

12.7(7) Modifications. Modifications to the procedures described in subrules 12.7(2), 12.7(3), and 12.7(4) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

12.7(8) Voided transactions. Whenever it becomes necessary to void a slip, all copies shall be clearly marked "void" and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.7(2), 12.7(3), and 12.7(5).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.8(99F) Dropping or opening a gaming table.

12.8(1) The table inventory slips shall be a two-part form, a “closer” and an “opener,” containing the following:

- a. The date and time of preparation.
- b. The game and table number.
- c. The total value of each denomination of gaming chips.
- d. The total value of all denominations of gaming chips.

12.8(2) Whenever a gaming table is dropped or upon initial opening after a drop, the gaming chips at the gaming table shall be counted by the dealer or boxperson assigned to the gaming table while observed by a casino supervisor assigned to the gaming table.

12.8(3) Signatures attesting to the accuracy of the information recorded on the table inventory slips at the time of dropping or opening of the gaming tables shall be of the dealer or boxperson and the casino supervisor assigned to the gaming table who observed the dealer or boxperson count the contents of the table inventory.

12.8(4) Upon meeting the signature requirements described in subrule 12.8(3):

a. The closer, at dropping, shall be deposited in the container immediately prior to the closing of the table. The opener and the gaming chips remaining at the table shall be placed in a secured, locked area on the table.

b. The opener, at opening, shall be immediately deposited in the container.

12.8(5) Upon opening a gaming table, if the totals on the gaming inventory form vary from the opening count, the casino supervisor shall fill out an error notification slip. The casino supervisor and dealer or boxperson shall sign the error notification slip and deposit the slip in the container.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.9(99F) Slot machines—keys.

12.9(1) Each slot machine shall have a container(s) that is housed in a locked compartment(s) separate from any other compartment of the slot machine. Facilities shall ensure:

a. Keys to each compartment securing a container are maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.

b. Each container is identified at time of removal by a number corresponding to the casino number of the slot machine from which the container is removed.

12.9(2) With the exception of the keys to the compartment housing the container, keys to each slot machine or any device connected thereto which may affect the operation of the slot machine shall be maintained in a secure place and controlled by the slot department.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.10(99F) Procedures for hopper fills and attendant payouts.

12.10(1) *Slips.* Each slip shall be sequentially numbered, and two copies shall be simultaneously printed. An employee authorized by the internal controls shall input data for each slip, and each prepared copy shall contain the following information:

- a. The type of transaction.
- b. The sequentially ordered slip number.
- c. The date and time of preparation.
- d. For attendant payouts, the amount to be paid and the cage location from which the amount is to be paid.
- e. For jackpots, the winning combination to be paid.
- f. For hopper fills, the denomination and amount of currency to be distributed.

12.10(2) *Hopper fills.* A slip shall be prepared by a person authorized by the internal controls whenever a slot machine fill is required. On receipt or preparation of a slip in the cashier’s cage, the following procedures shall apply:

a. The cashier, upon providing the coins to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.

b. The employee authorized by the internal controls, upon receipt of the coins, shall sign all copies of the slip and transport the coins and one copy of the slip to the slot machine. The remaining copy shall remain with the cashier.

c. An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(2) "a" and 12.10(2) "b," shall observe the deposit of the coins into the slot machine hopper and the closing and locking of the slot machine door. This employee shall then sign the copy of the slip at the slot machine.

d. Upon completion of the fill, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

12.10(3) Attendant payouts. Whenever a patron wins a jackpot or has accumulated credits not totally and automatically paid directly from a slot machine, a slip shall be prepared by a person authorized by the internal controls. On receipt or preparation of a slip for an attendant payout in the cashier's cage, the following procedures shall apply:

a. The cashier, upon providing the payment to an employee authorized by the internal controls, shall sign all copies of the slip attesting to the accuracy of the amount provided and the information contained on the slip.

b. The employee authorized by the internal controls, upon receipt of the payment, shall sign all copies of the slip and transport the payment and one copy of the slip to the slot machine. The remaining copy of the slip shall remain with the cashier.

c. An additional employee authorized by the internal controls, other than the employees listed in paragraphs 12.10(3) "a" and 12.10(3) "b," shall observe the payment of the patron. For jackpots, the employee shall verify the symbols on the slot machine. For jackpots in excess of \$10,000, the employee shall be a supervisor or higher authority. In either case, the employee shall then sign the copy of the slip at the slot machine.

d. Upon completion of the payout, the copy of the slip at the slot machine shall be deposited in a secure area controlled by the accounting department.

e. For a slot machine jackpot in excess of \$100,000, a facility shall notify a commission representative in accordance with the immediate notification process established by 491—subrule 5.4(5).

12.10(4) Overrides. System overrides shall be authorized by a slot supervisor or an employee authorized by the internal controls. This employee shall not perform the duties and signature requirements of subrules 12.10(2) and 12.10(3) in any transaction where the employee authorizes a system override. In addition to the signature requirements of subrules 12.10(2) and 12.10(3), the signature of the authorizing employee shall be on all copies of the slip.

12.10(5) Slip reconciliation. At the end of each gaming day, copies of the slip retained by the cashier's cage shall be forwarded to the accounting department for agreement with the copies of the slips deposited in the area controlled by the accounting department and for recording on the slot win sheet. Copies shall also be compared for agreement with the stored data.

12.10(6) Stored data. All information required by subrule 12.10(1) shall be stored in the online monitoring and control system in machine-readable format. The stored data shall not be susceptible to change or removal by any personnel after preparation of the slip.

12.10(7) Modifications. Modifications to the procedures described in subrules 12.10(2) to 12.10(5) may be substituted as internal controls, subject to the approval process of subrule 12.3(2), if the procedures comply with the intent of this rule.

12.10(8) Manual process. In the event the online monitoring and control system is unavailable, the facility staff shall perform hopper fills and manual payouts using manual slips. Manual slips shall be three-part serially prenumbered forms. For use of manual slips, the following shall apply:

a. Slips shall be placed in a locked dispenser. Once prepared, the dispenser shall discharge two copies of the slip, while retaining the third copy in a continuous form. They shall be prepared in the

cashier's cage at the request of an employee authorized by the internal controls. Procedures for the two dispensed copies shall follow subrules 12.10(2) and 12.10(3).

b. The copies remaining in the dispenser shall be removed each gaming day where a manual process had to be performed for hopper fills or manual payouts and to replace the stored data used pursuant to subrule 12.10(5). Access to the locked dispenser shall be maintained and controlled by independent employees responsible for accounting for the unused slips, placing slips in the dispensers, and removing slips from the dispensers.

12.10(9) Voided transactions. Whenever it becomes necessary to void a slip, all the copies shall be clearly marked "void" and shall require the signature of the preparer. All void slips shall be maintained and controlled in conformity with subrules 12.10(2) to 12.10(5).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.11(99F) Attendant and ticket payout accounting.

12.11(1) Attendant payouts. Under this rule, unless otherwise subject to Iowa Code chapter 556, jackpots and accumulated credits paid by a slip that are unpaid or unclaimed at the close of a facility's fiscal year shall be disallowed as a deduction from gross receipts for the calculation of adjusted gross revenue for the wagering tax. A facility shall make this adjustment to revenue within 90 days of the close of the facility's fiscal year.

12.11(2) Ticket payouts. Payouts dispensed by a ticket issued directly from a gaming device must have a minimum payout redemption period of 90 days from the date of issuance.

a. Notwithstanding 491—subrule 5.4(14), an issued ticket redeemed for cash or deposited in a slot machine for machine credits shall be retained for a minimum of 90 days from the redemption date. The ticket may be subsequently destroyed if record of the transaction is retrievable by other means.

b. At the close of the facility's fiscal year, tickets issued in previous fiscal years and tickets with expired redemption periods that remain outstanding and unredeemed are subject to the requirements of subrule 12.11(1).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.12(99F) Computer recording requirements and monitoring of slot machines.

12.12(1) A facility shall have an online monitoring and control system connected to each slot machine in the casino to record and monitor the slot machine's activities.

12.12(2) The online monitoring and control system shall be designed and operated to automatically perform the functions relating to slot machine meters in the casino as follows:

a. Record the number and total of currency placed in the slot machine for the purpose of activating play.

b. Record the number and total of currency in the container(s).

c. Record the number and total of currency to be paid manually as the result of a jackpot.

d. Record the electronic meter information required by 491—paragraph 11.10(2) "c."

12.12(3) The online monitoring and control system shall monitor and detect machine exception codes and error messages as required by 491—paragraph 11.10(2) "d."

12.12(4) The online monitoring and control system shall store in machine-readable form all information required by subrules 12.12(2) and 12.12(3), and the stored data shall not be susceptible to change or removal.

12.12(5) The licensee shall maintain a current log, accessible to commission representatives, of all changes and updates made to the online monitoring and control system. All changes and updates shall be approved as required by 491—subrule 11.4(1).

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.13(99F) Transportation of containers.

12.13(1) Each facility shall place on file with a commission representative a schedule setting forth the specific times at which the containers will be brought to or removed from the gaming tables or slot machines.

12.13(2) A security employee shall accompany and observe the drop team. For table games, all containers removed from the gaming tables shall be transported by a security employee and a table game supervisor.

12.13(3) All containers removed from slot machine cabinets shall:

- a. Be removed by a drop team who shall wear outer garments as required by subrule 12.15(2).
- b. Be replaced immediately with an empty container that shall be secured in the cabinet.

12.13(4) All containers removed shall be transported directly to, and secured in, the count room or in a secure area within the facility until the containers can be transferred to the count room.

12.13(5) Empty containers not secured to the gaming tables or slot machine cabinets shall be stored in the count room or an approved secured location.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.14(99F) Count room—characteristics.

12.14(1) Each facility shall have a count room that shall:

- a. Be designed and constructed to provide maximum security for materials housed within and the activities conducted therein.
- b. Have an alarm device connected to the entrance of the room that causes a signaling to the monitors of the closed circuit surveillance system and to the commission representative's office whenever the door to the room is opened.
- c. Have, if currency is counted within the count room, a count table constructed of clear glass or similar material for the emptying, counting, and recording of the contents of containers.

12.14(2) All room keys shall be maintained and controlled in a secured area by the security department. The facility shall establish a sign-out procedure for all keys removed from the secured area.

[ARC 8029B, IAB 8/12/09, effective 9/16/09]

491—12.15(99F) Opening, counting, and recording contents of containers in the count room.

12.15(1) Each facility shall file with a commission representative the specific times and procedures for opening, counting, and recording the contents of containers.

12.15(2) All persons present in the count room during the counting process, unless expressly exempted by a commission representative, shall wear a full-length, one-piece, pocketless outer garment with openings only for the arms, feet, and neck that extends over any other garments and covers the tops of any footwear.

12.15(3) Persons shall not:

- a. Carry a pocketbook or other container into the count room, unless it is transparent.
- b. Remove their hands from or return them to a position on or above the count table unless the backs and palms of the hands are first held straight out and exposed to the view of other members of the count team and the closed circuit surveillance camera.

12.15(4) Requirements for conducting the count.

a. Immediately prior to the commencement of the count, the count team shall notify the person assigned to the surveillance room that the count is about to begin, after which the surveillance department shall make a video recording with the time and date inserted thereon of the entire counting process.

b. Prior to counting the contents of the containers, the doors to the count room shall be locked and no person shall be permitted to enter or leave the count room, except during an emergency or on scheduled breaks, until the entire counting, recording, and verification process is completed. During this time, a commission representative shall have unrestricted access.

c. When a container is placed on a count table or coin scale, the count team shall ensure that the table or machine number associated with a container is identified to the surveillance department.

d. A machine may be used to automatically count the contents of a container.

e. The contents of each container shall be emptied on the count table or coin scale and either manually counted separately on the count table or counted in an approved currency counting machine located in a conspicuous location on, near, or adjacent to the count table or coin scale. These procedures shall at all times be conducted in full view of the closed circuit surveillance cameras located in the count room.

f. Immediately after the contents of a container are emptied onto the count table or coin scale, the inside of the container shall be held up to the full view of a closed circuit surveillance camera and shall be shown to at least one other count team member to ensure all contents of the container have been removed and, if applicable, the container shall then be locked. Empty containers shall be secured in an area separate from uncounched containers.

g. If the original count is being performed by a machine that automatically counts and records the amounts of the contents of each individual container, an aggregate count may be permitted in substitution of a second container count.

h. For manually counted containers:

(1) The count team members shall place the contents of each container into separate stacks on the count table by denomination of currency and by type of form, record, or document, except that a machine may be used to automatically sort currency by denomination.

(2) Each denomination of currency shall be counted separately by one count team member who shall group currency of the same denomination on the count table in full view of a closed circuit surveillance camera. The currency shall then be counted by a second count team member who is unaware of the result of the original count. The second count team member, after completing this count, shall confirm the accuracy of the total, either orally or in writing, with that reached by the first count team member.

12.15(5) Table games.

a. As the contents of each container from a table game are counted, one count team member shall record the following information by game, table number, date, and time on a master game report or supporting documents:

- (1) The amount of each denomination of currency.
- (2) The amount of all denominations of currency.
- (3) The total amounts of currency.
- (4) The total amount of gaming chips.
- (5) The amount of the opener.
- (6) The amount of the closer.
- (7) The serial number and amount of each fill.
- (8) The amount of all fills.
- (9) The serial number and amount of each credit.
- (10) The amount of all credits.
- (11) The win or loss.

b. After the contents of each container are counted and recorded, one member of the count team shall record by game on the master game report the total amounts of currency, table inventory slips, fills, credits, and win or loss together with any other required information.

c. Notwithstanding the requirements of paragraphs 12.15(5)“*a*” and “*b*,” if the internal controls allow for the recording of fills, credits, and table inventory slips on the master game report or supporting documents prior to commencement of the count, a count team member shall compare for agreement the totals of the amounts recorded thereon to the fills, credits, and table inventory slips removed from the containers.

d. After preparation of the master game report, each count team member shall sign the report attesting to the accuracy of the information contained thereon.

e. Currency and gaming chips shall not be removed from the count room after commencement of the count until the total has been verified and accepted by a cashier. At the conclusion of the count, all currency and gaming chips removed from the containers shall be counted by a cashier in the presence of a count team member prior to having access to the information recorded on the master game report. The cashier shall attest to the accuracy of the amount received from the gaming tables by signature on the master game report, after which a count team member shall sign the master game report evidencing the fact that both the cashier and count team have agreed on the total counted. The verified funds shall then remain in the custody of the cashier.

f. After the master game report has been signed, the requests, slips, and table inventory slips removed from the containers shall be attached. The report, with attachments, shall then be transported directly to the accounting department or shall be maintained in locked storage until the master game report can be delivered to the accounting department. Upon meeting the signature requirements described in paragraph 12.15(5) “e,” the report shall not be available to any cashier’s cage personnel.

g. Unless the internal controls provide for the forwarding of the original requests and original slips from the cashier’s cage directly to the accounting department, the original requests and original slips recorded or to be recorded on the master game report shall be transported from the count room directly to the accounting department.

h. The originals and copies of the master game report, requests, slips, table inventory slips, and the test receipts from the currency counting equipment shall, on a daily basis in the accounting department, be:

(1) Compared for agreement with each other on a test basis if the originals are received from the count room by persons with no recording responsibilities and, if applicable, to copies remaining in the dispenser or stored data.

(2) Reviewed for the appropriate number and propriety of signatures on a test basis.

(3) Accounted for by series numbers, if applicable.

(4) Verified for proper calculation, summarization, and recording.

(5) Recorded.

(6) Maintained and controlled by the accounting department as a permanent accounting record.

12.15(6) Slot machines.

a. Currency shall not be removed from the count room after commencement of the count until the currency total has been verified and accepted by a cashier. At the conclusion of the count, all currency removed from the containers shall be counted by a cashier in the presence of a count team member prior to the recording of information on the slot drop sheet. The cashier shall attest to the accuracy of the amount of currency received from the slot machines by signature on the slot drop sheet, after which a count team member shall sign the slot drop sheet evidencing the fact that both the cashier and count team have agreed on the total amount of currency counted. The verified funds shall remain in the custody of the cashier.

b. The slot drop sheet and supporting documents shall be transported directly to the accounting department and shall not be available, except for signing, to any cashier’s cage or slot personnel or shall be maintained in locked storage until they can be delivered to the accounting department.

c. The preparation of the slot drop sheet shall be completed by accounting employees as follows:

(1) Compare the amount of currency counted and the drop meter reading for agreement for each slot machine.

(2) Record the hopper fills for each slot machine.

(3) Record for each slot machine the payouts and compare for agreement the payouts to the manual jackpot meter reading recorded on the slot meter sheet.

(4) Calculate and record the win or loss for each slot machine.

(5) Explain and report for corrections of apparent meter malfunctions to the slot department all significant differences between meter readings and amounts recorded.

(6) Calculate statistics by slot machine.

d. The slot drop sheet, the slot meter sheet, payouts, and hopper fills shall be:

(1) Compared for agreement with each other and to copies or stored data on a test basis.

(2) Reviewed for the appropriate number and propriety of signatures on a test basis.

(3) Accounted for by series numbers, if applicable.

(4) Verified for proper calculation, summarization, and recording.

(5) Recorded.

(6) Maintained and controlled by accounting department employees.

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ENVIRONMENTAL PROTECTION COMMISSION[567]

Former Water, Air and Waste Management[900], renamed by 1986 Iowa Acts, chapter 1245, Environmental Protection Commission under the "umbrella" of the Department of Natural Resources.

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CHAPTER 61
WATER QUALITY STANDARDS

[Prior to 7/1/83, DEQ Ch 16]

[Prior to 12/3/86, Water, Air and Waste Management[900]]

WATER QUALITY STANDARDS

567—61.1 Rescinded, effective August 31, 1977.

567—61.2(455B) General considerations.

61.2(1) Policy statement. It shall be the policy of the commission to protect and enhance the quality of all the waters of the state. In the furtherance of this policy it will attempt to prevent and abate the pollution of all waters to the fullest extent possible consistent with statutory and technological limitations. This policy shall apply to all point and nonpoint sources of pollution.

These water quality standards establish selected criteria for certain present and future designated uses of the surface waters of the state. The standards establish the areas where these uses are to be protected and provide minimum criteria for waterways having nondesignated uses as well. Many surface waters are designated for more than one use. In these cases the more stringent criteria shall govern for each parameter.

Certain of the criteria are in narrative form without numeric limitations. In applying such narrative standards, decisions will be based on the U.S. Environmental Protection Agency's methodology described in "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses," (1985) and on the rationale contained in "Quality Criteria for Water," published by the U.S. Environmental Protection Agency (1977), as updated by supplemental Section 304 (of the Act) Ambient Water Quality Criteria documents. To provide human health criteria for parameters not having numerical values listed in 61.3(3) Table 1, the required criteria will be based on the rationale contained in these EPA criteria documents. The human health criterion considered will be the value associated with the consumption of fish flesh and a risk factor of 10^{-5} for carcinogenic parameters. For noncarcinogenic parameters, the recommended EPA criterion will be selected. For Class C water, the EPA criteria for fish and water consumption will be selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above.

All methods of sample collection, preservation, and analysis used in applying any of the rules in these standards shall be in accord with those prescribed in 567—Chapter 63.

61.2(2) Antidegradation policy. It is the policy of the state of Iowa that:

a. Existing surface water uses and the level of water quality necessary to protect the existing uses will be maintained and protected.

b. Chemical integrity: For those water bodies where water quality significantly exceeds levels necessary to protect existing uses and the waters designated as high quality in 61.3(5) "e," that water quality will be maintained at or above existing quality, except when it is determined by the environmental protection commission after public hearing and after intergovernmental coordination and public participation provisions noted in the continuing planning process that there is need to allow a lower chemical quality because of necessary and justifiable economic and social development in the area. The state shall ensure adequate chemical quality to fully protect existing uses.

(1) Bear Creek, mouth in Winneshiek County and tributary to the Upper Iowa River.

(2) Bloody Run, mouth in Clayton County and tributary to the Mississippi River.

(3) Catfish Creek from Swiss Valley Park in Dubuque County to its source.

(4) Unnamed Creek known locally as Coldwater Creek with mouth in Winneshiek County and tributary to the Upper Iowa River.

(5) Fenchel Creek, mouth to Richmond Springs, in Delaware County and tributary to the Maquoketa River.

(6) Odell Branch (aka Fountain Spring Creek), mouth (section 10, T90N, R4W, Delaware County), tributary to Elk Creek, which is tributary to the Turkey River to west line of section 9, T90N, R4W, Delaware County.

- (7) Iowa Great Lakes chain of lakes in Dickinson County, including West Lake Okoboji, Spirit Lake, East Lake Okoboji, Minnewashta Lake, Upper Gar Lake, and Lower Gar Lake.
- (8) North Bear Creek, with mouth in Winneshiek County and tributary to Bear Creek, listed as number 1 in this listing.
- (9) North Cedar Creek, with mouth in Clayton County and tributary to Sny Magill Creek.
- (10) Sny Magill Creek, with mouth in Clayton County and tributary to the Mississippi River.
- (11) Turkey River, from the point where it is joined by the Volga River in Clayton County to Vernon Springs in Howard County.
- (12) Waterloo Creek, with mouth in Allamakee County and tributary to the Upper Iowa River.
- (13) Maquoketa River, from confluence with South Fork Maquoketa River (section 16, T90N, R6W, Delaware County) to Highway 3 (north line of section 24, T91N, R7W, Fayette County).
- (14) Spring Branch, mouth (section 10, T88N, R5W, Delaware County) to spring source (section 35, T89N, R5W, Delaware County).
- (15) Little Turkey River, Clayton-Delaware County line to south line of section 11, T90N, R3W, Delaware County.
- (16) Middle Fork Little Maquoketa River (aka Bankston Creek), west line of section 31, T90N, R1E to north line of section 33, T90N, R1W, Dubuque County.
- (17) Brush Creek, north line of section 23, T85N, R3E to north line of section 1, T85N, R3E, Jackson County.
- (18) Dalton Lake — Jackson County.
- (19) Little Mill Creek, mouth (Jackson County) to west line of section 29, T86N, R4E, Jackson County.
- (20) Mill Creek (aka Big Mill Creek), from confluence with Little Mill Creek in section 13, T86N, R4E, Jackson County, to confluence with Unnamed Creek, section 1, T86N, R3E, Jackson County.
- (21) Unnamed Creek (tributary to Mill Creek), mouth (section 1, T86N, R3E, Jackson County) to west line of section 1, T86N, R3E, Jackson County.
- (22) Unnamed Creek (aka South Fork Big Mill), tributary to Mill Creek, from mouth (section 8, T86N, R4E, Jackson County) to west line of section 17, T86N, R4E, Jackson County.
- (23) Clear Creek, mouth (Allamakee County) to west line of section 25, T99N, R4W, Allamakee County.
- (24) French Creek, mouth (Allamakee County) to east line of section 23, T99N, R5W, Allamakee County.
- (25) Hickory Creek, mouth (Allamakee County) to south line of section 28, T96N, R5W, Allamakee County.
- (26) Little Paint Creek, mouth to north line of section 30, T97N, R3W, Allamakee County.
- (27) Paint Creek, from confluence with Little Paint Creek to road crossing in section 18, T97N, R4W, Allamakee County.
- (28) Patterson Creek, mouth (Allamakee County) to east line of section 3, T98N, R6W, Allamakee County.
- (29) Silver Creek, mouth (Allamakee County) to south line of section 31, T99N, R5W, Allamakee County.
- (30) Village Creek, mouth (Allamakee County) to west line of section 19, T98N, R4W, Allamakee County.
- (31) Wexford Creek, mouth to west line of section 25, T98N, R3W, Allamakee County.
- (32) Buck Creek, mouth (Clayton County) to west line of section 9, T93N, R3W, Clayton County.
- (33) Ensign Creek (aka Ensign Hollow), mouth (section 28, T92N, R6W, Clayton County) to spring source (section 29, T92N, R6W, Clayton County).
- (34) South Cedar Creek (aka Cedar Creek), mouth (Clayton County) to north line of section 7, T92N, R3W, Clayton County.
- (35) Bear Creek, mouth (Fayette County) to west line of section 6, T92N, R7W, Fayette County.
- (36) Unnamed Creek (aka Glover's Creek), mouth to west line of section 15, T94N, R8W, Fayette County.

- (37) Grannis Creek, mouth to west line of section 36, T93N, R8W, Fayette County.
- (38) Mink Creek, mouth to west line of section 15, T93N, R7W, Fayette County.
- (39) Otter Creek, mouth (Fayette County) to confluence with Unnamed Creek (aka Glover's Creek) in section 22, T94N, R8W, Fayette County.
- (40) Nichols Creek (aka Bigalk Creek), mouth (section 18, T100N, R10W, Winneshiek County) to west line of section 23, T100N, R11W, Howard County.
- (41) Spring Creek, mouth (Mitchell County) to north line of section 8, T97N, R16W, Mitchell County.
- (42) Turtle Creek, mouth (Mitchell County) to east line of section 7, T99N, R17W, Mitchell County.
- (43) Wapsipinicon River, from the town of McIntire to north line of section 20, T99N, R15W, Mitchell County.
- (44) Bohemian Creek, mouth (Winneshiek County) to Howard County Road V58 (west line of section 2, T97N, R11W, Howard County).
- (45) Coon Creek, mouth (Winneshiek County) to road crossing in section 13, T98N, R7W, Winneshiek County.
- (46) Smith Creek (aka Trout River), mouth to south line of section 33, T98N, R7W, Winneshiek County.
- (47) Unnamed Creek (aka Trout Run), mouth to south line of section 27, T98N, R8W, Winneshiek County.
- (48) Twin Springs Creek, mouth to springs in Twin Springs Park in section 20, T98N, R8W, Winneshiek County.
- (49) Canoe Creek (aka West Canoe Creek), from Winneshiek County Road W38 to west line of section 8, T99N, R8W, Winneshiek County.

c. Standards and restrictions more stringent than those applied to other waters may be applied by the commission to those waters listed below when it is determined that such more stringent standards and restrictions are necessary to fully maintain water quality at existing levels.

West Lake Okoboji in Dickinson County.

d. The Mississippi River and the Missouri River do not meet the criteria of 61.2(2)“*c*” but nevertheless constitute waters of exceptional state and national significance. Water quality management decisions will be made in consideration of the exceptional value of the resource.

e. In furtherance of the policy stated in 61.2(2)“*b*,” there shall be achieved the highest statutory and regulatory requirements for all new and existing point sources, and feasible management and regulatory programs pursuant to Section 208 of the Federal Water Pollution Control Act for nonpoint sources, both existing and proposed.

f. Physical and biological integrity: The waters designated as high-quality resource waters in 61.3(5)“*e*” will receive protection of existing uses through maintaining water quality levels necessary to fully protect existing uses or improve water quality to levels necessary to meet the designated use criterion in Tables 1, 2 and 3 and at preserving or enhancing the physical and biological integrity of these waters. This involves the protection of such features of the water body as channel alignment, bed characteristics, water velocity, aquatic habitat, and the type, distribution and abundance of existing aquatic species.

g. It is the intent of the antidegradation policy to protect and maintain the existing physical, biological, and chemical integrity of all waters of the state. Consistency with Iowa's water quality standards requires that any proposed activity modifying the existing physical, biological, or chemical integrity of a water of the state shall not adversely impact these resource attributes, either on an individual or cumulative basis. An adverse impact shall refer to the loss of or irreparable damage to the aquatic, semiaquatic or wildlife habitat or population, or a modification to the water body that would cause an overall degradation to the aquatic or wildlife population and diversity. The fish and wildlife division of the department and the U.S. Fish and Wildlife Service shall serve as consultants to the department for assessing impacts. Exceptions to the preceding will be allowed only if full mitigation is provided by the applicant and approved by the department.

For those waters of the state designated as high quality or high quality resource waters and the Mississippi and Missouri Rivers, any proposed activity that will adversely impact the existing physical, chemical, or biological integrity of that water will not be consistent with Iowa's water quality standards. Mitigation will not be allowed except in highly unusual situations where no other project alternatives exist. In these cases, full mitigation must be provided by the applicant and approved by the department.

h. This policy shall be applied in conjunction with water quality certification review pursuant to Section 401 of the Act. In the event that activities are specifically exempted from flood plain development permits or any other permits issued by this department in 567—Chapters 70, 71, and 72, the activity will be considered consistent with this policy. Other activities not otherwise exempted will be subject to 567—Chapters 70, 71, and 72 and this policy. The repair and maintenance of a drainage district ditch as defined in 567—70.2(455B,481A) will not be considered a violation of the antidegradation policy for the purpose of implementing Title IV of these rules. United States Army Corps of Engineers (Corps) nationwide permits 3, 4, 5, 6, 7, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 25, 27, 29, 30, 31, 32, 33, 34, 36, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, 47, 48, 49, and 50 as well as Corps regional permits 7, 33, and 34 as promulgated October 29, 2008, are certified pursuant to Section 401 of the Clean Water Act subject to the following Corps regional conditions and the state water quality conditions:

(1) Side slopes of a newly constructed channel will be no steeper than 2:1 and planted to permanent, perennial, native vegetation if not armored.

(2) Nationwide permits with mitigation may require recording of the nationwide permit and pertinent drawings with the registrar of deeds or other appropriate official charged with the responsibility for maintaining records of title to, or interest in, real property and may also require the permittee to provide proof of that recording to the Corps.

(3) Mitigation shall be scheduled prior to, or concurrent with, the discharge of dredged or fill material into waters of the United States.

(4) For discharges of dredged or fill material resulting in the permanent loss of more than 1/10 acre of waters of the United States (including jurisdictional wetlands), a compensatory mitigation plan to offset those losses will be required. In addition, a preconstruction notice to the Corps of Engineers in accordance with general condition 27 will be required.

(5) For newly constructed channels through areas that are unvegetated, native grass filter strips, or a riparian buffer with native trees or shrubs a minimum of 35 feet wide from the top of the bank must be planted along both sides of the new channel. A survival rate of 80 percent of desirable species shall be achieved within three years of establishment of the buffer strip.

(6) For single-family residences authorized under nationwide permit 29, the permanent loss of waters of the United States (including jurisdictional wetlands) must not exceed 1/4 acre.

(7) For nationwide permit 46, the discharge of dredged or fill material into ditches that would sever the jurisdiction of an upstream water of the United States from a downstream water of the United States is not allowed.

(8) For projects that impact fens, bogs, seeps, or sedge meadows, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition).

(9) For nationwide permits when the Corps' district engineer has issued a waiver to allow the permittee to exceed the limits of the nationwide permit, an individual Section 401 Water Quality Certification will be required (Iowa Section 401 Water Quality Certification condition). Written verification by the Corps or 401 certification by the state is required for activities covered by these permits as required by the nationwide permit or the Corps, and the activities are allowed subject to the terms and conditions of the nationwide and regional permits. The department will maintain and periodically update a guidance document listing special waters of concern. This document will be provided to the Corps for use in determining whether preconstruction notices should be provided to the department and other interested parties prior to taking action on applications for projects that would normally be covered by a nationwide or regional permit and not require preconstruction notice under nationwide permit conditions.

61.2(3) *Minimum treatment required.* All wastes discharged to the waters of the state must be of such quality that the discharge will not cause the narrative or numeric criteria limitations to be exceeded.

Where the receiving waters provide sufficient assimilative capacity that the water quality standards are not the limiting factor, all point source wastes shall receive treatment in compliance with minimum effluent standards as adopted in rules by the department.

There are numerous parameters of water quality associated with nonpoint source runoff which are of significance to the designated water uses specified in the general and specific designations in 61.3(455B), but which are not delineated. It shall be the intent of these standards that the limits on such nonpoint source related parameters when adopted shall be those that can be achieved by best management practices as defined in the course of the continuing planning process from time to time. Existing water quality and nonpoint source runoff control technology will be evaluated in the course of the Iowa continuing planning process, and best management practices and limitations on specific water quality parameters will be reviewed and revised from time to time to ensure that the designated water uses and water quality enhancement goals are met.

61.2(4) *Regulatory mixing zones.* Mixing zones are recognized as being necessary for the initial assimilation of point source discharges which have received the required degree of treatment or control. Mixing zones shall not be used for, or considered as, a substitute for minimum treatment technology required by subrule 61.2(3). The objective of establishing mixing zones is to provide a means of control over the placement and emission of point source discharges so as to minimize environmental impacts. Waters within a mixing zone shall meet the general water quality criteria of subrule 61.3(2). Waters at and beyond mixing zone boundaries shall meet all applicable standards and the chronic and human health criteria of subrule 61.3(3), Tables 1 and 3, for that particular water body or segment. A zone of initial dilution may be established within the mixing zone beyond which the applicable standards and the acute criteria of subrule 61.3(3) will be met. For waters designated under subrule 61.3(5), any parameter not included in Tables 1, 2 and 3 of subrule 61.3(3), the chronic and human health criteria, and the acute criterion calculated following subrule 61.2(1), will be met at the mixing zone and zone of initial dilution boundaries, respectively.

a. Due to extreme variations in wastewater and receiving water characteristics, spatial dimensions of mixing zones shall be defined on a site-specific basis. These rules are not intended to define each individual mixing zone, but will set maximum limits which will satisfy most biological, chemical, physical and radiological considerations in defining a particular mixing zone. Additional details are noted in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on June 16, 2004, for considering unusual site-specific features such as side channels and sand bars which may influence a mixing zone. Applications for operation permits under 567—subrule 64.3(1) may be required to provide specific information related to the mixing zone characteristics below their outfall so that mixing zone boundaries can be determined.

b. For parameters included in Table 1 only (which does not include ammonia nitrogen), the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the “Supporting Document for Iowa Water Quality Management Plans,” Chapter IV, July 1976, as revised on June 16, 2004, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

- (1) The stream flow in the mixing zone may not exceed the most restrictive of the following:
 1. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for interior streams and rivers, and the Big Sioux and Des Moines Rivers.
 2. Ten percent of the design low stream flows noted in subrule 61.2(5) for the Mississippi and Missouri Rivers.
 3. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.
- (2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:
 1. The distance to the juncture of two perennial streams.
 2. The distance to a public water supply intake.
 3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county and local parks.

4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.

5. The distance to another mixing zone.

6. Not to exceed a distance of 2000 feet.

7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4) "b"(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

c. The stream flow used in determining wasteload allocations to ensure compliance with the maximum contaminant level (MCL), chronic and human health criteria of Table 1 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the following percentages of the design low stream flow as measured at the point of discharge:

(1) Twenty-five percent for interior streams and rivers, and the Big Sioux and Des Moines Rivers.

(2) Ten percent for the Mississippi and Missouri Rivers.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 1 may not exceed 10 percent of the calculated flow associated with the mixing zone.

d. For toxic parameters noted in Table 1, the following exceptions apply to the mixing zone requirements:

(1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.

(2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi or Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.

e. For ammonia criteria noted in Table 3, the dimensions of the mixing zone and the zone of initial dilution will be calculated using a mathematical model presented in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004, or from instream studies of the mixing characteristics during low flow. In addition, the most restrictive of the following factors will be met:

(1) The stream flow in the mixing zone may not exceed the most restrictive of the following:

1. One hundred percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is less than or equal to 2:1.

2. Fifty percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 2:1, but less than or equal to 5:1.

3. Twenty-five percent of the design low stream flows noted in subrule 61.2(5) for locations where the dilution ratio is greater than 5:1.

4. The stream flow contained in the mixing zone at the most restrictive of the applicable mixing zone length criteria, noted below.

(2) The length of the mixing zone below the point of discharge shall be set by the most restrictive of the following:

1. The distance to the juncture of two perennial streams.
2. The distance to a public water supply intake.
3. The distance to the upstream limits of an established recreational area, such as public beaches, and state, county, and local parks.
4. The distance to the middle of a crossover point in a stream where the main current flows from one bank across to the opposite bank.
5. The distance to another mixing zone.
6. Not to exceed a distance of 2000 feet.
7. The location where the mixing zone contained the percentages of stream flow noted in 61.2(4) "e"(1).

(3) The width of the mixing zone is calculated as the portion of the stream containing the allowed mixing zone stream flow. The mixing zone width will be measured perpendicular to the basic direction of stream flow at the downstream boundary of the mixing zone. This measurement will only consider the distance of continuous water surface.

(4) The width and length of the zone of initial dilution may not exceed 10 percent of the width and length of the mixing zone.

f. For ammonia criteria noted in Table 3, the stream flow used in determining wasteload allocations to ensure compliance with the chronic criteria of Table 3 will be that value contained at the boundary of the allowed mixing zone. This stream flow may not exceed the percentages of the design low stream flow noted in 61.2(4) "e"(1) as measured at the point of discharge.

The pH and temperature values at the boundary of the mixing zone used to select the chronic ammonia criteria of Table 3 will be from one of the following sources. The source of the pH and temperature data will follow the sequence listed below, if applicable data exists from the source.

(1) Specific pH and temperature data provided by the applicant gathered at their mixing zone boundary. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.

(2) Regional background pH and temperature data provided by the applicant gathered along the receiving stream and representative of the background conditions at the outfall. Procedures for obtaining this data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.

(3) The statewide average background values presented in Table IV-2 of the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.

The stream flow in the zone of initial dilution used in determining effluent limits to ensure compliance with the acute criteria of Table 3 may not exceed 5 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of less than or equal to 2:1, and not exceed 10 percent of the calculated flow associated with the mixing zone for facilities with a dilution ratio of greater than 2:1. The pH and temperature values at the boundary of the zone of initial dilution used to select the acute ammonia criteria of Table 3 will be from one of the following sources and follow the sequence listed below, if applicable data exists from the source.

1. Specific effluent pH and temperature data if the dilution ratio is less than or equal to 2:1.
2. If the dilution ratio is greater than 2:1, the logarithmic average pH of the effluent and the regional or statewide pH provided in 61.2(4) "f" will be used. In addition, the flow proportioned average temperature of the effluent and the regional or statewide temperature provided in 61.2(4) "f" will be used. The procedures for calculating these data are noted in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.

g. For ammonia criteria noted in Table 3, the following exceptions apply to the mixing zone requirements.

- (1) No mixing zone or zone of initial dilution will be allowed for waters designated as lakes or wetlands.
- (2) No zone of initial dilution will be allowed in waters designated as cold water.

(3) The use of a diffuser device to promote rapid mixing of an effluent in a receiving stream will be considered on a case-by-case basis with its usage as a means for dischargers to comply with an acute numerical criterion.

(4) A discharger to interior streams and rivers, the Big Sioux and Des Moines Rivers, and the Mississippi and Missouri Rivers may provide to the department, for consideration, instream data which technically supports the allowance of an increased percentage of the stream flow contained in the mixing zone due to rapid and complete mixing. Any allowed increase in mixing zone flow would still be governed by the mixing zone length restrictions. The submission of data should follow the guidance provided in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.

h. Temperature changes within mixing zones established for heat dissipation will not exceed the temperature criteria in 61.3(3) "b"(5).

i. The appropriateness of establishing a mixing zone where a substance discharged is bioaccumulative, persistent, carcinogenic, mutagenic, or teratogenic will be carefully evaluated. In such cases, effects such as potential groundwater contamination, sediment deposition, fish attraction, bioaccumulation in aquatic life, bioconcentration in the food chain, and known or predicted safe exposure levels shall be considered.

61.2(5) Implementation strategy. Numerical criteria specified in these water quality standards shall be met when the flow of the receiving stream equals or exceeds the design low flows noted below.

Type of Numerical Criteria	Design Low Flow Regime
Aquatic Life Protection (TOXICS)	
Acute	1Q ₁₀
Chronic	7Q ₁₀
Aquatic Life Protection (AMMONIA - N)	
Acute	1Q ₁₀
Chronic	30Q ₁₀
Human Health Protection & MCL	
Noncarcinogenic	30Q ₅
Carcinogenic	Harmonic mean

a. The allowable 3°C temperature increase criterion for warm water interior streams, 61.3(3) "b"(5) "1," is based in part on the need to protect fish from cold shock due to rapid cessation of heat source and resultant return of the receiving stream temperature to natural background temperature. On low flow streams, in winter, during certain conditions of relatively cold background stream temperature and relatively warm ambient air and groundwater temperature, certain wastewater treatment plants with relatively constant flow and constant temperature discharges will cause temperature increases in the receiving stream greater than allowed in 61.3(3) "b"(5) "1."

b. During the period November 1 to March 31, for the purpose of applying the 3°C temperature increase criterion, the minimum protected receiving stream flow rate below such discharges may be increased to not more than three times the rate of flow of the discharge, where there is reasonable assurance that the discharge is of such constant temperature and flow rate and continuous duration as to not constitute a threat of heat cessation and not cause the receiving stream temperature to vary more than 3°C per day.

c. Site-specific water quality criteria may be allowed in lieu of the specific numerical criteria listed in Tables 1 and 3 of this chapter if adequate documentation is provided to show that the proposed criteria will protect all existing or potential uses of the surface water. Site-specific water quality criteria may be appropriate where:

- (1) The types of organisms differ significantly from those used in setting the statewide criteria; or
- (2) The chemical characteristics of the surface water such as pH, temperature, and hardness differ significantly from the characteristics used in setting the statewide criteria.

Development of site-specific criteria shall include an evaluation of the chemical and biological characteristics of the water resource and an evaluation of the impact of the discharge. All evaluations for site-specific criteria modification must be coordinated through the department, and be conducted using scientifically accepted procedures approved by the department. Any site-specific criterion developed under the provisions of this subrule is subject to the review and approval of the U.S. Environmental Protection Agency. All criteria approved under the provisions of this subrule will be published periodically by the department. Guidelines for establishing site-specific water quality criteria can be found in "Water Quality Standards Handbook," published by the U.S. Environmental Protection Agency, December 1983.

d. A wastewater treatment facility may submit to the department technically valid instream data which provides additional information to be used in the calculations of their wasteload allocations and effluent limitations. This information would be in association with the low flow characteristics, width, length and time of travel associated with the mixing zone or decay rates of various effluent parameters. The wasteload allocation will be calculated considering the applicable data and consistent with the provisions and restrictions in the rules.

e. The department may perform use assessment and related use attainability analyses on water bodies where uses may not be known or adequately documented. The preparation of use attainability analysis documents will consider available U.S. Environmental Protection Agency guidance or other applicable guidance. Credible data and documentation will be used to assist in the preparation of use assessments and use attainability analysis reports.

567—61.3(455B) Surface water quality criteria.

61.3(1) *Surface water classification.* All waters of the state are classified for protection of beneficial uses. These classified waters include general use segments and designated use segments.

a. General use segments. These are intermittent watercourses and those watercourses which typically flow only for short periods of time following precipitation and whose channels are normally above the water table. These waters do not support a viable aquatic community during low flow and do not maintain pooled conditions during periods of no flow.

The general use segments are to be protected for livestock and wildlife watering, aquatic life, noncontact recreation, crop irrigation, and industrial, agricultural, domestic and other incidental water withdrawal uses.

b. Designated use segments. These are water bodies which maintain flow throughout the year or contain sufficient pooled areas during intermittent flow periods to maintain a viable aquatic community.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa not specifically listed in the surface water classification of 61.3(5) are designated as Class B(WW-1) waters.

All perennial rivers and streams as identified by the U.S. Geological Survey 1:100,000 DLG Hydrography Data Map (published July 1993) or intermittent streams with perennial pools in Iowa are designated as Class A1 waters.

Designated uses of segments may change based on a use attainability analysis consistent with 61.2(5) "e." Designated use changes will be specifically listed in the surface water classification of 61.3(5).

Designated use waters are to be protected for all uses of general use segments in addition to the specific uses assigned. Designated use segments include:

(1) Primary contact recreational use (Class "A1"). Waters in which recreational or other uses may result in prolonged and direct contact with the water, involving considerable risk of ingesting water in quantities sufficient to pose a health hazard. Such activities would include, but not be limited to, swimming, diving, water skiing, and water contact recreational canoeing.

(2) Secondary contact recreational use (Class "A2"). Waters in which recreational or other uses may result in contact with the water that is either incidental or accidental. During the recreational use, the probability of ingesting appreciable quantities of water is minimal. Class A2 uses include fishing,

commercial and recreational boating, any limited contact incidental to shoreline activities and activities in which users do not swim or float in the water body while on a boating activity.

(3) Children's recreational use (Class "A3"). Waters in which recreational uses by children are common. Class A3 waters are water bodies having definite banks and bed with visible evidence of the flow or occurrence of water. This type of use would primarily occur in urban or residential areas.

(4) Cold water aquatic life—Type 1 (Class "B(CW1)"). Waters in which the temperature and flow are suitable for the maintenance of a variety of cold water species, including reproducing and nonreproducing populations of trout (*Salmonidae* family) and associated aquatic communities.

(5) Cold water aquatic life—Type 2 (Class "B(CW2)"). Waters that include small, channeled streams, headwaters, and spring runs that possess natural cold water attributes of temperature and flow. These waters usually do not support consistent populations of trout (*Salmonidae* family), but may support associated vertebrate and invertebrate organisms.

(6) High quality water (Class "HQ"). Waters with exceptionally better quality than the levels specified in Tables 1, 2 and 3 and with exceptional recreational and ecological importance. Special protection is warranted to maintain the unusual, unique or outstanding physical, chemical, or biological characteristics which these waters possess.

(7) High quality resource water (Class "HQR"). Waters of substantial recreational or ecological significance which possess unusual, outstanding or unique physical, chemical, or biological characteristics which enhance the beneficial uses and warrant special protection.

(8) Warm water—Type 1 (Class "B(WW-1)"). Waters in which temperature, flow and other habitat characteristics are suitable to maintain warm water game fish populations along with a resident aquatic community that includes a variety of native nongame fish and invertebrate species. These waters generally include border rivers, large interior rivers, and the lower segments of medium-size tributary streams.

(9) Warm water—Type 2 (Class "B(WW-2)"). Waters in which flow or other physical characteristics are capable of supporting a resident aquatic community that includes a variety of native nongame fish and invertebrate species. The flow and other physical characteristics limit the maintenance of warm water game fish populations. These waters generally consist of small perennially flowing streams.

(10) Warm water—Type 3 (Class "B(WW-3)"). Waters in which flow persists during periods when antecedent soil moisture and groundwater discharge levels are adequate; however, aquatic habitat typically consists of nonflowing pools during dry periods of the year. These waters generally include small streams of marginally perennial aquatic habitat status. Such waters support a limited variety of native fish and invertebrate species that are adapted to survive in relatively harsh aquatic conditions.

(11) Lakes and wetlands (Class "B(LW)"). These are artificial and natural impoundments with hydraulic retention times and other physical and chemical characteristics suitable to maintain a balanced community normally associated with lake-like conditions.

(12) Human health (Class "HH"). Waters in which fish are routinely harvested for human consumption or waters both designated as a drinking water supply and in which fish are routinely harvested for human consumption.

(13) Drinking water supply (Class "C"). Waters which are used as a raw water source of potable water supply.

61.3(2) General water quality criteria. The following criteria are applicable to all surface waters including general use and designated use waters, at all places and at all times for the uses described in 61.3(1) "a."

a. Such waters shall be free from substances attributable to point source wastewater discharges that will settle to form sludge deposits.

b. Such waters shall be free from floating debris, oil, grease, scum and other floating materials attributable to wastewater discharges or agricultural practices in amounts sufficient to create a nuisance.

c. Such waters shall be free from materials attributable to wastewater discharges or agricultural practices producing objectionable color, odor or other aesthetically objectionable conditions.

d. Such waters shall be free from substances attributable to wastewater discharges or agricultural practices in concentrations or combinations which are acutely toxic to human, animal, or plant life.

e. Such waters shall be free from substances, attributable to wastewater discharges or agricultural practices, in quantities which would produce undesirable or nuisance aquatic life.

f. The turbidity of the receiving water shall not be increased by more than 25 Nephelometric turbidity units by any point source discharge.

g. Acceptable levels of total dissolved solids (TDS) and constituent cations and anions will be established on a site-specific basis. The implementation approach for establishing the site-specific levels may be found in the "Supporting Document for Iowa Water Quality Management Plans," Chapter IV, July 1976, as revised on June 16, 2004.

h. The *Escherichia coli* (*E. coli*) content of water which enters a sinkhole or losing stream segment, regardless of the water body's designated use, shall not exceed a Geometric Mean value of 126 organisms/100 ml or a sample maximum value of 235 organisms/100 ml. No new wastewater discharges will be allowed on watercourses which directly or indirectly enter sinkholes or losing stream segments.

61.3(3) Specific water quality criteria.

a. *Class "A" waters.* Waters which are designated as Class "A1," "A2," or "A3" in subrule 61.3(5) are to be protected for primary contact, secondary contact, and children's recreational uses. The general criteria of subrule 61.3(2) and the following specific criteria apply to all Class "A" waters.

(1) The *Escherichia coli* (*E. coli*) content shall not exceed the levels noted in the Bacteria Criteria Table when the Class "A1," "A2," or "A3" uses can reasonably be expected to occur.

Bacteria Criteria Table (organisms/100 ml of water)

Use	Geometric Mean	Sample Maximum
Class A1		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply
Class A2 (Only)		
3/15 – 11/15	630	2880
11/16 – 3/14	Does not apply	Does not apply
Class A2 and B(CW) or HQ		
Year-Round	630	2880
Class A3		
3/15 – 11/15	126	235
11/16 – 3/14	Does not apply	Does not apply

Class A1 - Primary Contact Recreational Use, Class A2 - Secondary Contact Recreational Use, Class A3 - Children's Recreational Use

When a water body is designated for more than one of the recreational uses, the most stringent criteria for the appropriate season shall apply.

(2) The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

b. *Class "B" waters.* All waters which are designated as Class B(CW1), B(CW2), B(WW-1), B(WW-2), B(WW-3) or B(LW) are to be protected for wildlife, fish, aquatic, and semiaquatic life. The following criteria shall apply to all Class "B" waters designated in subrule 61.3(5).

(1) Dissolved oxygen. Dissolved oxygen shall not be less than the values shown in Table 2 of this subrule.

(2) pH. The pH shall not be less than 6.5 nor greater than 9.0. The maximum change permitted as a result of a waste discharge shall not exceed 0.5 pH units.

(3) General chemical constituents. The specific numerical criteria shown in Tables 1, 2, and 3 of this subrule apply to all waters designated in subrule 61.3(5). The sole determinant of compliance with these criteria will be established by the department on a case-by-case basis. Effluent monitoring or instream monitoring, or both, will be the required approach to determine compliance.

1. The acute criteria represent the level of protection necessary to prevent acute toxicity to aquatic life. Instream concentrations above the acute criteria will be allowed only within the boundaries of the zone of initial dilution.

2. The chronic criteria represent the level of protection necessary to prevent chronic toxicity to aquatic life. Excursions above the chronic criteria will be allowed only inside of mixing zones or only for short-term periods outside of mixing zones; however, these excursions cannot exceed the acute criteria shown in Tables 1 and 3. The chronic criteria will be met as short-term average conditions at all times the flow equals or exceeds either the design flows noted in subrule 61.2(5) or any site-specific low flow established under the provisions of subrule 61.2(5).

3. Rescinded IAB 2/15/06, effective 3/22/06.

(4) Rescinded IAB 2/15/06, effective 3/22/06.

(5) Temperature.

1. No heat shall be added to interior streams or the Big Sioux River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 32°C.

2. No heat shall be added to streams designated as cold water fisheries that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the stream temperature above 20°C.

3. No heat shall be added to lakes and reservoirs that would cause an increase of more than 2°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added in excess of that amount that would raise the temperature of the lake or reservoirs above 32°C.

4. No heat shall be added to the Missouri River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In no case shall heat be added that would raise the stream temperature above 32°C.

5. No heat shall be added to the Mississippi River that would cause an increase of more than 3°C. The rate of temperature change shall not exceed 1°C per hour. In addition, the water temperature at representative locations in the Mississippi River shall not exceed the maximum limits in the table below during more than 1 percent of the hours in the 12-month period ending with any month. Moreover, at no time shall the water temperature at such locations exceed the maximum limits in the table below by more than 2°C.

Zone II—Iowa-Minnesota state line to the northern Illinois border (Mile Point 1534.6).

Zone III—Northern Illinois border (Mile Point 1534.6) to Iowa-Missouri state line.

Month	Zone II	Zone III
January	4°C	7°C
February	4°C	7°C
March	12°C	14°C
April	18°C	20°C
May	24°C	26°C
June	29°C	29°C
July	29°C	30°C
August	29°C	30°C
September	28°C	29°C
October	23°C	24°C
November	14°C	18°C
December	9°C	11°C

(6) Early life stage for each use designation. The following seasons will be used in applying the early life stage present chronic criteria noted in Table 3b, "Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present."

1. For all Class B(CW1) waters, the early life stage will be year-round.
2. For all Class B(CW2) waters, the early life stage will begin on April 1 and last through September 30.
3. For all Class B(WW-1) waters, the early life stage will begin in March and last through September, except as follows:
 - For the following, the early life stage will begin in February and last through September:
 - The entire length of the Mississippi and Missouri Rivers,
 - The lower reach of the Des Moines River south of the Ottumwa dam, and
 - The lower reach of the Iowa River below the Cedar River.
 - For the following, the early life stage will begin in April and last through September:
 - All Class B(WW-1) waters in the Southern Iowa River Basin,
 - All of the Class B(WW-1) reach of the Skunk River, the North Skunk River and the South Skunk River south of Indian Creek (Jasper County), and the Class B(WW-1) tributaries to these reaches, and the entire Class B(WW-1) reach of the English River.
4. For all Class B(WW-2) and Class B(WW-3) waters, the early life stage will begin in April and last through September.
5. For all Class B(LW) lake and wetland waters, the early life stage will begin in March and last through September except for the Class B(LW) waters in the southern two tiers of Iowa counties which will have the early life stage of April through September.

c. *Class "C" waters.* Waters which are designated as Class "C" are to be protected as a raw water source of potable water supply. The following criteria shall apply to all Class "C" waters designated in subrule 61.3(5).

- (1) Radioactive substances.
 1. The combined radium-226 and radium-228 shall not exceed 5 picocuries per liter at the point of withdrawal.
 2. Gross alpha particle activity (including radium-226 but excluding radon and uranium) shall not exceed 15 picocuries per liter at the point of withdrawal.
 3. The average annual concentration at the point of withdrawal of beta particle and photon radioactivity from man-made radionuclides other than tritium and strontium-90 shall not produce an annual dose equivalent to the total body or any internal organ greater than 4 millirem/year.
 4. The average annual concentration of tritium shall not exceed 20,000 picocuries per liter at the point of withdrawal; the average annual concentration of strontium-90 shall not exceed 8 picocuries per liter at the point of withdrawal.
- (2) All substances toxic or detrimental to humans or detrimental to treatment process shall be limited to nontoxic or nondetrimental concentrations in the surface water.
- (3) The pH shall not be less than 6.5 nor greater than 9.0.

d. *Class "HH" waters.* Waters which are designated as Class HH shall contain no substances in concentrations which will make fish or shellfish inedible due to undesirable tastes or cause a hazard to humans after consumption.

(1) The human health criteria represent the level of protection necessary, in the case of noncarcinogens, to prevent adverse health effects in humans and, in the case of carcinogens, to prevent a level of incremental cancer risk not exceeding 1 in 100,000. Instream concentrations in excess of the human health criteria will be allowed only within the boundaries of the mixing zone.

(2) Reserved.

TABLE 1. Criteria for Chemical Constituents

(all values as micrograms per liter as total recoverable unless noted otherwise)

Human health criteria for carcinogenic parameters noted below were based on the prevention of an incremental cancer risk of 1 in 100,000. For parameters not having a noted human health criterion, the U.S. Environmental Protection Agency has not developed final national human health guideline values.

For noncarcinogenic parameters, the recommended EPA criterion was selected. For Class C waters, the EPA criteria for fish and water consumption were selected using the same considerations for carcinogenic and noncarcinogenic parameters as noted above. For Class C waters for which no EPA human health criteria were available, the EPA MCL value was selected.

Parameter		Use Designations							C	HH
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)			
Alachlor	MCL	—	—	—	—	—	—	—	2	—
Aldrin	Acute	—	—	3	3	3	—	—	—	—
	Human Health — Fish	—	—	—	—	—	—	—	—	.00050 ^(e)
	Human Health + — F & W	—	—	—	—	—	—	—	—	.00049 ^(f)
Aluminum	Chronic	87	—	87	87	87	748	—	—	—
	Acute	1106	—	750	750	750	983	—	—	—
Antimony	Human Health — Fish	—	—	—	—	—	—	—	—	640 ^(e)
	Human Health + — F & W	—	—	—	—	—	—	—	—	5.6 ^(f)
Arsenic (III)	Chronic	200	—	150	150	150	200	—	—	—
	Acute	360	—	340	340	340	360	—	—	—
	Human Health — Fish	—	—	—	—	—	—	—	—	50 ^{(e)(g)}
	Human Health — F & W	—	—	—	—	—	—	—	—	.18 ^{(f)(g)}
Asbestos	Human Health — F & W	—	—	—	—	—	—	—	—	7 ^{(a)(f)}
Atrazine	MCL	—	—	—	—	—	—	—	3	—
Barium	Human Health + — F & W	—	—	—	—	—	—	—	—	1000 ^(f)
Benzene	Human Health — F & W	—	—	—	—	—	—	—	—	22 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	—	510 ^(e)
Benzo(a)Pyrene	Human Health — F & W	—	—	—	—	—	—	—	—	.038 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	—	.18 ^(e)
Beryllium	MCL	—	—	—	—	—	—	—	4	—
Bromoform	Human Health — F & W	—	—	—	—	—	—	—	—	43 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	—	1400 ^(e)
Cadmium	Chronic	1	—	.27 ^(h)	.27 ^(h)	.27 ^(h)	1	—	—	—
	Acute	4	—	2.13 ^(h)	2.13 ^(h)	2.13 ^(h)	4	—	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	—	168 ^(e)
	MCL	—	—	—	—	—	—	—	5	—
Carbofuran	MCL	—	—	—	—	—	—	—	40	—
Carbon Tetrachloride	Human Health — F & W	—	—	—	—	—	—	—	—	2.3 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	—	16 ^(e)

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Chlordane	Chronic	.004	—	.0043	.0043	.0043	.004	—	—
	Acute	2.5	—	2.4	2.4	2.4	2.5	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0081 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	.008 ^(f)
Chloride	MCL	—	—	—	—	—	—	250*	—
Chlorobenzene	Human Health + — Fish	—	—	—	—	—	—	—	1.6* ^(e)
	Human Health + — F & W	—	—	—	—	—	—	—	130 ^(f)
	MCL	—	—	—	—	—	—	100	—
Chlorodibromomethane	Human Health — F & W	—	—	—	—	—	—	—	4.0 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	130 ^(e)
Chloroform	Human Health — F & W	—	—	—	—	—	—	—	57 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	4700 ^(e)
Chloropyrifos	Chronic	.041	—	.041	.041	.041	.041	—	—
	Acute	.083	—	.083	.083	.083	.083	—	—
Chromium (VI)	Chronic	40	—	11	11	11	10	—	—
	Acute	60	—	16	16	16	15	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	3365 ^(e)
	MCL	—	—	—	—	—	—	100	—
Copper	Chronic	20	—	9.3 ⁽ⁱ⁾	9.3 ⁽ⁱ⁾	9.3 ⁽ⁱ⁾	10	—	—
	Acute	30	—	14 ⁽ⁱ⁾	14 ⁽ⁱ⁾	14 ⁽ⁱ⁾	20	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	1000 ^(e)
	Human Health + — F & W	—	—	—	—	—	—	—	1300 ^(f)
Cyanide	Chronic	5	—	5.2	5.2	5.2	10	—	—
	Acute	20	—	22	22	22	45	—	—
	Human Health + — F & W	—	—	—	—	—	—	—	140 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	140 ^(e)
Dalapon	MCL	—	—	—	—	—	—	200	—
Dibromochloropropane	MCL	—	—	—	—	—	—	.2	—
4,4-DDT ++	Chronic	.001	—	.001	.001	.001	.001	—	—
	Acute	.9	—	1.1	1.1	1.1	.55	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0022 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	.0022 ^(f)
o-Dichlorobenzene	MCL	—	—	—	—	—	—	600	—
para-Dichlorobenzene	Human Health + — F & W	—	—	—	—	—	—	—	63 ^(f)
	Human Health + — Fish	—	—	—	—	—	—	—	190 ^(e)
3,3-Dichlorobenzidine	Human Health — Fish	—	—	—	—	—	—	—	.28 ^(e)

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
	Human Health — F & W	—	—	—	—	—	—	—	.21 ^(f)
Dichlorobromomethane	Human Health — F & W	—	—	—	—	—	—	—	5.5 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	170 ^(e)
1,2-Dichloroethane	Human Health — F & W	—	—	—	—	—	—	—	3.8 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	370 ^(e)
1,1-Dichloroethylene	Human Health — F & W	—	—	—	—	—	—	—	330 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	7.1 ^{*(e)}
cis-1,2-Dichloroethylene	MCL	—	—	—	—	—	—	70	—
1,2-trans-Dichloroethylene	Human Health + — F & W	—	—	—	—	—	—	—	10 ^{*(f)}
	Human Health — Fish	—	—	—	—	—	—	—	140 ^(e)
Dichloromethane	MCL	—	—	—	—	—	—	5	—
1,2-Dichloropropane	Human Health — F & W	—	—	—	—	—	—	—	5.0 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	150 ^(e)
Dieldrin	Chronic	.056	—	.056	.056	.056	.056	—	—
	Acute	.24	—	.24	.24	.24	.24	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00054 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	.00052 ^(f)
Dinoseb	MCL	—	—	—	—	—	—	7	—
2,3,7,8-TCDD (Dioxin)	Human Health — F & W	—	—	—	—	—	—	—	5.0-8 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	5.1-8 ^(e)
Diquat	MCL	—	—	—	—	—	—	20	—
2,4-D	Human Health + — F & W	—	—	—	—	—	—	—	100 ^(f)
Endosulfan ^(b)	Chronic	.056	—	.056	.056	.056	.15	—	—
	Acute	.11	—	.22	.22	.22	.3	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	89 ^(e)
	Human Health + — F & W	—	—	—	—	—	—	—	62 ^(f)
Endothall	MCL	—	—	—	—	—	—	100	—
Endrin	Chronic	.05	—	.036	.036	.036	.036	—	—
	Acute	.12	—	.086	.086	.086	.086	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	.06 ^(e)
	Human Health + — F & W	—	—	—	—	—	—	—	.059 ^(f)
Ethylbenzene	Human Health + — F & W	—	—	—	—	—	—	—	530 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	2100 ^(e)

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
Nitrite as N	MCL	—	—	—	—	—	—	1*	—
Oxamyl (Vydate)	MCL	—	—	—	—	—	—	200	—
Parathion	Chronic	.013	—	.013	.013	.013	.013	—	—
	Acute	.065	—	.065	.065	.065	.065	—	—
Pentachlorophenol (PCP)	Chronic	(d)	—	(d)	(d)	(d)	(d)	—	—
	Acute	(d)	—	(d)	(d)	(d)	(d)	—	—
	Human Health — Fish	—	—	—	—	—	—	—	30 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	2.7 ^(f)
Phenols	Chronic	50	—	50	50	50	50	—	—
	Acute	1000	—	2500	2500	2500	1000	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	1700 ^(e)
	Human Health + — F & W	—	—	—	—	—	—	—	21 ^(f)
Picloram	MCL	—	—	—	—	—	—	500	—
Polychlorinated Biphenyls (PCBs)	Chronic	.014	—	.014	.014	.014	.014	—	—
	Acute	2	—	2	2	2	2	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.00064 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	.00064 ^(f)
Polynuclear Aromatic Hydrocarbons (PAHs)**	Chronic	.03	—	.03	3	3	.03	—	—
	Acute	30	—	30	30	30	30	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.18 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	.038 ^(f)
Selenium	Chronic	10	—	5	5	5	70	—	—
	Acute	15	—	19.3	19.3	19.3	100	—	—
	Human Health + — F & W	—	—	—	—	—	—	—	170 ^(f)
	Human Health + — Fish	—	—	—	—	—	—	—	4200 ^(e)
Silver	Chronic	N/A	—	N/A	N/A	N/A	N/A	—	—
	Acute	30	—	3.8	3.8	3.8	4	—	—
	MCL	—	—	—	—	—	—	50	—
2,4,5-TP (Silvex)	MCL	—	—	—	—	—	—	10	—
Simazine	MCL	—	—	—	—	—	—	4	—
Styrene	MCL	—	—	—	—	—	—	100	—
Tetrachlorethylene	Human Health — F & W	—	—	—	—	—	—	—	6.9 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	33 ^(e)
Thallium	Human Health + — F & W	—	—	—	—	—	—	—	.24 ^(f)

Parameter		Use Designations							
		B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)	C	HH
	Human Health + — Fish	—	—	—	—	—	—	—	.47 ^(e)
Toluene	Chronic	50	—	50	150	150	50	—	—
	Acute	2500	—	2500	7500	7500	2500	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	15 ^{*(e)}
	Human Health + — F & W	—	—	—	—	—	—	—	1300 ^(f)
Total Residual Chlorine (TRC)	Chronic	10	—	11	11	11	10	—	—
	Acute	35	—	19	19	19	20	—	—
Toxaphene	Chronic	.037	—	.002	.002	.002	.037	—	—
	Acute	.73	—	.73	.73	.73	.73	—	—
	Human Health — Fish	—	—	—	—	—	—	—	.0028 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	.0028 ^(f)
1,2,4-Trichlorobenzene	MCL	—	—	—	—	—	—	70	—
1,1,1-Trichloroethane	MCL	—	—	—	—	—	—	200	—
	Human Health + — Fish	—	—	—	—	—	—	—	173 ^{*(e)}
1,1,2-Trichloroethane	Human Health — F & W	—	—	—	—	—	—	—	6 ^(f)
Trichloroethylene (TCE)	Chronic	80	—	80	80	80	80	—	—
	Acute	4000	—	4000	4000	4000	4000	—	—
	Human Health — Fish	—	—	—	—	—	—	—	300 ^(e)
	Human Health — F & W	—	—	—	—	—	—	—	25 ^(f)
Trihalomethanes (total) ^(c)	MCL	—	—	—	—	—	—	80	—
Vinyl Chloride	Human Health — F & W	—	—	—	—	—	—	—	.25 ^(f)
	Human Health — Fish	—	—	—	—	—	—	—	24 ^(e)
Xylenes (Total)	MCL	—	—	—	—	—	—	10*	—
Zinc	Chronic	200	—	120 ^(f)	120 ^(f)	120 ^(f)	100	—	—
	Acute	220	—	120 ^(f)	120 ^(f)	120 ^(f)	110	—	—
	Human Health + — Fish	—	—	—	—	—	—	—	26 ^{*(e)}
	Human Health + — F & W	—	—	—	—	—	—	—	7.4 ^{*(f)}

* units expressed as milligrams/liter

** to include the sum of known and suspected carcinogenic PAHs (includes benzo(a)anthracene, benzo(b)fluoranthene, benzo(k)fluoranthene, chrysene, dibenzo(a,h)anthracene, and indeno(1,2,3-cd)pyrene)

† expressed as nanograms/liter

+ represents the noncarcinogenic human health parameters

++ The concentrations of 4,4-DDT or its metabolites; 4,4-DDE and 4,4-DDD, individually shall not exceed the human health criteria.

(a) units expressed as million fibers/liter (longer than 10 micrometers)

- (b) includes alpha-endosulfan, beta-endosulfan, and endosulfan sulfate in combination or as individually measured
- (c) The sum of the four trihalomethanes (bromoform [tribromomethane], chlorodibromomethane, chloroform [trichloromethane], and dichlorobromomethane) may not exceed the MCL.
- (d) Class B numerical criteria for pentachlorophenol are a function of pH using the equation: Criterion ($\mu\text{g/l}$) = $e^{[1.005(\text{pH}) - x]}$, where $e = 2.71828$ and x varies according to the following table:

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Acute	3.869	—	4.869	4.869	4.869	4.869
Chronic	4.134	—	5.134	5.134	5.134	5.134

- (e) This Class HH criterion would be applicable to any Class B(LW), B(CW1), B(WW-1), B(WW-2), or B(WW-3) water body that is also designated Class HH.
- (f) This Class HH criterion would be applicable to any Class C water body that is also designated Class HH.
- (g) inorganic form only
- (h) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as CaCO_3 (mg/l)). Numerical criteria ($\mu\text{g/l}$) for cadmium are a function of hardness (as CaCO_3 (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$	$e^{[1.0166\text{Ln}(\text{Hardness}) - 3.924]}$
Chronic	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$	$e^{[0.7409\text{Ln}(\text{Hardness}) - 4.719]}$

- (i) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as CaCO_3 (mg/l)). Numerical criteria ($\mu\text{g/l}$) for copper are a function of hardness (CaCO_3 (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$	$e^{[0.9422\text{Ln}(\text{Hardness}) - 1.700]}$
Chronic	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$	$e^{[0.8545\text{Ln}(\text{Hardness}) - 1.702]}$

- (j) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as CaCO_3 (mg/l)). Numerical criteria ($\mu\text{g/l}$) for lead are a function of hardness (CaCO_3 (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 1.46]}$
Chronic	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$	$e^{[1.2731\text{Ln}(\text{Hardness}) - 4.705]}$

- (k) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as CaCO_3 (mg/l)). Numerical criteria ($\mu\text{g/l}$) for nickel are a function of hardness (CaCO_3 (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 2.255]}$
Chronic	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$	$e^{[0.846\text{Ln}(\text{Hardness}) + 0.0584]}$

- (l) Class B(WW-1), B(WW-2), and B(WW-3) criteria listed in main table are based on a hardness of 100 mg/l (as CaCO_3 (mg/l)). Numerical criteria ($\mu\text{g/l}$) for zinc are a function of hardness (CaCO_3 (mg/l)) using the equation for each use according to the following table:

	B(WW-1)	B(WW-2)	B(WW-3)
Acute	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$
Chronic	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$	$e^{[0.8473\text{Ln}(\text{Hardness}) + 0.884]}$

TABLE 2. Criteria for Dissolved Oxygen*(all values expressed in milligrams per liter)*

	B(CW1)	B(CW2)	B(WW-1)	B(WW-2)	B(WW-3)	B(LW)
Minimum value for at least 16 hours of every 24-hour period	7.0	7.0	5.0	5.0	5.0	5.0*
Minimum value at any time during every 24-hour period	5.0	5.0	5.0	4.0	4.0	5.0*

**applies only to the upper layer of stratification in lakes*

TABLE 3a. Acute Criterion for Ammonia in Iowa Streams

Acute Criterion, mg/l as N (or Criterion Maximum Concentration, CMC)		
pH	Class B(WW-1), B(WW-2), B(WW-3) & B(LW)	Class B(CW1) & B(CW2)
6.5	48.8	32.6
6.6	46.8	31.3
6.7	44.6	29.8
6.8	42.0	28.0
6.9	39.1	26.1
7.0	36.1	24.1
7.1	32.8	21.9
7.2	29.5	19.7
7.3	26.2	17.5
7.4	23.0	15.3
7.5	19.9	13.3
7.6	17.0	11.4
7.7	14.4	9.64
7.8	12.1	8.11
7.9	10.1	6.77
8.0	8.40	5.62
8.1	6.95	4.64
8.2	5.72	3.83
8.3	4.71	3.15
8.4	3.88	2.59
8.5	3.20	2.14
8.6	2.65	1.77
8.7	2.20	1.47
8.8	1.84	1.23
8.9	1.56	1.04
9.0	1.32	0.885

TABLE 3b. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Present

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
6.5	6.67	6.67	6.06	5.33	4.68	4.12	3.62	3.18	2.80	2.46
6.6	6.57	6.57	5.97	5.25	4.61	4.05	3.56	3.13	2.75	2.42
6.7	6.44	6.44	5.86	5.15	4.52	3.98	3.50	3.07	2.70	2.37
6.8	6.29	6.29	5.72	5.03	4.42	3.89	3.42	3.00	2.64	2.32
6.9	6.12	6.12	5.56	4.89	4.30	3.78	3.32	2.92	2.57	2.25
7.0	5.91	5.91	5.37	4.72	4.15	3.65	3.21	2.82	2.48	2.18
7.1	5.67	5.67	5.15	4.53	3.98	3.50	3.08	2.70	2.38	2.09
7.2	5.39	5.39	4.90	4.31	3.78	3.33	2.92	2.57	2.26	1.99
7.3	5.08	5.08	4.61	4.06	3.57	3.13	2.76	2.42	2.13	1.87
7.4	4.73	4.73	4.30	3.78	3.32	2.92	2.57	2.26	1.98	1.74
7.5	4.36	4.36	3.97	3.49	3.06	2.69	2.37	2.08	1.83	1.61

Chronic Criterion - Early Life Stages Present, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0	14	16	18	20	22	24	26	28	30
7.6	3.98	3.98	3.61	3.18	2.79	2.45	2.16	1.90	1.67	1.47
7.7	3.58	3.58	3.25	2.86	2.51	2.21	1.94	1.71	1.50	1.32
7.8	3.18	3.18	2.89	2.54	2.23	1.96	1.73	1.52	1.33	1.17
7.9	2.8	2.8	2.54	2.24	1.96	1.73	1.52	1.33	1.17	1.03
8.0	2.43	2.43	2.21	1.94	1.71	1.50	1.32	1.16	1.02	0.897
8.1	2.10	2.10	1.91	1.68	1.47	1.29	1.14	1.00	0.879	0.773
8.2	1.79	1.79	1.63	1.43	1.26	1.11	0.973	0.855	0.752	0.661
8.3	1.52	1.52	1.39	1.22	1.07	0.941	0.827	0.727	0.639	0.562
8.4	1.29	1.29	1.17	1.03	0.906	0.796	0.700	0.615	0.541	0.475
8.5	1.09	1.09	0.990	0.870	0.765	0.672	0.591	0.520	0.457	0.401
8.6	0.920	0.920	0.836	0.735	0.646	0.568	0.499	0.439	0.386	0.339
8.7	0.778	0.778	0.707	0.622	0.547	0.480	0.422	0.371	0.326	0.287
8.8	0.661	0.661	0.601	0.528	0.464	0.408	0.359	0.315	0.277	0.244
8.9	0.565	0.565	0.513	0.451	0.397	0.349	0.306	0.269	0.237	0.208
9.0	0.486	0.486	0.442	0.389	0.342	0.300	0.264	0.232	0.204	0.179

TABLE 3c. Chronic Criterion for Ammonia in Iowa Streams - Early Life Stages Absent

Chronic Criterion - Early Life Stages Absent, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0-7	8	9	10	11	12	13	14	15*	16*
6.5	10.8	10.1	9.51	8.92	8.36	7.84	7.35	6.89	6.46	6.06
6.6	10.7	9.99	9.37	8.79	8.24	7.72	7.24	6.79	6.36	5.97
6.7	10.5	9.81	9.20	8.62	8.08	7.58	7.11	6.66	6.25	5.86
6.8	10.2	9.58	8.98	8.42	7.90	7.40	6.94	6.51	6.10	5.72
6.9	9.93	9.31	8.73	8.19	7.68	7.20	6.75	6.33	5.93	5.56
7.0	9.60	9.00	8.43	7.91	7.41	6.95	6.52	6.11	5.73	5.37
7.1	9.20	8.63	8.09	7.58	7.11	6.67	6.25	5.86	5.49	5.15
7.2	8.75	8.20	7.69	7.21	6.76	6.34	5.94	5.57	5.22	4.90
7.3	8.24	7.73	7.25	6.79	6.37	5.97	5.60	5.25	4.92	4.61
7.4	7.69	7.21	6.76	6.33	5.94	5.57	5.22	4.89	4.59	4.30
7.5	7.09	6.64	6.23	5.84	5.48	5.13	4.81	4.51	4.23	3.97
7.6	6.46	6.05	5.67	5.32	4.99	4.68	4.38	4.11	3.85	3.61
7.7	5.81	5.45	5.11	4.79	4.49	4.21	3.95	3.70	3.47	3.25
7.8	5.17	4.84	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89
7.9	4.54	4.26	3.99	3.74	3.51	3.29	3.09	2.89	2.71	2.54
8.0	3.95	3.70	3.47	3.26	3.05	2.86	2.68	2.52	2.36	2.21
8.1	3.41	3.19	2.99	2.81	2.63	2.47	2.31	2.17	2.03	1.91
8.2	2.91	2.73	2.56	2.40	2.25	2.11	1.98	1.85	1.74	1.63
8.3	2.47	2.32	2.18	2.04	1.91	1.79	1.68	1.58	1.48	1.39
8.4	2.09	1.96	1.84	1.73	1.62	1.52	1.42	1.33	1.25	1.17
8.5	1.77	1.66	1.55	1.46	1.37	1.28	1.20	1.13	1.06	0.99
8.6	1.49	1.40	1.31	1.23	1.15	1.08	1.01	0.951	0.892	0.836
8.7	1.26	1.18	1.11	1.04	0.976	0.915	0.858	0.805	0.754	0.707

Chronic Criterion - Early Life Stages Absent, mg/l as N (or Criterion Continuous Concentration, CCC)										
pH	Temperature, °C									
	0-7	8	9	10	11	12	13	14	15*	16*
8.8	1.07	1.01	0.944	0.885	0.829	0.778	0.729	0.684	0.641	0.601
8.9	0.917	0.860	0.806	0.756	0.709	0.664	0.623	0.584	0.548	0.513
9.0	0.790	0.740	0.694	0.651	0.610	0.572	0.536	0.503	0.471	0.442

*At 15°C and above, the criterion for fish early life stage (ELS) absent is the same as the criterion for fish ELS present.

61.3(4) *Class "C" waters.* Rescinded IAB 4/18/90, effective 5/23/90.

61.3(5) *Surface water classification.* The department hereby incorporates by reference "Surface Water Classification," effective September 16, 2009. This document may be obtained on the department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

61.3(6) *Cold water use designation assessment protocol.* The department hereby incorporates by reference "Cold Water Use Designation Assessment Protocol," effective December 15, 2004. This document may be obtained on the department's Web site at <http://www.iowadnr.com/water/standards/index.html>.

61.3(7) *Warm water stream use assessment and attainability analysis protocol.* The department hereby incorporates by reference "Warm Water Stream Use Assessment and Attainability Analysis Protocol," effective March 22, 2006. This document may be obtained on the departments Web site at <http://www.iowadnr.com/water/standards/index.html>.

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

This rule is intended to implement Iowa Code chapter 455B, division I, and division III, part 1. [ARC 8039B, IAB 8/12/09, effective 9/16/09]

567—61.4 to 61.9 Reserved.

VOLUNTEER MONITORING DATA REQUIREMENTS

567—61.10(455B) Purpose. The department uses water quality monitoring data for a number of purposes, including determining compliance with effluent limits for operation permits issued under 567—Chapter 64. The department also uses water quality monitoring data to determine the relative health of a water body by comparing monitoring data to the appropriate water quality standards established in 567—Chapter 61, a process known as water body assessments. Water body assessments are performed to prepare the biennial water quality report required under Section 305(b) of the Act and the list of impaired waters under Section 303(d) of the Act.

Iowa Code sections 455B.193 to 455B.195 require that credible data, as defined in Iowa Code section 455B.171, be used for the purpose of preparing Section 303(d) lists and other water quality program functions. Data provided by a volunteer are not considered credible data unless provided by a qualified volunteer. The purpose of this chapter is to establish minimum requirements for data produced by volunteers to meet the credible data and qualified volunteer requirements.

567—61.11(455B) Monitoring plan required. Volunteer water quality monitoring data submitted to the department must have been produced in accordance with a department-approved volunteer water quality monitoring plan before the data may be used for any of the purposes listed in Iowa Code section 455B.194. Approval of a plan will establish qualified volunteer status for the personnel identified in the plan for those monitoring activities covered under the plan.

61.11(1) Submittal of the plan. Prior to initiation of volunteer water quality monitoring activities intended to produce credible data, a water quality monitoring plan must be submitted to the department for review and approval. The plan must be submitted to the Volunteer Monitoring Coordinator,

Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319, a minimum of 90 days before planned initiation of volunteer monitoring activities. A letter transmitting the plan must specifically request formal review and approval of the plan and identify a contact person. Volunteer monitors are encouraged to communicate with the department and to attend volunteer monitoring training sessions prior to formal submittal of a plan.

61.11(2) *Content of the plan.* A volunteer monitoring plan must contain, at a minimum, the following to be considered an acceptable volunteer monitoring plan:

- a. A statement of the intent of the monitoring effort.
- b. The name(s) of the person or persons that will be involved in data collection or analysis, the specific responsibilities of each person or group of people, and the general qualifications of the volunteers to carry out those responsibilities. For groups, such as educational institutions, it will be acceptable to identify the persons involved by general description (e.g., tenth grade biology class) with the exception of persons in responsible charge.
- c. The name(s) of the person or persons that will oversee the monitoring plan, ensure that quality assurance and control objectives are being met, and certify the data. The person or persons in responsible charge must have training commensurate with the level of expertise to ensure that credible data is being generated.
- d. The duration of the volunteer monitoring effort. In general, the department will not approve plans of greater than three years' duration unless a longer duration is justified.
- e. Location and frequency of sample collection.
- f. Methods of data collection and analysis.
- g. Record keeping and data reporting procedures.

61.11(3) *Department review of the plan.* The department will review monitoring plans and normally approve or disapprove the plan within 90 days of receipt. The department will work with the contact person identified in the plan to make any necessary changes prior to taking formal action. The department will use guidelines contained in the publications EPA Requirements for Quality Assurance Project Plans (EPA QA/R-5, 2001) and Volunteer Monitor's Guide to Quality Assurance Project Plans (1966, EPA 841-B-96-003) or equivalent updates to determine if the plans provide adequate quality assurance and quality control measures. Approval or disapproval of the plan will be in the form of a letter and approval may include conditions or limitations.

61.11(4) *Changes in monitoring plans.* The department must approve any changes to an approved monitoring plan. Data collected under a modified plan will not be considered credible data until such time as the department has approved the modifications. Modifications to an approved plan should be submitted at the earliest possible time to avoid interruptions in data collection and to ensure continuity of data.

61.11(5) *Appeal of disapproval.* If a monitoring plan submitted for approval is disapproved, the decision may be appealed by filing an appeal with the director within 30 days of disapproval. The form of the notice of appeal and appeal procedures are governed by 567—Chapter 7.

567—61.12(455B) Use of volunteer monitoring data. Data produced under an approved water quality monitoring plan will be considered credible data for the purposes listed in Iowa Code section 455B.194 if the following conditions are met.

61.12(1) *Data submittal.* A qualified volunteer monitor or qualified volunteer monitoring group must specifically request that data produced under an approved volunteer monitoring plan be considered credible data. A letter identifying the specific data must be submitted along with a certification from the volunteer or the person in responsible charge for volunteer groups that the data, to the best of the volunteer's or responsible person's knowledge, was produced in accordance with the approved volunteer monitoring plan. The department shall provide a standard format on the IOWATER Web site for submittal of qualified volunteer data and related information. The department encourages volunteers to enter monitoring data on the IOWATER volunteer monitoring database maintained by the department, but doing so does not constitute submittal to or acceptance of the data by the department

for uses requiring credible data. Volunteer data shall be labeled as such in any departmental reports, Web sites, or databases.

61.12(2) *Department review of submitted data.* The department must review and approve the submitted data. The person submitting the data will be informed of the department's decision either to accept or reject the data. The department will attempt to resolve any apparent inconsistencies or questionable values in the submitted data prior to making a final decision.

567—61.13(455B) Department audits of volunteer monitoring activities. The department shall conduct field audits of a statistically valid and representative sample of volunteer data collection and analysis procedures to ensure compliance with an approved plan and may conduct confirmatory monitoring tests. Volunteers shall be informed of any audit results and be provided with an opportunity to address any concerns to the extent possible. The department reserves the right to rescind approval of an approved plan if it finds substantial problems that cannot be addressed in a timely manner to ensure the quality of the data being produced.

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

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[◇] Two or more ARCs

CHAPTER 101
SOLID WASTE COMPREHENSIVE PLANNING REQUIREMENTS

[Prior to 7/1/83, DEQ Ch 26]

[Prior to 12/3/86, Water, Air and Waste Management [900]]

567—101.1(455B,455D) Purpose. The purpose of these rules is to provide general definitions and direction for comprehensive integrated solid waste management planning for every city and county of this state and to provide an orderly and efficient process for the assessment and collection of fees for the disposal of solid waste at a sanitary landfill.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.2(455B,455D) Definitions. For the purpose of this chapter, the following definitions shall apply:

“*Comprehensive plan*” means a course of action developed and established cooperatively between cities, counties and municipal solid waste sanitary disposal projects regarding their chosen integrated solid waste management system, its participants, waste reduction strategies, and disposal methods.

“*Comprehensive plan amendment*” means a notification, filed between comprehensive plan updates, that the planning agency seeks to change the participation or change the designated disposal project(s) as set out in the most recent approved comprehensive plan submittal.

“*Comprehensive plan update*” means a planning document that provides status reports on the integrated solid waste management system and that describes revision to the information and evaluation of the integrated solid waste management system and the proposed course of action for the next two planning cycles.

“*Consumer price index*” means the measure of the average change over time in the prices paid by urban consumers for a market basket of consumer goods and services. For the purpose of this chapter, consumer price index refers to All Urban Consumers (CPI-U), All Items, as published by the U.S. Bureau of Labor Statistics.

“*Contaminated soil*” means soil(s) that contains any harmful constituent in great enough concentration to harm human health.

“*Fiscal year*” means the state fiscal year from July 1 through June 30.

“*Initial comprehensive plan*” means a first or new comprehensive plan filed with the department of natural resources pursuant to the provisions of Iowa Code section 455B.306.

“*Integrated solid waste management*” means any solid waste management system which is focused on planned development of programs and facilities that reduce waste volume and toxicity, recycle marketable materials and provide for safe disposal of any residuals.

“*Monogenerator facility*” means any permitted facility that accepts waste(s) from a sole generator that is also the owner/operator of the facility.

“*Monowaste facility*” means any permitted facility with special permit provisions which limit the site to a single solid waste including, but not limited to, coal combustion residue, cement kiln dust and foundry sand.

“*Municipal solid waste sanitary disposal project*” means all facilities and appurtenances, including all real and personal property connected with such facilities, which are acquired, purchased, constructed, reconstructed, equipped, improved, extended, maintained, or operated to facilitate the final disposition of household waste without creating a significant hazard to the public health or safety, and which are approved by the executive director. A municipal solid waste sanitary disposal project also may receive other types of RCRA Subtitle D wastes, such as construction and demolition debris and commercial and industrial solid waste.

“*Planning agency*” means the designated contact agency on file with the department.

“*Planning area*” means the combined jurisdiction of the local governments and the designated municipal solid waste sanitary disposal project(s) involved in a comprehensive plan. A planning area may include one or more municipal solid waste sanitary disposal projects.

“*Planning cycle*” means the length of time between the due date for each comprehensive plan update submittal as approved by the department, which shall be five years effective March 1, 2011.

“*Plan participants*” means any individual, group, government or private entity that has direct involvement in an integrated solid waste management system.

“*Private agency*” means an individual or any form of business organization authorized under the laws of this or any other state.

“*Public agency*” means any political subdivision of this state, including Iowa Code chapter 28E agencies.

“*Service area*” means an area served by a specific municipal solid waste sanitary disposal project defined in terms of the jurisdictions of the local governments using the facility. A planning area may include more than one service area.

“*Solid waste*” has the same meaning as found in Iowa Code section 455B.301. Pursuant to Iowa Code section 455B.301, the department has determined that solid waste includes those wastes exempted from federal hazardous waste regulation pursuant to 40 CFR 261.4(b), as amended through September 16, 2009, except to the extent that any such exempted substances are liquid wastes or wastewater.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.3(455B,455D) Waste management hierarchy. The state’s waste management hierarchy is listed in descending order of preference:

1. Volume reduction at the source;
2. Recycling and reuse, including composting;
3. Combustion with energy recovery;
4. Other approved techniques of solid waste management including, but not limited to, combustion for waste disposal and disposal in sanitary landfills.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.4(455B,455D) Duties of cities and counties. Every city and county of this state shall, for the solid waste generated within the jurisdiction of its political subdivision, provide for the establishment and operation of an integrated solid waste management system consistent with the waste management hierarchy under rule 567—101.3(455B,455D) and designed to meet the state’s waste reduction and recycling goals. Integrated systems and municipal solid waste sanitary disposal projects may be established separately or through cooperative efforts, including Iowa Code chapter 28E agreements as provided by law.

To meet these responsibilities, cities and counties may execute, with public and private agencies, contracts, leases, or other necessary instruments, purchase land and do all things necessary not prohibited by law for the implementation of waste management programs, collection of solid waste, establishment and operation of municipal solid waste sanitary disposal projects, and general administration of the same.

If a city or county facility refuses any particular solid waste type for management or disposal, the city or county facility must identify another waste management facility for that waste within the planning area. In the case of special waste, if no other waste management facility for that waste type exists within the planning area, the city or county must, in cooperation with the waste generator, establish or arrange for access to another waste management facility. Municipal solid waste sanitary disposal projects are required to maintain written approval from both the department and the planning area of origin in order to accept any Iowa-generated waste from outside the planning area.

All cities and counties or Iowa Code chapter 28E agencies established for the purpose of managing solid waste or implementing integrated solid waste management systems, or both, on behalf of cities and counties shall demonstrate compliance with the provisions of this chapter by their participation in a comprehensive plan approved by the department.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.5(455B,455D) Contracts with permitted agencies.

101.5(1) Every city, county, and other public agency which complies with the requirements of Iowa Code chapter 455B for the disposal of solid waste by means of a contract with an agency holding a municipal solid waste sanitary disposal project permit or by means of a contract with a hauler that has a contract with an agency holding a municipal solid waste sanitary disposal project permit shall submit

to the department notification of that executed contract. All such agencies shall have on file at the department at all times a list of valid contracts. Notification of any renewal of the contract or any new or amended contract shall be submitted.

101.5(2) All public agencies which contract with a hauler to comply with the requirements of part 1 of division IV of Iowa Code chapter 455B shall include, as terms of that contract, a requirement that all solid waste collected by the hauler for that agency shall be disposed of or deposited at a municipal solid waste sanitary disposal project designated within said agency's comprehensive plan in accordance with the rules of the department.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.6(455B,455D) State volume reduction and recycling goals. The goal of the state is to reduce the amount of materials in the waste stream existing as of the July 1, 1988, baseline, 25 percent by July 1, 1994, and 50 percent by July 1, 2000, through the practice of waste volume reduction at the source and through recycling. The updated goal progress calculations provided by the department for each planning area shall be used by the department in reporting to the general assembly on the state's progress toward meeting the 25 and 50 percent goals. If at any time the department notifies the planning agency in writing that the planning area has failed to meet the 25 percent waste volume reduction and recycling goal, at a minimum, the solid waste management techniques listed in Iowa Code section 455D.3(4) and subrule 101.13(8) must be implemented throughout the planning area. The specific methodology for determining goal progress is outlined in rule 567—101.7(455B,455D).

567—101.7(455B,455D) Base year adjustment method. Planning agencies may request that the department complete a goal progress recalculation once per fiscal year to resolve any discrepancies and to further evaluate progress toward the state's waste volume reduction and recycling goals. At the time of approval of a comprehensive plan or comprehensive plan update, the department will use the most current complete fiscal year data set available to complete goal progress calculations, which will be used to meet the requirements outlined in subrule 101.13(8) and rule 567—101.14(455B,455D).

101.7(1) The base year adjustment method (see Formula 1) controls for population, employment, and taxable sales to more accurately determine progress toward the state's waste volume reduction and recycling goals. Factors included within the base year adjustment method include:

- a. Base year residential waste disposal tonnage - (A).
- b. Base year commercial waste disposal tonnage - (B).
- c. Base year population data (U.S. Bureau of the Census) - (C).
- d. Base year employment data - total nonfarm (Iowa Department of Workforce Development) - (D).
- e. Base year taxable sales data (Iowa Department of Revenue) - (E).
- f. Base year consumer price index - (F).
- g. Most current complete fiscal year data set available for waste disposal tonnage - (G).
- h. Most current complete fiscal year data set available for population (U.S. Bureau of the Census) - (H).
- i. Most current complete fiscal year data set available for employment - total nonfarm (Iowa Department of Workforce Development) - (I).
- j. Most current complete fiscal year data set available for taxable sales (Iowa Department of Revenue) - (J).
- k. Most current complete fiscal year data set available for consumer price index - (K).

Formula 1

$$100\% - \left[\frac{G}{A \left[\frac{H}{C} + \left[\frac{\frac{I}{D} + \frac{J \frac{F}{K}}{E}}{2} \right] \right] + B \left[\frac{I}{D} + \left[\frac{J \frac{F}{K}}{E} \right] \right]} \right] \times 100\%$$

101.7(2) Planning agencies must document the amount of waste disposed of in both the base year and the most current fiscal year where a complete data set is available. If no changes have occurred within the planning area that would affect the base year, then only data for the most current fiscal year for which a complete data set is available need to be presented in the comprehensive plan update, since information on each planning area's base year tonnage is presented in prior comprehensive plan submittals. Tonnage data sources that each planning agency must identify include, but are not limited to:

- a. Landfill(s) within the planning area and its respective service area(s).
- b. Transfer station(s) or hauler(s) transporting waste into or out of the planning area for final disposal.
- c. Incineration with or without energy recovery of waste within the planning area.
- d. Allowable base year adjustment method exemptions, including exceptional events, waste originating from out of state, and solid waste generated outside the planning area.

101.7(3) Waste generated as part of an exceptional event or contaminated soils removed as part of a brownfield or contaminated site cleanup should not negatively affect a planning area's goal progress calculation.

a. Exceptional events include, but are not limited to, such unforeseen disasters as storms, fires, floods, tornadoes, or train wrecks. Exceptional events do not include economic development, derelict housing removal, or other planned activities/demolitions. Written requests to exempt exceptional event debris from goal progress calculations shall be made to the department on the required Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276.

Requests for goal progress calculation exemptions must be made within six months after initial disposal of the debris. The determination to exempt exceptional event debris from goal progress calculations shall be made solely by the department and shall not be made independently by individual municipal solid waste sanitary disposal projects or planning agencies. Municipal solid waste sanitary disposal projects required to remit tonnage fees shall continue to pay solid waste tonnage fees until written notification of fee exemption is received, at which time any applicable fee credit shall be granted by the department. Upon review of the request, the department will notify the municipal solid waste sanitary disposal project and planning agency of the determination in writing or request further documentation.

(1) Exemption requests shall, at a minimum, include:

1. Date(s) of duration of the exceptional event.
2. Type of event (i.e., flood, tornado, combination thereof).
3. Description of affected area(s), including approximate number of buildings and addresses, if available.

4. Type(s) of waste to be exempted.
5. Actual tonnage of debris disposed of during the quarter.
6. Preliminary estimate of the total tonnage to be exempted (i.e., tons already disposed of and potential tons to be disposed of in future quarters).

(2) Additional documentation to verify the exceptional event and the debris it generated may be requested by the department. Failure to submit requested documentation may result in denial of the goal progress calculation or solid waste tonnage fee exemption request(s), including any fee credits authorized by the department. Documentation may include:

1. Protocol used by the municipal solid waste sanitary disposal project staff for determining which waste(s) coming into the facility was attributed to the exceptional event.
2. Summary of existing policies to divert storm debris from disposal, as well as the amount of waste(s) diverted.
3. Copies of scale tickets and summary report of scale tickets.
4. Federal Emergency Management Agency (FEMA) reports, if any.
5. Newspaper articles or pictures of affected areas.
6. Supporting documentation indicating estimated remaining tonnage expected as a result of the exceptional event (i.e., supporting documentation from local insurance companies or municipal building inspectors).

7. Contact information for the person(s) responsible for compiling the exceptional event report(s).

b. If the governor of the state of Iowa declares a city or county a disaster area as a result of an exceptional event, the municipal solid waste sanitary disposal project or planning agency may request that the debris be exempt from solid waste tonnage fees. A request to waive tonnage fees must be submitted in writing on the facility's or planning agency's letterhead prior to or in the same submittal as the Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276. Requests to waive tonnage fees, as provided for in this rule, must be made within 6 months after the initial disposal of the debris. A copy of the proclamation of disaster emergency declared by the governor of the state of Iowa is required in order for approval of tonnage fee exemptions. Any continuing documentation shall be submitted with each Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276, within the length of time authorized by the department. Solid waste disposed of outside the window of time authorized by the department shall not be eligible for exemption. To be eligible for an exemption, all exceptional event waste must be disposed of within the following time lines:

(1) For debris clearance and emergency protective measures, as defined by FEMA guidelines, 6 months from the end of the exceptional event.

(2) For permanent repair work, as defined by FEMA guidelines, 18 months from the end of the exceptional event.

Upon written request, with supporting rationale, extensions to these time lines may be granted solely by the department on a case-by-case basis.

c. Contaminated soils removed as part of a brownfield or contaminated site cleanup should not negatively affect a planning area's goal progress calculation. If the contaminated soil is to be disposed of in a municipal solid waste sanitary disposal project, the municipal solid waste sanitary disposal project or planning agency must request the goal progress exemption in writing, in accordance with the procedures outlined in this rule. Written requests to exempt contaminated soil from goal progress calculations shall be made to the department on the Quarterly Solid Waste Fee Schedule and Retained Fees Report, DNR Form 542-3276. Requests for goal progress exemptions must be made within 6 months after initial disposal of the contaminated soil.

The determination to exempt contaminated soil from goal progress calculations shall be made solely by the department and shall not be made independently by individual municipal solid waste sanitary disposal projects or planning agencies. The department shall notify the municipal solid waste sanitary disposal project or planning agency in writing of the determination or shall request further clarification to make an exemption decision. Failure to submit additional information requested by the department regarding the request to exempt contaminated soil may result in a denial of the goal progress calculation exemption request. Contaminated soil occurrences not eligible for goal progress exemption include, but are not limited to, illegal municipal solid waste disposal sites and contaminated soils formed for the sole purpose of requesting goal progress exemption. Exemption requests shall include, at a minimum, the following:

(1) Contact information of the primary and any other government agency overseeing or involved with site cleanup.

(2) Address of the brownfield or contaminated site.

(3) Date(s) when the site was believed to have been contaminated, if known.

(4) Type of operation and owners of the operation that led to the contamination, if known.

(5) Constituents of concern present in the soil.

(6) Types of miscellaneous waste mixed with the soil, if any.

(7) Appropriate testing for identified contaminants of the contaminated soil.

(8) Actual tonnage of contaminated soil disposed of during the quarter.

(9) Preliminary estimate of the total tonnage to be exempted (i.e., tons of contaminated soil already disposed of and potential tons to be disposed of in future quarters).

(10) Narrative justification to explain why disposal in a municipal solid waste sanitary disposal project is the best site cleanup methodology.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.8(455B,455D) Submittal of initial comprehensive plans and comprehensive plan updates. Initial comprehensive plans and comprehensive plan updates filed with the department must include a signed electronic submission certificate, which can be printed when all online forms have been submitted to the department for review. When hard-copy portions of the initial comprehensive plan or comprehensive plan update are submitted to the department, only one original copy is necessary. Initial comprehensive plans and comprehensive plan updates are required to be double-sided and cannot be submitted in three-ring binders. Comprehensive plan updates shall be submitted in accordance with the schedule, as provided by the department 12 months prior to the due date of the first comprehensive plan update for each planning cycle. Planning agencies are not required to submit hard copies of the online forms for comprehensive plan updates.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.9(455B,455D) Review of initial comprehensive plans and comprehensive plan updates. Initial comprehensive plans and comprehensive plan updates submitted in accordance with rule 567—101.13(455B,455D) shall be reviewed by the department for compliance with this chapter. The director may reject, suggest modification of, or approve a comprehensive plan based upon the criteria outlined in rule 567—101.13(455B,455D).

567—101.10(455B,455D) Municipal solid waste and recycling survey. During each planning cycle, local governments are required to complete and submit the Municipal Solid Waste and Recycling Survey, DNR Form 542-8134. The department will not provide access to the comprehensive planning online database, described further in rule 567—101.11(455B,455D), until the department receives copies of all completed Municipal Solid Waste and Recycling Survey forms from the planning area. The department will contact each planning agency 12 months prior to the due date of the comprehensive plan update to determine the planning agency's preferred Municipal Solid Waste and Recycling Survey option. To facilitate the completion, submittal, and data input of the Municipal Solid Waste and Recycling Survey form, the methodology as set forth in one of the following subrules shall be used:

101.10(1) The department shall distribute the Municipal Solid Waste and Recycling Survey forms to the planning area's member communities. The planning agency will receive and input the data into the online database.

101.10(2) The planning agency shall distribute the Municipal Solid Waste and Recycling Survey forms to its member communities. The planning agency will receive and input the data into the online database.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.11(455B,455D) Online database. In accordance with rule 567—101.10(455B,455D), the following comprehensive plan data must be completed and inputted into the online database developed by the department. This database may be accessed, with the proper credentials, via the department's Web site. The following online forms must be completed prior to comprehensive plan approval by the department:

- Choose a City, DNR Form 542-8136.
- Recycling and Waste Collection, DNR Form 542-8137.
- Recycling and Waste Haulers, DNR Form 542-8138.
- Diverted Materials Collection, DNR Form 542-8139.
- Commercial Recycling, DNR Form 542-8140.
- Residential Recycling Program, DNR Form 542-8141.
- Yard Waste Management Programs, DNR Form 542-8142.
- Drop-off Recycling Sites, DNR Form 542-8143.
- Yard Waste Management Sites, DNR Form 542-8144.
- Board Members, DNR Form 542-8145.
- Boards, DNR Form 542-8146.
- Permitted Facilities, DNR Form 542-8147.
- Contacts, DNR Form 542-8148.

- Planning Area Description, DNR Form 542-8149.

567—101.12(455B,455D) Solid waste comprehensive plan types. A city, county, or private agency operating or planning to operate a municipal solid waste sanitary disposal project shall file with the director one of two types of comprehensive plans detailing the method by which the city, county, or private agency will comply with solid waste comprehensive planning requirements. The first type is a comprehensive plan in which solid waste is disposed of in a sanitary landfill within the planning area. The second type is a comprehensive plan in which all solid waste is consolidated at, and transported from, a permitted transfer station for disposal at a sanitary landfill in another comprehensive planning area or state.

101.12(1) A planning area that closes all of the municipal solid waste sanitary landfills located in the planning area and chooses instead to use a municipal solid waste sanitary landfill in another planning area may choose to retain its autonomy as long as the sanitary landfill in the other planning area complies with all the requirements of this chapter, and all solid waste generated within the planning area closing its landfills is consolidated at, and transported from, a permitted transfer station. For purposes of this subrule, a planning area closing its own landfills that chooses to retain its autonomy shall not be required to join the planning area that contains the landfill it is using for final disposal of its solid waste.

101.12(2) If a planning area chooses to retain autonomy pursuant to this rule, the planning area receiving solid waste from the planning area sending it shall not be required to include the sending planning area in its comprehensive plan provided that no services other than the acceptance of solid waste for disposal are shared between the two planning areas. A planning area receiving solid waste shall only be responsible for the permitting, planning, and waste reduction and diversion programs within that planning area.

101.12(3) If the department determines that solid waste cannot reasonably be consolidated and transported from a particular transfer station (e.g., asbestos or bulky construction and demolition waste), the department may establish permit conditions to address the transport and disposal of the solid waste. A planning area sending solid waste for disposal in another planning area may retain autonomy pursuant to subrule 101.12(1) only if both comprehensive planning areas enter into an agreement pursuant to Iowa Code chapter 28E that includes both of the following:

a. A detailed methodology of the manner in which solid waste will be tracked and reported between the two planning areas.

b. A detailed methodology of the manner in which the receiving sanitary landfill will collect, remit, and report tonnage fees, pursuant to Iowa Code section 455B.310, paid by the planning area that is transporting the solid waste. The methodology shall include both the remittances of tonnage fees to the state and the retained tonnage fees.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

567—101.13(455B,455D) Types of comprehensive plan submittals to be filed. There are three types of comprehensive plan submittals: initial, updates, and amendments. The purpose of these types of comprehensive plans is the development of a specific plan and schedule for implementing technically and economically feasible solid waste management methods that will prevent or minimize any adverse environmental impact and meet the state's waste volume reduction and recycling goals pursuant to rule 567—101.6(455B,455D).

Cities and counties planning to use a municipal solid waste sanitary disposal project in Iowa must participate in a comprehensive plan with all other cities and counties using that municipal solid waste sanitary disposal project. Cities and counties planning to use an out-of-state disposal facility(ies) must file a comprehensive plan that identifies the out-of-state facility(ies) used. Cities or counties using an out-of-state disposal facility(ies) are still required to meet all comprehensive plan submittal requirements.

If it is demonstrated to the department that any of the provisions outlined in paragraphs "1" through "3" below will not impact the planning area significantly, then the department may consider accepting a comprehensive plan amendment. If during the planning cycle a change occurs to an existing planning

area, the submission of an initial comprehensive plan may be required. An initial comprehensive plan is needed if:

1. A new planning area is established.
2. A change increases or decreases the population or the disposal tonnage of the planning area by more than 30 percent.
3. The solid waste disposal method has changed or a new method has been initiated, including siting of a new municipal solid waste landfill or municipal solid waste incinerator.

101.13(1) *Content of an initial comprehensive plan.* In fulfillment of the requirements of Iowa Code section 455B.301A and Iowa Code chapter 455D, an initial comprehensive plan shall include the following information:

a. A description of the planning area and the public and private agencies involved in the integrated solid waste management system, including a description of each agency's role in managing solid waste generated in the area.

b. A resolution or resolutions from all local governments or 28E agencies established for the purpose of managing solid waste or implementing integrated solid waste management systems, or both, on behalf of local governments, and letters of cooperation from privately owned municipal solid waste sanitary disposal projects participating in the comprehensive plan. The resolution(s) shall include a statement that the comprehensive plan participants have reviewed the initial comprehensive plan and will adopt the implementation schedule contained within the initial comprehensive plan. Letters of cooperation from private agencies shall include a statement that the private agencies have reviewed the comprehensive plan and support the waste volume reduction and recycling efforts outlined therein. The letter of cooperation shall briefly summarize the implementation schedule. If a local government included in the planning area refuses to provide a resolution, then that local government must prepare its own comprehensive plan and is no longer considered to be in the original planning area. In such cases, the original comprehensive plan may still be approved if it includes a brief addendum stating the effect of the change on the waste stream, but the municipal solid waste sanitary disposal project(s) in the planning area may no longer accept waste from the local government that has withdrawn from the comprehensive plan. Privately owned municipal solid waste sanitary disposal projects failing to provide letters of cooperation will be unable to receive a permit or permit renewal. If a city, county, or other public agency complies with comprehensive planning requirements by means of a contract(s) with an agency holding a municipal solid waste sanitary disposal project permit or with a hauler(s) that has a contract(s) with an agency holding a municipal solid waste sanitary disposal project permit, a list of those contracts shall be submitted as provided in rule 567—101.5(455B,455D).

c. A detailed description of public participation, including:

- (1) Details of ongoing strategies to provide the public with opportunities to provide input.
- (2) A list of all public hearings or meetings that were held in conjunction with the development of the initial comprehensive plan and the methods used to publicize public meetings on the initial comprehensive plan.

(3) An account of opportunities for the public to comment on the initial comprehensive plan and minutes from any meetings regarding initial comprehensive plan development.

(4) Proof that a minimum of two public meetings were held during the development of the initial comprehensive plan. The first meeting shall inform the public of the initial comprehensive plan development process, while the second meeting shall provide the public with an opportunity for review and comment on the initial comprehensive plan.

d. A description of past local and regional planning activities.

e. A report of the base year waste stream in total tons per year. Progress toward meeting the state's waste volume reduction and recycling goals pursuant to rule 567—101.6(455B,455D) shall be demonstrated through methods described in this chapter.

f. A description of population, employment, and industrial production as of the planning area's base year waste stream.

g. A description of the current waste composition and waste generation rates and a projection of waste composition and waste generation rates spanning two planning cycles. This description should

include the effects of anticipated planning area modifications on waste generation and composition in the future. These factors may include economic changes, population changes, loss or addition of communities to the planning area, and any other modification expected to affect the amount of waste generated.

h. A description of the current integrated solid waste management system that contains a specific methodology for meeting the state's waste volume reduction and recycling goals pursuant to rule 567—101.6(455B,455D). This description shall include:

- (1) Details of strategies and educational efforts designed to:
 1. Increase public awareness about proper recycling and disposal options for motor oil and lead-acid batteries.
 2. Encourage residents of the planning area to dispose of household appliances properly.
 3. Encourage tire stewardship and proper tire recycling and disposal.
 4. Encourage backyard composting and proper management of yard waste.
 5. Encourage residents of the planning area to properly manage household hazardous waste.
- (2) A list of collectors/recyclers used by the permitted municipal solid waste sanitary disposal project(s) for the proper management of tires or household appliances.
- (3) A detailed narrative of all other existing waste management programs in the planning area that addresses all components of the state's waste management hierarchy. This narrative must include specific methodologies for the separation of glass, paper, plastic and metal. For each specific waste management program, the following shall be included:
 1. Program description.
 2. Responsibility for program oversight.
 3. Funding source(s).
 4. Public education strategies employed.
 5. Targeted audiences (business and industry, urban residents, rural residents, local governments, and public institutions).
 6. The anticipated impact on the waste stream and diversion over at least two planning cycles.
- (4) A discussion of the strengths and weaknesses of existing programs, efforts and strategies in the current integrated solid waste management system.
- (5) An evaluation of the planning area's progress toward meeting the state's waste volume reduction and recycling goals. This evaluation shall address the goal progress calculation that was most recently provided in writing by the department. The department, upon written notification of intent to submit an initial comprehensive plan, will, within 30 days after receipt of notification, perform a goal progress calculation using the most current complete fiscal year data set available.

i. An assessment of alternative waste management systems, programs and strategies that addresses each of the following tiers of the state's waste management hierarchy:

- (1) Source reduction options including, but not limited to, backyard composting and management of household hazardous waste.
- (2) Recycling and reuse options.
- (3) Combustion options with or without energy recovery. Any programs using incineration, with or without energy recovery, must include methodologies for prior removal of recyclable and reusable material, material that will result in uncontrolled toxic or hazardous air emissions when burned, and hazardous or toxic materials which are not rendered nonhazardous or nontoxic by incineration.
- (4) Use of other existing or planned sanitary landfills or transfer stations.

j. If construction of a new or purchase of an existing municipal solid waste sanitary disposal project is considered or proposed, an initial comprehensive plan shall include:

- (1) A summary of established and anticipated regulatory requirements regarding future siting, operation, closure and postclosure of each facility.
- (2) A financial plan detailing the actual cost of the municipal solid waste sanitary disposal project, including the funding sources of the project, and a description that spans two planning cycles of the methods of financing. The financial plan shall address:
 1. Initial capital expenditures, including land acquisition, if applicable.

2. Local approval costs, including legal, engineering, and administrative fees.
 3. Long-term costs, operations, closure and postclosure.
 4. A mechanism to fund closure and postclosure costs.
 5. Projected annual revenues.
- (3) A description of expected environmental impacts from the construction of a new or purchase of an existing municipal solid waste sanitary disposal project.

¹(4) Rescinded IAB 7/4/07, effective 10/1/07.

k. A specific plan and schedule spanning two planning cycles for implementing the initial comprehensive plan. Items that shall be addressed include:

- (1) Proposed activities and locations.
- (2) Responsible organization(s).
- (3) Implementation milestones.
- (4) Public education strategies.
- (5) Anticipated impact on the waste stream and diversion.

101.13(2) *Comprehensive plan updates for municipal solid waste sanitary disposal projects.* The department shall notify a planning agency of the due dates of the comprehensive plan update submittal a minimum of 12 months prior to the beginning of the planning cycle. In fulfillment of the requirements of Iowa Code section 455B.301A and Iowa Code chapter 455D, a comprehensive plan update shall include the following information:

a. A narrative that describes any permanent change in the planning area that has resulted in change in the waste stream, if applicable. An amendment to the comprehensive plan update is required prior to the facility's receiving waste on an ongoing basis from outside the delineated planning area.

b. A resolution or resolutions from all local governments or 28E agencies established for the purpose of managing solid waste or implementing integrated solid waste management systems, or both, on behalf of local governments, and letters of cooperation from privately owned municipal solid waste sanitary disposal projects participating in the comprehensive plan update. The resolution(s) shall include a statement that the comprehensive plan participants have reviewed the comprehensive plan update and will adopt the implementation schedule contained in the comprehensive plan update. Letters of cooperation from private agencies shall include a statement that they have reviewed the comprehensive plan update and support the waste reduction and recycling efforts outlined therein. The letter of cooperation shall briefly summarize the implementation schedule. If a local government included in the planning area refuses to provide a resolution, then that local government must prepare its own comprehensive plan and is no longer considered to be in the original planning area. In such cases, the original comprehensive plan update may still be approved if it includes a brief addendum stating the effect of the change on the waste stream, but the municipal solid waste sanitary disposal project(s) in the planning area may no longer accept waste from the local government that has withdrawn from the comprehensive plan. Privately owned municipal solid waste sanitary disposal projects failing to provide letters of cooperation will be unable to receive a permit or permit renewal. If a city, county, or other public agency complies with comprehensive planning requirements by means of a contract(s) with an agency holding a municipal solid waste sanitary disposal project permit or with a hauler(s) that has a contract(s) with an agency holding a municipal solid waste sanitary disposal project permit, a list of those contracts shall be submitted as provided in rule 567—101.5(455B,455D).

c. A description of public participation, including:

(1) A summary of ongoing strategies to provide the public with opportunities to provide input.

(2) A list of all public hearings or meetings that were held in conjunction with the development of the comprehensive plan update and the methods used to publicize public meetings.

(3) Proof that a minimum of two public meetings were held during the development of the comprehensive plan update. The first meeting shall inform the public of the comprehensive plan update development process, while the second meeting shall provide the public with an opportunity for review and comment on the comprehensive plan update.

(4) An account of opportunities for the public to comment on the comprehensive plan update and minutes from any meetings regarding comprehensive plan update development.

d. A report of the base year waste stream in total tons per year. This base year data and landfill tonnage information for the most current completed fiscal year data set available will be used to demonstrate progress toward meeting the state's waste volume reduction and recycling goals pursuant to rule 567—101.6(455B,455D) through methods described in this chapter.

e. A description of changes in population, employment, and industrial production since the last approved comprehensive plan or comprehensive plan update.

f. A description of current waste composition and waste generation rates, including:

(1) Changes since the last approved comprehensive plan or comprehensive plan update.
(2) The effects of anticipated planning area modifications on waste generation and composition in the future. These factors may include economic changes, population changes, loss or addition of communities to the planning area and any other modification expected to affect the amount of waste generated.

g. A discussion of changes to the integrated solid waste management system since the last approved comprehensive plan or comprehensive plan update, including:

(1) New and evolving strategies, efforts, and programs implemented within the planning area to:

1. Increase public awareness about proper recycling and disposal options for motor oil and lead-acid batteries.
2. Encourage residents of the planning area to dispose of household appliances properly.
3. Encourage tire stewardship and proper tire recycling and disposal.
4. Encourage backyard composting and proper management of yard waste.
5. Encourage residents of the planning area to properly manage household hazardous waste.
6. Provide for the separation of glass, paper, plastic and metal.

(2) A list of collectors/recyclers used by the permitted municipal solid waste sanitary disposal project(s) for the proper management of tires or household appliances.

(3) A detailed narrative of all waste management programs implemented since the last approved comprehensive plan or comprehensive plan update that addresses all components of the state's waste management hierarchy. For each specific waste management program implemented since the last approved comprehensive plan or comprehensive plan update, the following shall be included:

1. Program description.
2. Responsibility for program oversight.
3. Public education strategies employed.
4. Targeted audiences (business and industry, urban residents, rural residents, local governments, and public institutions).
5. The anticipated impact on the waste stream and diversion over at least two planning cycles.

h. An evaluation of progress toward meeting the state's waste volume reduction and recycling goals using the goal progress calculation provided by the department 12 months prior to the due date of the comprehensive plan update. This analysis may use any combination of the following methodologies:

(1) Trend analysis of goal progress since the initial comprehensive plan.
(2) Formal, stakeholder-based collaborative goal-setting process leading to development of long-range integrated solid waste management system goals. The process shall include development of detailed objective-based strategies to achieve the desired goals. If programs have been implemented since the establishment of the goals, the comprehensive plan update shall include analysis of their impact on the long-range goals.

(3) An analysis of the effectiveness or benefit of existing programs, individually and in aggregate, including a discussion of opportunities and need for improvement, modification or expansion.

i. Analysis of the impact of alternative solid waste management methods not currently employed, but being considered within the planning area.

j. A specific plan and schedule spanning two planning cycles for implementing the comprehensive plan. Items that shall be addressed include:

- (1) Proposed activities and locations.
- (2) Responsible organization(s).
- (3) Implementation milestones.

- (4) Public education strategies.
- (5) Anticipated impact on the waste stream and diversion.

101.13(3) *Transfer stations and construction and demolition waste disposal sites.* Rescinded IAB 8/12/09, effective 9/16/09.

101.13(4) *Comprehensive plan updates for permitted monowaste facilities.* Rescinded IAB 8/12/09, effective 9/16/09.

101.13(5) *Comprehensive plan updates for permitted monogenerator facilities.* Rescinded IAB 8/12/09, effective 9/16/09.

101.13(6) *Comprehensive plan updates for permitted incinerators.* Rescinded IAB 8/12/09, effective 9/16/09.

101.13(7) *Comprehensive plan amendments.* If a municipal solid waste sanitary disposal project or city or county requests to be included in a planning area after completion of an initial comprehensive plan or a comprehensive plan update but before the next comprehensive plan update is due, and the planning area participants agree to include the city, county, or municipal solid waste sanitary disposal project, the following procedure is required:

a. A letter must be submitted to the department by the facility operator describing the facility's operation and the amount of waste to be managed, or by the city or county describing that local government's intention to participate in the specified comprehensive plan.

b. In a letter that must be submitted to the department, the planning agency must agree to accept the city, county, or municipal solid waste sanitary disposal project in the planning agency's planning area and must state how the change will affect the planning area's waste stream, including an explanation of the change in the planning area, the amount of waste involved and details of waste reduction and recycling efforts that will be implemented in any new communities, if applicable.

c. The next comprehensive plan update submitted by the planning agency shall include the amended city, county, or municipal solid waste sanitary disposal project.

d. If a city or county joins a planning area, a resolution must be submitted to the department stating the city's or county's commitment to the comprehensive plan of the planning area, and stating that the city or county will work to implement the comprehensive plan of the planning area.

101.13(8) *Failure to meet the 25 percent waste volume reduction and recycling goal.* If at any time the department notifies a planning agency in writing that the planning area has failed to meet the 25 percent waste volume reduction and recycling goal, then, at a minimum, the solid waste management techniques listed in Iowa Code section 455D.3(4) must be implemented throughout the planning area. Evidence of implementation of these solid waste management techniques shall be documented in comprehensive plan updates. The planning area shall:

a. Develop draft ordinances no later than 6 months after the date of the goal progress calculation approval letter issued by the department. Ordinances shall be enacted and implemented no later than 12 months after the date of issuance of the goal progress calculation approval letter. Local governments are charged with the responsibility for establishing collection fees that are based on volume or on the number of containers used for disposal by residents, and for submitting documentation of ordinance enactment and implementation.

Local governments shall set the maximum container limit for a base price service at or below 100 gallons of solid waste per household per week. If an ordinance has a base price service limit that is over 100 gallons of solid waste per household per week, communities will be required to justify how the ordinance has been designed to meet the state's waste volume reduction and recycling goals.

b. Conduct an educational and promotional program to inform citizens of the manner and benefits of reducing, reusing, and recycling materials and the procurement of products made with recycled content. The program shall include the following:

(1) Targeted waste reduction and recycling education for residents, including residents of multifamily dwelling complexes having five or more units.

(2) A seminar for the commercial sector regarding the benefits of and opportunities for waste reduction and recycling. The planning area shall provide a description of the methods used to encourage participation in the commercial recycling seminar and a list or count of the businesses attending.

- (3) Promotion of recycling through targeted community and media events.
- (4) Recycling notification and educational packets to all new residential, commercial, and institutional collection service customers that include, at a minimum, the manner of preparation of materials for collection and the reasons for separation of materials for recycling.

c. Notify the public of the planning area's failure to meet the waste volume reduction goals of this chapter.

- (1) The planning area participants shall notify the public using the following standard language:

PUBLIC NOTIFICATION
(insert NAME OF SOLID WASTE PLANNING AREA)

The Iowa General Assembly mandated that the amount of waste landfilled as of July 1, 1988, be reduced 25 percent by July 1, 1994, and 50 percent by July 1, 2000, through source reduction and recycling activities.

The (insert name of solid waste planning area) did not meet the state's 25 percent waste volume reduction and recycling goal and is now required to implement a number of waste management techniques. Because the (insert name of solid waste planning area) did not meet the 25 percent goal, landfill users will pay 50 cents per ton in addition to the state solid waste fee of \$4.25 per ton of material landfilled. This additional fee will be applied until the (insert name of solid waste planning area) demonstrates it has attained the goal. In contrast, those planning areas meeting the goal may subtract 60 cents per ton from the state solid waste fee.

The (insert name of solid waste planning area) must also do the following:

- 1. Develop draft ordinances to be used by local governments for establishing fees that are based on volume or on the number of containers used for disposal by residents;
- 2. Conduct an educational and promotional program to inform citizens of the manner and benefits of reducing, reusing, and recycling materials and the procurement of products made with recycled content.

Everyone—businesses, industries, schools, governments, and citizens—must work together to reduce the amount of valuable resources being landfilled.

To find out how you can help reduce waste and participate in the activities listed above, please contact (insert name of contact person) at (insert telephone number of contact person).

The (insert name of solid waste planning area) includes (insert names of participating local governments—cities and counties).

- (2) The planning area participants shall notify the public using the following procedures:

- 1. Publication of the notice in not less than a one-quarter page format in a daily newspaper(s) of general circulation in each county within the planning area as soon as possible, or within 60 days from the date the department notifies the planning agency that it has failed to meet the 25 percent waste volume reduction and recycling goal.

- 2. If counties served by the planning area are not served by a daily newspaper(s) of general circulation, notice shall instead be given by publication in a weekly newspaper(s) of general circulation in each county within the planning area.

- (3) The planning agency shall submit to the department, within 30 days from the date of publication of the public notice, proof of publication from the newspaper(s) used to satisfy this requirement.

d. For municipal solid waste sanitary disposal projects required to remit state tonnage fees, require remittance of an additional 50 cents per ton to the department as outlined in subrule 101.14(3).

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

¹ Effective date of rescission of 101.13(1)“j”(4) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007.

567—101.14(455B,455D) Fees for disposal of solid waste at sanitary landfills.**101.14(1) Authority, purpose and applicability.**

a. Authority. Pursuant to Iowa Code section 455B.310, the department has authority to collect fees for the disposal of solid waste at sanitary landfills. All tonnage fees received by the department under this rule shall be deposited in the solid waste account of the groundwater protection fund created under Iowa Code section 455E.11(1).

b. Purpose. The purpose of this rule is to provide an orderly and efficient process for the assessment and collection of fees for the disposal of solid waste at a sanitary landfill. This rule clarifies the applicability of the fees and sets forth a fee schedule, means of filing, and record-keeping requirements.

c. Applicability. Except as provided in subrule 101.14(2), operators of all sanitary landfills located within Iowa and subject to the permitting requirements of the department shall pay a fee for each ton of solid waste disposed of in the landfill.

101.14(2) Exclusion. Fees do not apply to wastes which will not be buried at a sanitary landfill if such material is salvaged or recycled in accordance with the provisions of the landfill permit.

101.14(3) Fee schedule.

a. The base tonnage fee is \$4.25 per ton of solid waste.

b. The statewide goal progress average is 36 percent, as determined by the department on July 1, 1999.

c. If at any time the department notifies a planning agency or municipal solid waste sanitary disposal project(s) in writing that the planning area has failed to meet the 25 percent goal, all municipal solid waste sanitary disposal projects within that planning area that are required to remit state tonnage fees shall collect an additional 50 cents per ton, in addition to the base tonnage fee starting with the next scheduled fee payment. All municipal solid waste sanitary disposal projects within the planning area that are required to remit state tonnage fees shall remit to the department \$3.30 per ton for the tonnage fees collected, and the sanitary landfill operator(s) shall retain the remaining \$1.45 per ton. Of the tonnage fee retained by the sanitary landfill operator(s), 95 cents per ton is to be used for comprehensive plan implementation and 50 cents per ton is to be used for environmental protection activities and for comprehensive planning. Environmental protection activities include the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, the preparation of a financial plan, or other environmental protection activities. Moneys due to the department under this paragraph shall be remitted until such time as evidence of attainment of the 25 percent goal by the planning area is documented and approved in writing by the department.

d. If at any time the department notifies a planning agency and municipal solid waste sanitary disposal project(s) in writing that the planning area has met or exceeded the 25 percent goal, all municipal solid waste sanitary disposal projects within that planning area that are required to remit state tonnage fees shall reduce by 60 cents per ton the total amount of the base tonnage fee collected, starting with the next scheduled fee payment.

(1) If the planning area meets the 25 percent goal but is under the statewide average described in paragraph 101.14(3) "b," all municipal solid waste sanitary disposal projects within that planning area that are required to remit state tonnage fees shall remit to the department \$2.20 per ton for the tonnage fees collected, and the sanitary landfill operator(s) shall retain the remaining \$1.45 per ton. Of the tonnage fee retained by the sanitary landfill operator(s), 95 cents per ton is to be used for comprehensive plan implementation and 50 cents per ton is to be used for environmental protection activities and for comprehensive planning. Environmental protection activities include the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, the preparation of a financial plan, or other environmental protection activities. Moneys due to the department under this paragraph shall be remitted until such time as evidence of a change in the planning area's progress toward meeting the state's waste volume reduction and recycling goals is documented and approved in writing by the department.

(2) If the planning area meets the 25 percent goal and exceeds the statewide average described in paragraph 101.14(3)“b,” all municipal solid waste sanitary disposal projects within that planning area that are required to remit state tonnage fees shall remit to the department \$2.10 per ton for the tonnage fees collected, and the sanitary landfill operator(s) shall retain the remaining \$1.55 per ton. Of the tonnage fee retained by the sanitary landfill operator(s), \$1.05 per ton is to be used for comprehensive plan implementation and 50 cents per ton is to be used for environmental protection activities and for comprehensive planning. Environmental protection activities include the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, the preparation of a financial plan, or other environmental protection activities. Moneys due to the department under this paragraph shall be remitted until such time as evidence of a change in the planning area’s progress toward meeting the state’s waste volume reduction and recycling goals is documented and approved in writing by the department.

e. If at any time the department notifies a planning agency or municipal solid waste sanitary disposal project(s) in writing that the planning area has met or exceeded the 50 percent goal, all municipal solid waste sanitary disposal projects within that planning area that are required to remit state tonnage fees shall reduce by \$1.00 per ton the total amount of the base tonnage fee collected, starting with the next scheduled fee payment. All municipal solid waste sanitary disposal projects within the planning area that are required to remit state tonnage fees shall remit to the department \$1.95 per ton for the tonnage fees collected, and the sanitary landfill operator(s) shall retain the remaining \$1.30 per ton. Of the tonnage fee retained by the sanitary landfill operator(s), 80 cents per ton is to be used for comprehensive plan implementation and 50 cents per ton is to be used for environmental protection activities and for comprehensive planning. Environmental protection activities include the development of a closure or postclosure plan, the development of a plan for the control and treatment of leachate including the preparation of facility plans and detailed plans and specifications, the preparation of a financial plan, or other environmental protection activities. Moneys due to the department under this paragraph shall be remitted until such time as evidence of a change in the planning area’s progress toward meeting the state’s waste volume reduction and recycling goals is documented and approved in writing by the department.

Table 1 sets forth the solid waste tonnage fee schedule.

Table 1	
Planning areas with less than 25% diversion level:	
Collect	\$4.75 per ton
Remit	\$3.30 per ton to the department
Retain	\$1.45 per ton (\$0.95 per ton for implementing planning, \$0.50 per ton for environmental protection, comprehensive plan development and implementation)
Planning areas over 25% diversion, under the state average, and under 50%:	
Collect	\$3.65 per ton
Remit	\$2.20 per ton to the department
Retain	\$1.45 per ton (\$0.95 per ton for implementing planning, \$0.50 per ton for environmental protection, comprehensive plan development and implementation)
Planning areas over 25% diversion, over the state average, and under 50%:	
Collect	\$3.65 per ton
Remit	\$2.10 per ton to the department
Retain	\$1.55 per ton (\$1.05 per ton for implementing planning, \$0.50 per ton for environmental protection, comprehensive plan development and implementation)
Planning areas over 50% diversion:	

Collect	\$3.25 per ton
Remit	\$1.95 per ton to the department
Retain	\$1.30 per ton (\$0.80 per ton for implementing planning, \$0.50 per ton for environmental protection, comprehensive plan development and implementation)

f. Retained tonnage fees collected pursuant to this subrule shall be approved by the department and used for implementation of programs and services designed to satisfy the requirements of this chapter.

g. For purposes of calculating tonnage fees, sanitary landfills shall utilize scales and shall base the fee assessment on the net scale weight of solid wastes disposed of at the landfill during the reporting period.

h. If special conditions existing at a sanitary landfill make it impractical to use the landfill's scales to determine waste tonnages, the landfill may propose, for department review and approval, an alternate method for determining the weight of disposed solid waste.

101.14(4) Form, manner, time and place of filing.

a. Form. Any person to whom or entity to which this rule applies shall file a completed DNR Form 542-3276, Quarterly Solid Waste Fee Schedule and Retained Fees Report.

b. Manner, time and place. Fees are to be paid on a quarterly basis. Sanitary landfills serving more than one planning area, as expressed in rule 101.12(455B,455D), shall submit separate Quarterly Solid Waste Fee Schedule and Retained Fees Reports for each planning area. The fees and report on retained fees will be due January 1, April 1, July 1, and October 1 for the quarters ending September 30, December 31, March 31, and June 30, respectively. The completed form shall be submitted with the appropriate fees to Accounting, Department of Natural Resources, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319.

101.14(5) Reporting and record keeping.

a. Operating records. Those sanitary landfill operators who are subject to the fee assessment requirements of this rule shall maintain adequate records to determine and document the weight of solid waste received at and disposed of in the sanitary landfill during the calendar year. Planning areas entering into an agreement pursuant to Iowa Code Supplement section 455B.306(2) shall submit documentation to the department and a planning area receiving the solid waste under such an agreement shall, in addition, submit evidence to the department demonstrating that required retained fees were returned in a timely manner to other planning area(s) under the agreement.

b. Retention of records. All records used in determining the solid waste fee assessment must be kept for a period of at least three years from the end of the calendar year which the records represent.

c. Availability of records. All records required under this rule must be furnished upon request and be made available at all reasonable times for inspection to any officer, employee, or representative of the department who is duly designated by the director.

101.14(6) Failure to pay fees. If it is found that a person or entity has failed to pay the fees assessed by this rule, the director shall enforce the collection of the delinquent fees. A person or entity required to pay fees as required by Iowa Code section 455B.310 that fails or refuses to pay the fees by the due date shall be assessed a penalty of 2 percent of the quarterly fee due, to be assessed on January 2, April 2, July 2, and October 2, and on a monthly basis on the first day of each month thereafter, until paid. A person or entity required to retain fees as required by Iowa Code section 455B.310 that fails or refuses to report the use of the retained fees by the due date shall be assessed a penalty of 2 percent of the retained fees due to the department, with said penalty to be assessed on January 2, April 2, July 2, and October 2, and on a monthly basis on the first day of each month thereafter, until paid. All penalties shall be paid in addition to the fees due.

[ARC 8037B, IAB 8/12/09, effective 9/16/09]

These rules are intended to implement Iowa Code sections 455B.301A, 455B.302, 455B.306, and 455D.3.

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¹ Rules 101.4 and 101.7 rescinded, rules 101.5, 101.6 and 101.8 renumbered as 101.4 to 101.6, IAB 9/12/84.

² Effective date of rescission of 101.13(1)“j”(4) delayed 70 days by the Administrative Rules Review Committee at its meeting held September 11, 2007.

PODIATRISTS

CHAPTER 220	LICENSURE OF PODIATRISTS
CHAPTER 221	RESERVED
CHAPTER 222	CONTINUING EDUCATION FOR PODIATRISTS
CHAPTER 223	PRACTICE OF PODIATRY
CHAPTER 224	DISCIPLINE FOR PODIATRISTS

CHAPTER 220
LICENSURE OF PODIATRISTS

645—220.1(149) Definitions. For purposes of these rules, the following definitions shall apply:

“*Active license*” means a license that is current and has not expired.

“*Board*” means the board of podiatry.

“*Grace period*” means the 30-day period following expiration of a license when the license is still considered to be active. In order to renew a license during the grace period, a licensee is required to pay a late fee.

“*Inactive license*” means a license that has expired because it was not renewed by the end of the grace period. The category of “inactive license” may include licenses formerly known as lapsed, inactive, delinquent, closed, or retired.

“*Licensee*” means any person licensed to practice as a podiatrist in the state of Iowa.

“*License expiration date*” means June 30 of even-numbered years.

“*Licensure by endorsement*” means the issuance of an Iowa license to practice podiatry to an applicant who is or has been licensed in another state.

“*Mandatory training*” means training on identifying and reporting child abuse or dependent adult abuse required of podiatrists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

“*NBPME*” means National Board of Podiatric Medical Examiners.

“*Reactivate*” or “*reactivation*” means the process as outlined in rule 220.15(17A,147,272C) by which an inactive license is restored to active status.

“*Reciprocal license*” means the issuance of an Iowa license to practice podiatry to an applicant who is currently licensed in another state that has a mutual agreement with the Iowa board of podiatry to license persons who have the same or similar qualifications to those required in Iowa.

“*Reinstatement*” means the process as outlined in 645—11.31(272C) by which a licensee who has had a license suspended or revoked or who has voluntarily surrendered a license may apply to have the license reinstated, with or without conditions. Once the license is reinstated, the licensee may apply for active status.

645—220.2(149) Requirements for licensure. The following criteria shall apply to licensure:

220.2(1) An applicant shall complete a board-approved application packet. Application forms may be obtained from the board’s Web site (<http://www.idph.state.ia.us/licensure>) or directly from the board office. All applications shall be sent to the Board of Podiatry, Bureau of Professional Licensure, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

220.2(2) An applicant shall complete the application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board.

220.2(3) Each application shall be accompanied by the appropriate fees payable to the Board of Podiatry. The fees are nonrefundable.

220.2(4) No application will be considered complete until official copies of academic transcripts are received, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric

Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board.

220.2(5) Licensees who were issued their licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

220.2(6) Incomplete applications that have been on file in the board office for more than two years shall be:

- a.* Considered invalid and shall be destroyed; or
- b.* Retained upon written request of the applicant. The applicant is responsible for requesting that the file be retained.

220.2(7) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.2(8) An applicant who graduated from a podiatric college on or after January 1, 1995, shall present documentation of successful completion of a residency approved by the American Podiatric Medical Association's Council on Podiatric Medical Education.

220.2(9) Passing score reports for Part I, Part II, and Part III of the NBPME examination shall be sent directly from the examination service to the board.

[ARC 8028B, IAB 8/12/09, effective 9/16/09]

645—220.3(149) Written examinations.

220.3(1) The examinations required by the board shall be Part I, Part II, and Part III of the NBPME.

220.3(2) The applicant has responsibility for:

- a.* Making arrangements to take the examinations; and
- b.* Arranging to have the examination score reports sent directly to the board from the NBPME.

220.3(3) A passing score as recommended by the administrators of the NBPME examinations shall be required.

[ARC 8028B, IAB 8/12/09, effective 9/16/09]

645—220.4(149) Educational qualifications.

220.4(1) A new applicant for permanent or temporary licensure to practice as a podiatrist shall present official copies of academic transcripts, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board of podiatry.

220.4(2) Foreign-trained podiatrists shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundations, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site www.ierf.org, or E-mail at info@ierf.org; or International Credentialing Associates, Inc., 7245 Bryan Dairy Road, Bryan Dairy Business Park II, Largo, FL 33777, telephone (727)549-8555. The professional curriculum must be equivalent to that stated in these rules. The candidate shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a podiatry program in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

[ARC 8028B, IAB 8/12/09, effective 9/16/09]

645—220.5(149) Title designations. A podiatrist may use the prefix "Doctor" but shall add after the person's name the word "Podiatrist" or "DPM."

645—220.6(147,149) Temporary license.

220.6(1) A temporary license may be issued for one year and may be annually renewed at the discretion of the board.

220.6(2) Each applicant shall:

a. Submit a completed application form according to the instructions contained in the application. If the application is not completed according to the instructions, the application will not be reviewed by the board;

b. Submit the appropriate fees payable to the Board of Podiatry. The fees are nonrefundable;

c. Have official copies of academic transcripts sent directly to the board of podiatry from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association;

d. Request that passing score reports of the NBPME examination Part I and Part II be sent directly to the board of podiatry from the National Board of Podiatric Medical Examiners;

e. Furnish an affidavit by the institution director or dean of an approved podiatric college from this state, attesting that the applicant has been accepted into a residency program. The residency program must be approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association;

f. Request verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

220.6(3) An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.6(4) The ultimate decision to issue a temporary license resides with the board, and a temporary license shall be surrendered if the reason for issuance ceases to exist.

[ARC 8028B, IAB 8/12/09, effective 9/16/09]

645—220.7(149) Licensure by endorsement. An applicant who has been a licensed podiatrist under the laws of another jurisdiction shall file an application for licensure by endorsement with the board office.

220.7(1) The board may receive by endorsement any applicant from the District of Columbia, another state, territory, province or foreign country who:

a. Submits to the board a completed application;

b. Pays the licensure fee;

c. Shows evidence of licensure requirements that are similar to those required in Iowa;

d. Provides the board with official copies of academic transcripts, verifying graduation from a college of podiatric medicine approved by the Council on Podiatric Medical Education (CPME) of the American Podiatric Medical Association. Transcripts must be sent directly from the school to the board of podiatry; and

e. Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

- (1) Licensee's name;
- (2) Date of initial licensure;
- (3) Current licensure status; and
- (4) Any disciplinary action taken against the license.

220.7(2) An applicant shall submit the passing score reports for Part I and Part II of the NBPME examination. An applicant who graduated from a podiatric college in 1961 or earlier, is currently licensed in another state, and has practiced for the 24 months immediately prior to application may be exempted from passing Part I and Part II of the NBPME examination based on the applicant's credentials and the discretion of the board.

220.7(3) An applicant shall submit passing score reports for Part III of the NBPME examination. An applicant who passed the Part III NBPME examination more than three years prior to the date of application in Iowa must submit proof of podiatry practice for one of the last three years.

220.7(4) An applicant who graduated from a podiatric college on or after January 1, 1995, must present documentation of successful completion of a residency approved by the American Podiatric Medical Association's Council on Podiatric Medical Education.

[ARC 8028B, IAB 8/12/09, effective 9/16/09]

645—220.8(147) Licensure by reciprocal agreement. Rescinded IAB 11/5/08, effective 12/10/08.

645—220.9(149) License renewal.

220.9(1) The biennial license renewal period for a license to practice podiatry shall begin on July 1 of an even-numbered year and end on June 30 of the next even-numbered year. The board shall send a renewal notice by regular mail to each licensee at the address on record at least 60 days prior to the expiration of the license. The licensee is responsible for renewing the license prior to its expiration. Failure of the licensee to receive the notice does not relieve the licensee of the responsibility for renewing the license.

220.9(2) An individual who was issued a license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

220.9(3) A licensee seeking renewal shall:

a. Meet the continuing education requirements of rule 645—222.2(149,272C) and the mandatory reporting requirements of subrule 220.9(4). A licensee whose license was reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

b. Submit the completed renewal application and renewal fee before the license expiration date.

220.9(4) Mandatory reporter training requirements.

a. A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who, in the scope of professional practice or in the course of employment, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse. The course shall be a curriculum approved by the Iowa department of public health abuse education review panel.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension

of time in which to fulfill requirements due to a physical or mental disability or illness as identified in 645—Chapter 4.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

220.9(5) Upon receiving the information required by this rule and the required fee, board staff shall administratively issue a two-year license and shall send the licensee a wallet card by regular mail. In the event the board receives adverse information on the renewal application, the board shall issue the renewal license but may refer the adverse information for further consideration or disciplinary investigation.

220.9(6) A person licensed to practice podiatry shall keep the license certificate and wallet card(s) displayed in a conspicuous public place at the primary site of practice.

220.9(7) Late renewal. The license shall become late when the license has not been renewed by the expiration date on the wallet card. The licensee shall be assessed a late fee as specified in 645—subrule 5.15(3). To renew a late license, the licensee shall complete the renewal requirements and submit the late fee within the grace period.

220.9(8) Inactive license. A licensee who fails to renew the license by the end of the grace period has an inactive license. A licensee whose license is inactive continues to hold the privilege of licensure in Iowa, but may not practice as a podiatrist in Iowa until the license is reactivated. A licensee who practices as a podiatrist in the state of Iowa with an inactive license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

645—220.10(272C) Exemptions for inactive practitioners. Rescinded IAB 8/3/05, effective 9/7/05.

645—220.11(272C) Lapsed licenses. Rescinded IAB 8/3/05, effective 9/7/05.

645—220.12(147) Duplicate certificate or wallet card. Rescinded IAB 11/5/08, effective 12/10/08.

645—220.13(147) Reissued certificate or wallet card. Rescinded IAB 11/5/08, effective 12/10/08.

645—220.14(17A,147,272C) License denial. Rescinded IAB 11/5/08, effective 12/10/08.

645—220.15(17A,147,272C) License reactivation. To apply for reactivation of an inactive license, a licensee shall:

220.15(1) Submit a reactivation application on a form provided by the board.

220.15(2) Pay the reactivation fee that is due as specified in 645—Chapter 5.

220.15(3) Provide verification of current competence to practice as a podiatrist by satisfying one of the following criteria:

a. If the license has been on inactive status for five years or less, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction’s board office if the verification includes:

1. Licensee’s name;
2. Date of initial licensure;
3. Current licensure status; and
4. Any disciplinary action taken against the license; and

(2) Verification of completion of 40 hours of continuing education within two years of application for reactivation.

b. If the license has been on inactive status for more than five years, an applicant must provide the following:

(1) Verification of the license(s) from every jurisdiction in which the applicant is or has been licensed and is or has been practicing during the time period the Iowa license was inactive, sent directly

from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

1. Licensee's name;
 2. Date of initial licensure;
 3. Current licensure status; and
 4. Any disciplinary action taken against the license; and
- (2) Verification of completion of 80 hours of continuing education within two years of application for reactivation.

645—220.16(17A,147,272C) License reinstatement. A licensee whose license has been revoked, suspended, or voluntarily surrendered must apply for and receive reinstatement of the license in accordance with 645—11.31(272C) and must apply for and be granted reactivation of the license in accordance with 220.15(17A,147,272C) prior to practicing as a podiatrist in this state.

These rules are intended to implement Iowa Code chapters 17A, 147, 149, and 272C.

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TRANSPORTATION DEPARTMENT[761]

Rules transferred from agency number [820] to [761] to conform with the reorganization numbering scheme in general IAC Supp. 6/3/87.

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761—162.1(83GA,SF376) Purpose and source of funds. This chapter implements 2009 Iowa Acts, Senate File 376, section 34, which creates a bridge safety fund. 2009 Iowa Acts, Senate File 376, section 13, subsection 6, appropriates \$50 million to the department from tax-exempt revenue bonds to be used for infrastructure projects relating to functionally obsolete and structurally deficient bridges on the state's primary road system.

[ARC 8026B, IAB 8/12/09, effective 7/15/09]

761—162.2(83GA,SF376) Definitions.

"Functionally obsolete" means the classification of a highway structure indicating one or more geometric features of the structure are below the standard required for current traffic. The classification is based on criteria established by the Federal Highway Administration in the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges."

"Primary road system" means the same as defined in Iowa Code section 306.3.

"Structurally deficient" means the classification of a highway structure indicating one or more elements of the structure are in need of monitoring or repair. The classification is based on criteria established by the Federal Highway Administration in the "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges."

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761—162.3(83GA,SF376) General information.

162.3(1) Information regarding this chapter is available from the Office of Bridges and Structures, Iowa Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010; telephone (515)239-1564.

162.3(2) The publication entitled "Recording and Coding Guide for the Structure Inventory and Appraisal of the Nation's Bridges," December 1995, may be obtained from the office of bridges and structures or is available on the Internet at <http://www.fhwa.dot.gov/bridge/mtguide.pdf>.

[ARC 8026B, IAB 8/12/09, effective 7/15/09]

761—162.4(83GA,SF376) Eligibility.

162.4(1) In order for a bridge to be eligible for funding under this chapter, it must:

- a. Be on the state's primary road system as defined in rule 761—162.2(83GA,SF376).
- b. Be either functionally obsolete or structurally deficient as defined in rule 761—162.2(83GA,SF376).
- c. Be able to be developed, designed, constructed, completed and paid for within the prescribed time frames of 2009 Iowa Acts, Senate File 376.

162.4(2) The aggregate estimated cost of the projects must fall within the \$50 million that was appropriated to the bridge safety fund in 2009 Iowa Acts, Senate File 376.

[ARC 8026B, IAB 8/12/09, effective 7/15/09]

These rules are intended to implement 2009 Iowa Acts, Senate File 376, section 34.

[Filed Emergency ARC 8026B, IAB 8/12/09, effective 7/15/09]

CHAPTER 620
OWI AND IMPLIED CONSENT
[Prior to 6/3/87, Transportation Department[820]—(07,C)Ch 11]

761—620.1(321J) Definitions. Rescinded IAB 1/8/92, effective 2/12/92.

761—620.2(321J) Information and location. Applications, forms, information, assistance, and answers to questions relating to this chapter are available by mail from the Office of Driver Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (800)532-1121; or by facsimile at (515)237-3071.

761—620.3(321J) Issuance of temporary restricted license.

620.3(1) Eligibility and application.

a. The department may issue a temporary restricted license to a person who is eligible under Iowa Code section 321J.4 (except subsection 8), 321J.9, 321J.12 or 321J.20. The department shall not issue a temporary restricted license to a person who has a current suspension or revocation for any other reason, or who is otherwise ineligible.

b. To apply for a temporary restricted license, an applicant shall, at any time before or during the revocation period, submit application Form 430100 to the office of driver services at the address in 761—620.2(321J). The application form should be furnished by the arresting officer. It may also be obtained upon oral or written request to the office of driver services or by submitting Form 432018 to driver services with the appropriate box checked.

c. A temporary restricted license issued for employment may include permission for the licensee to transport dependent children to and from a location for child care when that activity is essential to continuation of the licensee's employment.

620.3(2) Statements. A person applying for a temporary restricted license shall submit all of the following statements that apply to the person's situation. Each statement shall explain the need for the license and shall list specific places and times for the activity which can be verified by the department.

a. A statement from the person's employer unless the person is self-employed including, when applicable, verification that the person's use of a child care facility is essential to the person's continued employment.

b. A statement from the person.

c. A statement from the health care provider if the person or the person's dependent requires continuing health care.

d. A statement from the educational institution in which the person is enrolled.

e. A statement from the substance abuse treatment program in which the person is participating.

f. A copy of the court order for community service and a statement describing the assigned community service from the responsible supervisor.

g. A statement from the child care provider.

620.3(3) Additional requirements. A person applying for a temporary restricted license shall also comply with all of the following requirements:

a. Provide a description of all motor vehicles to be operated under the temporary restricted license.

b. Submit proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated under the temporary restricted license.

c. Provide certification of installation of an approved ignition interlock device on every motor vehicle operated.

d. Pay the \$200 civil penalty.

620.3(4) Issuance and restrictions.

a. When the application is approved and all requirements are met, the applicant shall be notified by the department to appear before a driver's license examiner. The applicant shall pass the appropriate

examination for the type of vehicle to be operated under the temporary restricted license. An Iowa resident shall also pay the reinstatement and license fees.

b. The department shall determine the restrictions to be imposed by the temporary restricted license. The licensee shall apply to the department in writing with a justification for any requested change in license restrictions.

620.3(5) Denial. A person who has been denied a temporary restricted license or who contests the restrictions imposed by the department may request an informal settlement conference by submitting a written request to the director of the office of driver services at the address given in 761—620.2(321J). Following an unsuccessful informal settlement or instead of that procedure, the person may request a contested case hearing in accordance with rule 620.4(321J).

620.3(6) Issuance of temporary restricted license to repeat offender whose driving privilege is revoked under Iowa Code section 321J.4(2).

a. It is the opinion of the department that the amendment to Iowa Code section 321J.4(2) by 2009 Iowa Acts, Senate File 419, section 13, was undertaken in response to changes to 23 U.S.C. § 164, “Minimum penalties for repeat offenders for driving while intoxicated or driving under the influence,” effected by the SAFETEA-LU Technical Corrections Act of 2008, Public Law No. 110-244, § 115, 122 Stat. 1572 (June 6, 2008), and that Iowa Code section 321J.4(2) as amended by 2009 Iowa Acts, Senate File 419, section 13, is intended to remain and be interpreted in conformance with the requirements of 23 U.S.C. § 164, including the requirements for restricted driving privileges after 45 days.

b. Accordingly, any provision in subrules 620.3(1) to 620.3(5) notwithstanding, any temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) shall be limited during the first year of the two-year revocation period to driving to and from work when necessary to maintain the person’s present employment, and shall not be allowed for any other purpose, including but not limited to transporting dependent children to and from a location for child care. After the first year of the two-year revocation period, a temporary restricted license issued to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) may permit the person to drive to and from work as well as for any other work purpose when necessary to maintain the person’s present employment and may permit the person to transport dependent children to and from a location for child care when that activity is essential to continuation of the person’s employment.

c. All pleadings and orders submitted by the department under Iowa Code section 321J.4(9) in regard to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) will be in accord with the requirements of this subrule, and the department shall enforce any order authorizing the department to issue a temporary restricted license to a person whose driving privilege is revoked under Iowa Code section 321J.4(2) according to the requirements of this subrule.

d. The department interprets 2009 Iowa Acts, Senate File 419, section 13, as applying to convictions entered on or after July 1, 2009, and accordingly this subrule shall apply to revocations arising from convictions entered on or after July 1, 2009.

[ARC 8024B, IAB 8/12/09, effective 7/14/09]

761—620.4(321J) Hearings and appeals.

620.4(1) Contested case hearing.

a. A person may request a contested case hearing by checking the appropriate box on Form 432018 and submitting it to the department or by submitting a written request to the director of the office of driver services at the address given in 761—620.2(321J). The request shall include the person’s name, date of birth, driver license number, complete address and telephone number.

b. A request for a hearing to contest the denial of a temporary restricted license or to contest the restrictions may be submitted at any time.

c. A request for a hearing to contest a revocation shall be submitted within ten days after receipt of the revocation notice. The request shall be deemed timely submitted if it is delivered to the director of the office of driver services or properly addressed and postmarked within this time period.

d. Failure to timely request a hearing on a revocation is a waiver of the right to a hearing under Iowa Code chapter 321J, and the revocation shall become effective on the date specified in the revocation notice.

e. After a hearing, a written decision will be issued by the presiding officer.

620.4(2) Appeal. A decision by a presiding officer shall become the final decision of the department and shall be binding on the department and the person who requested the hearing unless either appeals the decision in accordance with this subrule.

a. The appeal shall be decided on the basis of the record made before the presiding officer in the contested case hearing and no additional evidence shall be presented.

b. The appeal shall include a statement of the specific issues presented for review and the precise ruling or relief requested.

c. An appeal of the presiding officer's decision shall be submitted in writing by sending the original and one copy of the appeal to the director of the office of driver services at the address given in 761—620.2(321J).

d. An appeal shall be deemed timely submitted if it is delivered to the director of the office of driver services or properly addressed and postmarked within ten days after receipt of the presiding officer's decision.

e. The director of the office of driver services shall forward the appeal to the director of transportation. The director of transportation may affirm, modify or reverse the decision of the presiding officer, or may remand the case to the presiding officer.

f. Failure to timely appeal a decision shall be considered a failure to exhaust administrative remedies.

620.4(3) Final agency action. The decision of the director of transportation shall be the final decision of the department and shall constitute final agency action for purposes of judicial review. No further steps are necessary to exhaust administrative remedies.

620.4(4) Default.

a. If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no continuance is granted, either enter a default decision or proceed with the hearing and render a decision in the absence of the party.

b. Any party may move for default against a party who has requested the contested case proceeding and who has failed to appear after proper service.

c. A default decision or a decision rendered on the merits after a party has failed to appear or participate in a contested case proceeding becomes final agency action unless, within ten days after receipt of the decision, either a motion to vacate is filed and served on the presiding officer and the other parties or an appeal of a decision on the merits is timely submitted in accordance with subrule 620.4(2). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate.

d. The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

e. Timely filed motions to vacate shall be granted only for good cause shown. The burden of proof is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate.

f. "Good cause" for the purpose of this rule means surprise, excusable neglect or unavoidable casualty.

g. A decision denying a motion to vacate is subject to further appeal in accordance with subrule 620.4(2).

h. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party in accordance with subrule 620.4(2).

i. If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

620.4(5) Petition to reopen a hearing.

a. A petition to reopen a hearing pursuant to Iowa Code section 17A.16 shall be submitted in writing to the director of the office of driver services at the address in 761—620.2(321J). If a petition is

based on a court order, a copy of the court order shall be submitted with the petition. If a petition is based on new evidence, the petitioner shall submit a concise statement of the new evidence and the reason(s) for the unavailability of the evidence at the original hearing.

b. A petition to reopen a hearing may be submitted at any time even if a hearing to contest the revocation was not originally requested or held.

c. A person may appeal a denial of the petition to reopen. The appeal shall be deemed timely if it is delivered to the director of the office of driver services at the address in 761—620.2(321J) or properly addressed and postmarked within 20 days after issuance of the decision denying the petition to reopen.

761—620.5(321J) Reinstatement. When the revocation period has ended, a person shall be notified by the department to appear before a driver's license examiner to obtain a motor vehicle license. The license may be issued if the person has:

620.5(1) Filed proof of financial responsibility under Iowa Code chapter 321A for all motor vehicles to be operated.

620.5(2) Paid the \$200 civil penalty.

620.5(3) Provided proof of satisfactory completion of a course for drinking drivers and proof of completion of substance abuse evaluation and treatment or rehabilitation services on a form and in a manner approved by the department.

620.5(4) Successfully completed the required driver license examination.

620.5(5) Paid the specified reinstatement fee.

620.5(6) Paid the appropriate license or permit fee.

620.5(7) Provided proof of deinstallation of the ignition interlock device if one was installed for a temporary restricted license.

761—620.6(321J) Issuance of temporary restricted license after revocation period has expired. The department may issue a temporary restricted license to a person whose period of revocation under Iowa Code chapter 321J has expired but who has not met all the requirements for license reinstatement. The period of issuance shall be determined by the department, but it shall not exceed six months from the end of the original revocation period.

620.6(1) An applicant for a temporary restricted license under this rule must meet one of the following two conditions:

a. The applicant must demonstrate to the satisfaction of the department that a course for drinking drivers was not readily available to the person during the revocation period and that the applicant has enrolled in a course for drinking drivers. The applicant must furnish the dates the class will begin and end.

b. The applicant must demonstrate to the satisfaction of the department that substance abuse evaluation and treatment or rehabilitation services have not been completed because of an inability to schedule them or because they are ongoing.

620.6(2) An applicant for a temporary restricted license under this rule must meet all other conditions for issuance of a temporary restricted license under rule 761—620.3(321J) and Iowa Code section 321J.20, including installation of an ignition interlock device.

761—620.7 to 620.9 Reserved.

761—620.10(321J) Revocation for deferred judgment. The revocation period under Iowa Code subsection 321J.4(3) shall be 90 days.

761—620.11 to 620.14 Reserved.

761—620.15(321J) Substance abuse evaluation and treatment or rehabilitation services. When the department revokes a person's license under Iowa Code chapter 321J, the department shall also order the person to submit to substance abuse evaluation and, if recommended, treatment or rehabilitation services.

A provider of substance abuse evaluation and treatment or rehabilitation programs shall be licensed by the Iowa department of public health, division of substance abuse.

620.15(1) Reporting.

a. A provider of a substance abuse program shall report to the department on a form and in a manner approved by the department when a person who has been ordered to attend the program has satisfactorily completed the program.

b. Reporting to the department shall be in accordance with Iowa Code sections 125.37, 125.84 and 125.86 and the federal confidentiality regulations, “Confidentiality of Alcohol and Drug Abuse Patient Records,” 42 CFR Part 2, effective June 9, 1987.

620.15(2) Payment. Payment of substance abuse evaluation and treatment or rehabilitation costs shall be in accordance with Iowa department of public health rules.

761—620.16(321J) Drinking drivers course. When the department revokes a person’s license under Iowa Code chapter 321J, the department shall order the person to enroll, attend and satisfactorily complete a course for drinking drivers, as provided in Iowa Code section 321J.22.

620.16(1) Reporting.

a. A community college conducting a drinking drivers course shall report to the department on a form and in a manner approved by the department when a person who has been ordered to attend the course has successfully completed it.

b. Reserved.

620.16(2) Payment. A person ordered to complete a drinking drivers course is responsible for payment of course fees and expenses in accordance with Iowa Code section 321J.22.

These rules are intended to implement Iowa Code chapters 17A and 321J and sections 321.376 and 707.6A.

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CONSTRUCTION—REGISTRATION AND BONDING

CHAPTER 150

CONSTRUCTION CONTRACTOR REGISTRATION

[Prior to 10/21/98, see 347—Ch 150]

875—150.1(91C) Scope. This chapter implements Iowa Code chapter 91C. The rules in this chapter apply to all construction contractors, except for a person who earns less than \$2,000 annually or who performs work or has work performed on the person's own property.

875—150.2(91C) Definitions.

"Commissioner" means the labor commissioner of the division of labor services of the workforce development department or the commissioner's designee.

"Construction" means new work, additions, alterations, reconstruction, installations, repairs and demolitions. Construction activities are generally administered or managed from a relatively fixed place of business, but the actual construction work is performed at one or more different sites which may be dispersed geographically. Examples of construction activities, adopted by reference, are in 871—23.82(96) for purposes of the Iowa employment security law. For work on structures that are both located in an area that is subject to a disaster emergency proclamation pursuant to Iowa Code section 29C.6 and damaged by circumstances related to those that caused the disaster emergency proclamation, "construction" includes asbestos abatement.

"Contractor" means a person who engages in the business of construction as the term is defined in 871—23.82(96), for purposes of the Iowa employment security law, including subcontractors and special trade contractors. Also included are persons who conduct or perform construction on an incidental or occasional basis, regardless of whether the person is classified as being engaged in construction by the unemployment insurance services division of the workforce development department.

"Contract price" means the total pretax price of the contractor's project less the amount of all subcontracts. Contract price does not include the sales price of a product if the manufacturer installs the product and the price of the product is separately listed in the contract.

"Division" means the division of labor services of the workforce development department.

"File" means deliver to the division.

"Out-of-state contractor" means a contractor whose principal place of business is in another state, and who contracts to perform construction in this state.

"Principal place of business" means the state in which a substantial part of the contractor's business is transacted and from which the centralized supervision is exercised. Factors to be reviewed include:

1. State designated as home office on documents filed with governmental agencies.
2. State where payroll is prepared.
3. State where business transactions are performed.
4. State where officers, owners, or partners reside and work.
5. State in which bank accounts are located.
6. State in which fixed business property is located.
7. State where management decisions are made.

"Same phase of construction" means in the same type of construction operations or trade, such as, but not limited to, electrical work; masonry, stonework, tile setting and plastering; roofing; sheet metal work; excavation work; concrete work; glasswork; painting, paper hanging and decorating; plumbing, heating and air conditioning work; carpentry work; and miscellaneous special trade contractors.

"Working days" means Mondays through Fridays but shall not include Saturdays, Sundays or federal or state holidays. In computing 15 working days, the day of receipt of any notice shall not be included, and the last day of the 15 working days shall be included.

875—150.3(91C) Registration required. Before performing any construction work in this state, a contractor shall be registered with the division. A joint venture is an independent entity and shall be registered independently.

875—150.4(91C) Application. Each contractor shall file an application with the division for a registration number on forms provided by the division. The application shall contain the information specified in this rule.

150.4(1) Name. The name of the contractor.

150.4(2) Place of business. The complete mailing address of the principal place of business of the contractor.

150.4(3) Telephone number. The business telephone number of the contractor.

150.4(4) Business classification. The type of business entity of the contractor (i.e., corporation, partnership, sole proprietorship, trust, etc.).

150.4(5) Ownership information.

a. If the contractor is a corporation, the name, address, telephone number, and position of each officer of the corporation.

b. If the contractor is other than a corporation, the name, address, and telephone number of each owner.

150.4(6) Workers' compensation coverage information.

a. A certificate of insurance from the insurer showing proof of workers' compensation insurance, the effective dates of coverage, and listing the division of labor as a certificate holder;

b. Employer's release from the insurance requirements under workers' compensation law form provided to self-insured employers by the commissioner of insurance under Iowa Code section 87.11; or

c. A statement that the contractor is not required to carry workers' compensation coverage.

150.4(7) Account number. The employer account number or special contractor number issued by the unemployment insurance services division of the workforce development department prior to making application for a contractor's registration number.

150.4(8) Business description. A description of the business to include:

a. The employer's North American Industry Classification System (NAICS) code; or

b. The principal products and services provided.

150.4(9) Fee exemption. An exemption from fee may be requested if the contractor meets the requirements of and provides information specified in subrule 150.6(3).

150.4(10) Social security number. The contractor, if a natural person, shall include the contractor's social security number.

875—150.5(91C) Amendments to application.

150.5(1) A contractor shall report to the commissioner any change in the information originally reported on or with the application within 15 working days of the change, except that the contractor shall notify the commissioner of changes to workers' compensation coverage within ten days prior to any change in coverage.

150.5(2) After the time specified in subrule 150.5(1), with good cause shown the commissioner may determine that an amendment may be made to correct an application.

150.5(3) Amendments to applications shall not be permitted where a change occurs in the business classification, such as, but not limited to, a change from a sole proprietorship to a corporation.

875—150.6(91C) Fee.

150.6(1) New applications. A new application deposited in the U.S. mail shall be accompanied by the fee effective on the date the application is postmarked. A new application delivered in any other manner shall be accompanied by the fee effective on the date the application is received by the division.

150.6(2) Renewal applications. A timely renewal application shall be accompanied by the fee effective on the expiration date of the contractor's expiring registration. An application for renewal deposited in the U.S. mail after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is postmarked. An application for renewal delivered to the division in a manner other than U.S. mail and after the expiration date of the contractor's expiring registration shall be accompanied by the fee effective on the date the application is received by the division.

150.6(3) *Fee exemption.* A contractor shall not be required to pay the fee if the application is submitted with a completed and accurate Fee Exemption Application Form. The Fee Exemption Application Form is available from the division.

150.6(4) *Amendments to applications.* A fee is not required for a permissible amendment to an application.

[ARC 7876B, IAB 6/17/09, effective 7/1/09; ARC 8035B, IAB 8/12/09, effective 9/16/09]

875—150.7(91C) *Registration number issuance.* Within 30 days of receipt of a completed application, the commissioner will issue to the contractor a registration number. The registration number will consist of the letter “C” followed by six unique digits.

875—150.8(91C) *Workers’ compensation insurance cancellation notifications.*

150.8(1) *Insurance company coverage.* The division shall be notified by the insurance company carrying the contractor’s workers’ compensation insurance at the time of cancellation. The notice shall contain:

- a. The name of the insurance carrier;
- b. The name of the insured contractor; and
- c. The date the workers’ compensation coverage cancellation is effective.

150.8(2) *Self-insured contractors.* The contractor shall notify the division ten days prior to any cessation in self-insurance.

150.8(3) *Noninsured contractors.* The contractor shall notify the division whenever the required notice is not posted or in any change in insurance status.

875—150.9(91C) *Investigations and complaints.*

150.9(1) *Investigations.* Investigations may take many forms to determine if there is compliance with the law. Investigations shall take place at the times and in the places as the commissioner may direct. The commissioner may interview persons at the work site and utilize other reasonable investigatory techniques. The conduct of the investigation shall be such as to preclude unreasonable disruption of the operations of the work site. Investigations may be conducted without prior notice by correspondence, telephone conversations, or review of materials submitted to the division. At the initiation of an investigation at the contractor’s establishment, the investigator shall present credentials, explain the nature and purpose of the investigation, and seek the consent of the owner, operator or agent in charge of the establishment. In the event the investigator is not permitted to fully conduct an investigation, the commissioner may seek an administrative warrant, if necessary.

150.9(2) *Complaints.* Complaints in which the complainant provides a name and address made to the commissioner in writing shall receive a written response as to the results of the investigation. A complainant’s name and other identifying information shall not be released if the complaint was included as a part of another complaint where the complainant’s identity would be protected under other statutes or rules (i.e., a complaint filed under both Iowa Code chapters 88 and 91C).

875—150.10(91C) *Citations/penalties and appeal hearings.*

150.10(1) *Citations.* The commissioner shall issue a citation to a contractor where an investigation reveals the contractor has violated:

- a. The requirement that the contractor be registered;
- b. The requirement that the contractor’s registration information be substantially complete and accurate; or
- c. The requirement that an out-of-state contractor file a bond with the division.

150.10(2) *Penalties.* If a citation is issued, the commissioner shall notify the contractor by certified mail of the proposed administrative penalty, if any. The administrative penalties shall be not more than \$500 in the case of the first violation and not more than \$5,000 per violation in the case of a second or subsequent violation. In proposing a penalty, due consideration will be given to knowledge of the alleged violation, knowledge of requirements of the law, and nature and extent of the alleged violation.

150.10(3) Appeal. The contractor shall have 15 working days within which to file a notice of contest of the citation or proposed penalty. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.10(4) Appeal procedures. The rules of procedure of the employment appeal board shall apply to administrative hearings on citations and penalties.

875—150.11(91C) Revocation of registrations and appeal hearings.

150.11(1) Reason for revocation. The commissioner shall seek revocation of a contractor's registration where an investigation reveals the contractor failed to meet the conditions of registration at the time of issuance or no longer meets the conditions.

150.11(2) Notice of revocation. The commissioner shall serve a notice of intent to revoke on the contractor by personal service or by restricted certified mail to the address listed in the application or by other service as permitted in the Iowa Rules of Civil Procedure. The notice shall set the time for a fact-finding hearing conducted in accordance with Iowa Code chapter 17A.

150.11(3) Hearing. The purpose of the fact-finding hearing is to ensure the contractor is not in compliance before the registration is revoked. All hearings shall be held in the offices of the division. A telephone interview may be conducted upon request.

150.11(4) Hearing procedures. Administrative hearing rules at 875—Chapter 1 shall be applicable to the fact-finding hearings.

150.11(5) Decision. The commissioner shall serve the decision on the contractor by certified mail to the address listed on the application or to another address provided by the contractor. If the certified mail is returned unclaimed or undelivered, the commissioner shall send the decision to the address by first-class mail.

150.11(6) Effective date of revocation. Revocations shall become effective 21 days after certified mailing of the decision.

150.11(7) Suspension. The division and the commissioner find the public health, safety or welfare imperatively requires emergency action where a construction contractor fails to maintain compliance with the laws of this state relating to workers' compensation as required in subrule 150.4(6) due to the financial impact upon the public and any worker who might be injured. Therefore, a construction contractor's registration may be suspended effective upon issuance of the subrule 150.11(2) notice of revocation. Upon application showing good cause and proof of compliance with the workers' compensation laws as required in subrule 150.4(6), the commissioner may alter the finding and temporarily reinstate a registration number pending hearing on the revocation. In cases of suspension pending a revocation hearing, the hearing shall be instituted and determined promptly.

150.11(8) Appeal. The contractor shall have 15 working days from receipt of the decision issued pursuant to subrule 150.11(5) to file a notice of contest of decision. The notice of contest shall be filed with the commissioner who shall forward it to the employment appeal board.

150.11(9) Appeal procedures. The rules of procedure of the employment appeal board shall apply to appealed decisions.

150.11(10) Effect of revocation. A contractor whose registration is revoked may reapply for a new registration number if all requirements for registration eligibility are met.

150.11(11) Relinquishing registration certificate. A contractor shall return the original registration certificate to the division when a revocation or suspension becomes final.

875—150.12(91C) Concurrent actions. Actions under rules 875—150.10(91C) and 150.11(91C) may proceed at the same time against a contractor.

875—150.13(91C) Out-of-state contractor bonds.

150.13(1) Project size. Before commencing a contract for a project in Iowa with a contract price in excess of \$5,000 in value, an out-of-state contractor shall file a valid original project or blanket surety bond with the division.

150.13(2) Information. The division bond forms shall be used. The bond shall include the identification of the contractor including the name and address, and a valid power of attorney from the surety company shall be attached. If the Iowa construction contractor registration number has been issued, it shall be included on the bond.

150.13(3) Surety company. The bond shall be executed by a surety company authorized to do business in this state.

150.13(4) Time. The bond shall be continuous in nature until canceled by the surety or for the two-year registration period in the case of a blanket bond.

150.13(5) Cancellation. The surety shall give the commissioner and the contractor 30 days' written notice indicating the desire to cancel the bond.

150.13(6) Federal preemption. Rules 875—150.13(91C) to 150.15(91C) shall be suspended to the extent necessary to prevent any inconsistency with the requirements of federal law or to prevent the denial of federal funds. In addition, contractors performing work undertaken on a federal aid project shall submit to the division a letter of legal justification for the suspension or a letter from the contracting agency that the requirements of this rule are inconsistent with the federal requirements.

875—150.14(91C) Project bonds.

150.14(1) Information. In addition to the requirements in subrule 150.13(2), the following shall be included on the bond:

- a. The name of the person for whom the construction work will be performed; and
- b. The identification of the contract including the project name, contract number or identification, address where the work will be performed and a copy of the contract.

150.14(2) Amount. The bond shall be in the amount of \$1000 or 5 percent of the contract price, whichever is greater. A separate bond is required for each contract. An increase in the bond may be required by the department of revenue pursuant to Iowa Code chapter 91C.

875—150.15(91C) Blanket bonds. A blanket bond shall be in an amount not less than \$50,000. The commissioner may increase the bond after a hearing conducted pursuant to 875—Chapter 1.

875—150.16(91C) Bond release.

150.16(1) Notifications. Prior to releasing a bond, the commissioner will notify the department of revenue, the unemployment insurance services division of the workforce development department, and applicable state subdivisions of the intent to release the bond. The commissioner shall provide ten days for the filing of objections to the release of the bond. The commissioner may deem any failure to respond to the notice within the time provided as an approval of the release.

150.16(2) Conditions for release. A bond shall not be released until the contractor has made payment of all taxes, including contributions due under the unemployment compensation insurance system, penalties, interest, and fees, which may accrue to the state of Iowa or its subdivisions on account of the execution and performance of the contract or approval for the release is obtained from the appropriate agencies.

These rules are intended to implement Iowa Code chapter 91C as amended by 2006 Iowa Acts, chapter 1176.

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◊ Two or more ARCs

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Construction

Contracts/contractors

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Corporations

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- Fabrication/processing **701**—15.3, 16.3, 16.4, 16.16, 16.17, 18.29, 19.5(4), 19.6, 19.12(2)c, 213.18, 219.5(4), 219.6, 219.7
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- Feed **701**—17.9(9), 18.14, 18.23, 226.16
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- Films/video tapes/computer software **701**—17.18, 225.6(5), 231.14
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- Florists/nurseries **701**—17.3(1)d, 18.10, 18.57, 226.12, 226.18, 226.19(3), *see also Plants/Seeds this subheading below*
- Flying service **701**—26.21
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- Forms **701**—ch 8, 12.2, 12.5, 12.9, 13.2, 13.4, 15.11, 19.12, 19.18, 219.18
- Fowl, *see Livestock/Fowl this subheading below*
- Fraternal organizations/clubs **701**—16.37, 18.15
- Freight charges, *see Transportation/Freight this subheading below*
- Fuel **701**—12.3(2)b(1), 14.3(9), 15.3(3–5), 15.13, 16.15, 16.50, 17.2, 17.3, 17.9(4–7), 17.13, 17.23, 17.37, 17.38, 18.2, 18.5(3), 18.37–18.39, 18.57(2,3), 18.58(2)j, 213.4, 213.25, 226.12, 230.8(2), 231.2, 231.16, *see also Electricity/Steam this subheading above; Motor Fuel above; Use Tax: Tangible Personal Property below*
- Funeral directors/morticians **701**—18.21, *see also Memorial Stones this subheading below*
- Fur storage/repair **701**—26.23
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- Garages, *see subheadings Body Shops/Garages above; Parking Facilities below*
- Gasoline/gasohol/gases, *see subheadings Exemptions above; Fuel above; Propane/Butane below; Utilities below*
- Gifts/certificates/premiums **701**—15.15, 15.16, 16.12, 16.13, 20.12(4)b, 213.14, 231.15(4)b, *see also Exemptions: Prizes, Games this subheading above*
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- Gravel/stone **701**—18.17, 19.3(3), 219.3(3)
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- Gun repair **701**—18.43, 26.59
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- Hospitals/infirmaries/sanitariums **701**—18.24, 18.59, 20.7(5), 231.6(6)
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- Lawn care **701**—12.10, 18.43, 26.61, *see also Landscaping this subheading above*
- Layaways, *see Merchandise this subheading below*
- Leases **701**—15.11, 16.47, 18.34(2)*b*, 18.36, 18.44(2)*g*, 18.44(3), 18.45(3), 26.68(2), 211.1, 219.21, 225.6(7), 231.14, 240.8, *see also Rentals this subheading below; Use Tax: Motor Vehicles below*
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- Livestock/fowl **701**—17.9, 17.26, 17.35, 18.12, 211.1, 226.7, *see also Feed this subheading above*
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- Machine operator **701**—18.34(2)*i*, 19.1, 26.28, 219.1
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- Magazines/periodicals **701**—16.42, 16.43, 231.1
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 - Gifts **701**—16.12, 16.13, 20.12(4)*b*
 - Layaways **701**—16.22, 20.12(4)*c*, 213.10, 231.15(4)*c*
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- Motor vehicles, *see Vehicles this subheading below*
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- Oilers/lubricators **701**—19.1, 19.7, 26.32, 219.1, 219.8
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- Pesticides/herbicides/insecticides **701**—17.9(3), 18.57(1), 226.9
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Repairs

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Tangible personal property

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- Tree trimming/removal **701**—12.10, 18.43, 26.66
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