IOWA ADMINISTRATIVE BULLETIN

Published Biweekly VOLUME XXII NUMBER 20
April 5, 2000 Pages 1421 to 1516

CONTENTS IN THIS ISSUE

Pages 1431 to 1493 include **ARC 9748A** to **ARC 9776A**

Continued on page 1423

PREFACE

The Iowa Administrative Bulletin is published biweekly in pamphlet form pursuant to Iowa Code chapters 2B and 17A an contains Notices of Intended Action on rules, Filed and Filed Emergency rules by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Economi Impact Statements to proposed rules and filed emergency rules; Objections filed by Administrative Rules Review Committe Governor or the Attorney General; and Delay by the Committee of the effective date of filed rules; Regulatory Flexibility Analy ses and Agenda for monthly Administrative Rules Review Committee meetings. Other "materials deemed fitting and proper b the Administrative Rules Review Committee" include summaries of Public Hearings, Attorney General Opinions and Suprem Court Decisions.

The Bulletin may also contain Public Funds Interest Rates [12C.6]; Workers' Compensation Rate Filings [515A.6(7) Usury [535.2(3)"a"]; Agricultural Credit Corporation Maximum Loan Rates [535.12]; and Regional Banking—Notice o Application and Hearing [524.1905(2)].

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

Subscriptions and Distribution	Telephone:	(515)242-5120
	Fax:	(515)242-5974
KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor		(515)281-8157
	Fax:	(515)281-4424

SUBSCRIPTION INFORMATION

Iowa Administrative Bulletin

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

July 1, 1999, to June 30, 2000 $253.86 plus $12.69 sales tax

Iowa Administrative Code

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

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

Iowa Administrative Code - $1,163.76 plus $58.19 sales tax

(Price includes 22 volumes of rules and index, plus a one-year subscription to the Code Supplement and the Iowa Adminis trative Bulletin.)

Iowa Administrative Code Supplement - $409.24 plus $20.46 sales tax

(Subscription expires June 30, 2000)

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

Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, IA 50319
Telephone: (515)242-5120

ITATION of Administrative Rules

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

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

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

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

Schedule for Rule Making
2000

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 24 '99	Jan. 12 '00	Feb. 1 '00	Feb. 16 '00	Feb. 18 '00	Mar. 8 '00	Apr. 12 '00	July 10 '00
Jan. 7	Jan. 26	Feb. 15	Mar. 1	Mar. 3	Mar. 22	Apr. 26	July 24
Jan. 21	Feb. 9	Feb. 29	Mar. 15	Mar. 17	Apr. 5	May 10	Aug. 7
Feb. 4	Feb. 23	Mar. 14	Mar. 29	Mar. 31	Apr. 19	May 24	Aug. 21
Feb. 18	Mar. 8	Mar. 28	Apr. 12	Apr. 14	May 3	June 7	Sept. 4
Mar. 3	Mar. 22	Apr. 11	Apr. 26	Apr. 28	May 17	June 21	Sept. 18
Mar. 17	Apr. 5	Apr. 25	May 10	May 12	May 31	July 5	Oct. 2
Mar. 31	Apr. 19	May 9	May 24	May 26	June 14	July 19	Oct. 16
Apr. 14	May 3	May 23	June 7	June 9	June 28	Aug. 2	Oct. 30
Apr. 28	May 17	June 6	June 21	June 23	July 12	Aug. 16	Nov. 13
May 12	May 31	June 20	July 5	July 7	July 26	Aug. 30	Nov. 27
May 26	June 14	July 4	July 19	July 21	Aug. 9	Sept. 13	Dec. 11
June 9	June 28	July 18	Aug. 2	Aug. 4	Aug. 23	Sept. 27	Dec. 25
June 23	July 12	Aug. 1	Aug. 16	Aug. 18	Sept. 6	Oct. 11	Jan. 8 '01
July 7	July 26	Aug. 15	Aug. 30	Sept. 1	Sept. 20	Oct. 25	Jan. 22 '01
July 21	Aug. 9	Aug. 29	Sept. 13	Sept. 15	Oct. 4	Nov. 8	Feb. 5 '01
Aug. 4	Aug. 23	Sept. 12	Sept. 27	Sept. 29	Oct. 18	Nov. 22	Feb. 19 '01
Aug. 18	Sept. 6	Sept. 26	Oct. 11	Oct. 13	Nov. 1	Dec. 6	Mar. 5 '01
Sept. 1	Sept. 20	Oct. 10	Oct. 25	Oct. 27	Nov. 15	Dec. 20	Mar. 19 '01
Sept. 15	Oct. 4	Oct. 24	Nov. 8	Nov. 10	Nov. 29	Jan. 3 '01	Apr. 2 '01
Sept. 29	Oct. 18	Nov. 7	Nov. 22	Nov. 24	Dec. 13	Jan. 17 '01	Apr. 16 '01
Oct. 13	Nov. 1	Nov. 21	Dec. 6	Dec. 8	Dec. 27	Jan. 31 '01	Apr. 30 '01
Oct. 27	Nov. 15	Dec. 5	Dec. 20	Dec. 22	Jan. 10 '01	Feb. 14 '01	May 14 '01
Nov. 10	Nov. 29	Dec. 19	Jan. 3 '01	Jan. 5 '01	Jan. 24 '01	Feb. 28 '01	May 28 '01
Nov. 24	Dec. 13	Jan. 2 '01	Jan. 17 '01	Jan. 19 '01	Feb. 7 '01	Mar. 14 '01	June 11 '01
Dec. 8	Dec. 27	Jan. 16 '01	Jan. 31 '01	Feb. 2 '01	Feb. 21 '01	Mar. 28 '01	June 25 '01
Dec. 22	Jan. 10 '01	Jan. 30 '01	Feb. 14 '01	Feb. 16 '01	Mar. 7 '01	Apr. 11 '01	July 9 '01
Jan. 5 '01	Jan. 24 '01	Feb. 13 '01	Feb. 28 '01	Mar. 2 '01	Mar. 21 '01	Apr. 25 '01	July 23 '01

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
22	**Friday, April 14, 2000**	**May 3, 2000**
23	**Friday, April 28, 2000**	**May 17, 2000**
24	**Friday, May 12, 2000**	**May 31, 2000**

PLEASE NOTE:

Rules will not be accepted after **12 o'clock noon** on the Friday filing deadline days unless prior approval has been received from the Administrative Rules Coordinator's office.

If the filing deadline falls on a legal holiday, submissions made on the following Monday will be accepted.

PUBLICATION PROCEDURES

TO: Administrative Rules Coordinators and Text Processors of State Agencies
FROM: Kathleen K. Bates, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses Interleaf 6 to publish the Iowa Administrative Bulletin and can mport documents directly from most other word processing systems, including Microsoft Word, Word for Windows (Word 7 or earlier), and WordPerfect.

1. To facilitate the processing of rule-making documents, we request a 3.5" High Density (not Double ensity) IBM PC-compatible diskette of the rule making. Please indicate on each diskette the following nformation: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may e delivered to the Administrative Code Division, 1st Floor, Lucas State Office Building or included with he documents submitted to the Governor's Administrative Rules Coordinator.

2. Alternatively, if you have Internet E-mail access, you may send your document as an attachment to n E-mail message, addressed to both of the following:

bcarr@legis.state.ia.us
kbates@legis.state.ia.us

Please note that changes made prior to publication of the rule-making documents are reflected on the hard opy returned to agencies by the Governor's office, but not on the diskettes; diskettes are returned unchanged.

Your cooperation helps us print the Bulletin more quickly and cost-effectively than was previously ossible and is greatly appreciated.

IOWA ADMINISTRATIVE RULES and IOWA COURT RULES on CD-ROM
1999 WINTER EDITION

ontaining: **Iowa Administrative Code** (updated through December 1999)
Iowa Administrative Bulletins (July 1999 through December 1999)
Iowa Court Rules (updated through December 1999)

or free brochures and order forms contact:
Legislative Service Bureau
Attn: Ms. Stephanie Cox
State Capitol
Des Moines, Iowa 50319
Telephone: (515)281-3566 Fax: (515)281-8027
lsbinfo@staff.legis.state.ia.us

***Guide to Rule Making,** June 1995 Edition,* available upon request to the Iowa Administrative Code Division, Lucas State Office Building, First Floor, Des Moines, Iowa 50319.

To All Agencies:

The Administrative Rules Review Committee voted to request that Agencies comply with Iowa Code section 17A.4(1)"b by allowing the opportunity for oral presentation (hearing) to be held at least **twenty** days after publication of Notice in the Iow Administrative Bulletin.

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
CORRECTIONS DEPARTMENT[201]		
Private sector employment projects, 37.5 IAB 4/5/00 **ARC 9775A**	Conference Room—2nd Floor 420 Keo Way Des Moines, Iowa	April 25, 2000 11 a.m. to 1 p.m.
Utilization of offender labor, 37.6 IAB 4/5/00 **ARC 9776A**	Conference Room—2nd Floor 420 Keo Way Des Moines, Iowa	April 25, 2000 11 a.m. to 1 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Requirements for special education endorsements, 15.1, 15.2 IAB 4/5/00 **ARC 9766A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	April 25, 2000 2 p.m.
Paraeducator certificates, ch 22 IAB 4/5/00 **ARC 9765A**	Conference Room 3 North—3rd Floor Grimes State Office Bldg. Des Moines, Iowa	April 25, 2000 1 p.m
EDUCATION DEPARTMENT[281]		
Appeal procedures, 6.17 IAB 4/5/00 **ARC 9773A** (See also **ARC 9774A** herein)	State Board Room Grimes State Office Bldg. Des Moines, Iowa	April 25, 2000 1 p.m.
HUMAN SERVICES DEPARTMENT[441]		
AEA services under Medicaid, 78.32 IAB 3/22/00 **ARC 9738A** (See also **ARC 9613A**, IAB 1/26/00)	Conference Room—6th Floor Iowa Bldg., Suite 600 411 3rd St. SE Cedar Rapids, Iowa	April 12, 2000 10 a.m.
	Administrative Conference Room 417 E. Kanesville Blvd. Council Bluffs, Iowa	April 12, 2000 9 a.m.
	Large Conference Room Bicentennial Bldg.—5th Floor 428 Western Davenport, Iowa	April 13, 2000 10 a.m.
	Conference Room 104 City View Plaza 1200 University Des Moines, Iowa	April 12, 2000 10 a.m.
	Liberty Room Mohawk Square 22 N. Georgia Ave. Mason City, Iowa	April 12, 2000 11 a.m.

HUMAN SERVICES DEPARTMENT[441] (Cont'd)

	Conference Room 3 120 East Main Ottumwa, Iowa	April 12, 2000 10 a.m.
	Fifth Floor 520 Nebraska St. Sioux City, Iowa	April 12, 2000 1:30 p.m.
	Conference Rooms 443-445 Pinecrest Office Bldg. 1407 Independence Ave. Waterloo, Iowa	April 12, 2000 10 a.m.

INSURANCE DIVISION[191]

Consumer guide, 35.35 to 35.37 IAB 4/5/00 **ARC 9756A**	330 Maple St. Des Moines, Iowa	April 25, 2000 10 a.m.

LABOR SERVICES DIVISION[875]

Asbestos removal and encapsulation, chs 81, 82, 155 IAB 3/22/00 **ARC 9741A**	1000 E. Grand Ave. Des Moines, Iowa	April 11, 2000 1:30 p.m. (If requested)

NATURAL RESOURCE COMMISSION[571]

Volunteer safety/education instructor certification, 15.9 to 15.12 IAB 4/5/00 **ARC 9769A**	Conference Room—4th Floor West Wallace State Office Bldg. Des Moines, Iowa	April 25, 2000 2 p.m.
General dock permit, 16.1, 16.3 IAB 4/5/00 **ARC 9768A**	Conference Room—4th Floor West Wallace State Office Bldg. Des Moines, Iowa	April 25, 2000 1 p.m.
Community forestrychallenge grant program, 34.1 to 34.12 IAB 4/5/00 **ARC 9770A** (See also **ARC 9771A** herein)	Conference Room—4th Floor East Wallace State Office Bldg. Des Moines, Iowa	April 25, 2000 2 p.m.
Use of nontoxic shot on wildlife areas, 51.9 IAB 3/8/00 **ARC 9720A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.
Waterfowl and coot hunting, 91.1, 91.3, 91.4(2), 91.5(1), 91.6 IAB 3/8/00 **ARC 9719A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.
Wild turkey fall hunting, 99.2 IAB 3/8/00 **ARC 9721A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.
Deer hunting, 106.1(4), 106.2(4), 106.3(3), 106.4 to 106.6, 106.8 IAB 3/8/00 **ARC 9722A**	Auditorium Wallace State Office Bldg. Des Moines, Iowa	April 19, 2000 7:30 p.m.

PROFESSIONAL LICENSURE DIVISION[645]

Optometry examiners, 180.6, 180.12 to 180.18, 180.115; ch 181 IAB 4/5/00 **ARC 9767A**	Board Conference Room—5th Floor Lucas State Office Bldg. Des Moines, Iowa	April 26, 2000 9 to 11 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Emergency medical services training grants, 130.1, 130.4 IAB 4/5/00 **ARC 9758A** **(ICN Network)**	National Guard Armory 11 East 23rd St. Spencer, Iowa	April 25, 2000 1 to 2 p.m.
	National Guard Armory 1712 LaClark Rd. Carroll, Iowa	April 25, 2000 1 to 2 p.m.
	National Guard Armory 1160 10th St. SW Mason City, Iowa	April 25, 2000 1 to 2 p.m.
	ICN Room, Sixth Floor Lucas State Office Building Des Moines, Iowa	April 25, 2000 1 to 2 p.m.
	National Guard Armory 195 Radford Rd. Dubuque, Iowa	April 25, 2000 1 to 2 p.m.
	National Guard Armory 501 Hwy 1 South Washington, Iowa	April 25, 2000 1 to 2 p.m.

TRANSPORTATION DEPARTMENT[761]

Special mobile equipment, 410.1 to 410.3 IAB 4/5/00 **ARC 9761A**	Conference Room—Upper Level Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	April 27, 2000 8 a.m. (If requested)
Motor carrier regulations, 529.1 IAB 4/5/00 **ARC 9764A**	Conference Room—Upper Level Park Fair Mall 100 Euclid Ave. Des Moines. Iowa	April 27, 2000 10 a.m. (If requested)

Due to reorganization of state government by 1986 Iowa Acts, chapter 1245, it was necessary to revise the agency identification numbering system, i.e., the bracketed number following the agency name.

"Umbrella" agencies and elected officials are set out below at the left-hand margin in CAPITAL letters.

Divisions (boards, commissions, etc.) are indented and set out in lowercase type under their statutory "umbrellas."

Other autonomous agencies which were not included in the original reorganization legislation as "umbrella" agencies are included alphabetically in small capitals at the left-hand margin, e.g., BEEF INDUSTRY COUNCIL, IOWA[101].

The following list will be updated as changes occur:

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]
- Agricultural Development Authority[25]
- Soil Conservation Division[27]

ATTORNEY GENERAL[61]
AUDITOR OF STATE[81]
BEEF INDUSTRY COUNCIL, IOWA[101]
BLIND, DEPARTMENT FOR THE[111]
CITIZENS' AIDE[141]
CIVIL RIGHTS COMMISSION[161]
COMMERCE DEPARTMENT[181]
- Alcoholic Beverages Division[185]
- Banking Division[187]
- Credit Union Division[189]
- Insurance Division[191]
- Professional Licensing and Regulation Division[193]
  - Accountancy Examining Board[193A]
  - Architectural Examining Board[193B]
  - Engineering and Land Surveying Examining Board[193C]
  - Landscape Architectural Examining Board[193D]
  - Real Estate Commission[193E]
  - Real Estate Appraiser Examining Board[193F]
- Savings and Loan Division[197]
- Utilities Division[199]

CORRECTIONS DEPARTMENT[201]
- Parole Board[205]

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

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]
- City Development Board[263]
- Iowa Finance Authority[265]

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

EGG COUNCIL[301]
ELDER AFFAIRS DEPARTMENT[321]
EMPOWERMENT BOARD, IOWA[349]
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]
EXECUTIVE COUNCIL[361]
FAIR BOARD[371]
GENERAL SERVICES DEPARTMENT[401]
HUMAN INVESTMENT COUNCIL[417]
HUMAN RIGHTS DEPARTMENT[421]
- Community Action Agencies Division[427]
- Criminal and Juvenile Justice Planning Division[428]
- Deaf Services Division[429]
- Persons With Disabilities Division[431]
- Latino Affairs Division[433]
- Status of African-Americans, Division on the[434]
- Status of Women Division[435]

HUMAN SERVICES DEPARTMENT[441]

INSPECTIONS AND APPEALS DEPARTMENT[481]
Employment Appeal Board[486]
Foster Care Review Board[489]
Racing and Gaming Commission[491]
State Public Defender[493]
LAW ENFORCEMENT ACADEMY[501]
LIVESTOCK HEALTH ADVISORY COUNCIL[521]
MANAGEMENT DEPARTMENT[541]
Appeal Board, State[543]
City Finance Committee[545]
County Finance Committee[547]
NARCOTICS ENFORCEMENT ADVISORY COUNCIL[551]
NATIONAL AND COMMUNITY SERVICE, IOWA COMMISSION ON[555]
NATURAL RESOURCES DEPARTMENT[561]
Energy and Geological Resources Division[565]
Environmental Protection Commission[567]
Natural Resource Commission[571]
Preserves, State Advisory Board[575]
PERSONNEL DEPARTMENT[581]
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]
PREVENTION OF DISABILITIES POLICY COUNCIL[597]
PUBLIC DEFENSE DEPARTMENT[601]
Emergency Management Division[605]
Military Division[611]
PUBLIC EMPLOYMENT RELATIONS BOARD[621]
PUBLIC HEALTH DEPARTMENT[641]
Substance Abuse Commission[643]
Professional Licensure Division[645]
Dental Examiners Board[650]
Medical Examiners Board[653]
Nursing Board[655]
Pharmacy Examiners Board[657]
PUBLIC SAFETY DEPARTMENT[661]
RECORDS COMMISSION[671]
REGENTS BOARD[681]
Archaeologist[685]
REVENUE AND FINANCE DEPARTMENT[701]
Lottery Division[705]
SECRETARY OF STATE[721]
SEED CAPITAL CORPORATION, IOWA[727]
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]
TRANSPORTATION DEPARTMENT[761]
Railway Finance Authority[765]
TREASURER OF STATE[781]
TURKEY MARKETING COUNCIL, IOWA[787]
UNIFORM STATE LAWS COMMISSION[791]
VETERANS AFFAIRS COMMISSION[801]
VETERINARY MEDICINE BOARD[811]
VOTER REGISTRATION COMMISSION[821]
WORKFORCE DEVELOPMENT DEPARTMENT[871]
Labor Services Division[875]
Workers' Compensation Division[876]
Workforce Development Board and Workforce Development Center Administration Division[877]

ARC 9775A

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 904.804, he Department of Corrections hereby gives Notice of Intended Action to amend Chapter 37, "Iowa State Industries," owa Administrative Code.

Proposed rule 37.5(904) outlines the application and approval processes for private sector employment projects and provides for Iowa Workforce Development to address and esolve disputes received from anyone who believes that the private sector work program established by the deputy director of prison industries has displaced employed workers, applies to skills, crafts, or trades in which there is a local surplus of labor, or impairs existing contracts for employment or services.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 25, 2000. Such written materials should be sent to Deputy Director of Prison Industries, 420 Keo Way, Des Moines, Iowa 50309.

There will be a public hearing on April 25, 2000, from 11 a.m. to 1 p.m. in the Second Floor Conference Room, 420 Keo Way, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements should contact the Department of Corrections and advise of special needs.

The Department of Corrections approved this amendment on March 3, 2000.

This rule is intended to implement Iowa Code section 904.809.

The following amendment is proposed.

Amend 201—Chapter 37 by adopting the following new rule:

201—37.5(904) Private sector employment projects.

37.5(1) Definitions.

"Advisory board" means the prison industries advisory board.

"Deputy director of prison industries" means the department of corrections deputy director responsible for the day-to-day operations of prison industries including private sector individuals.

"Director" means the chief executive officer of the department of corrections.

"Workforce development board" means the state workforce development board.

"Workforce development director" means the chief executive officer of the department of workforce development.

37.5(2) Preapplication requirement. Prior to submitting an application to the deputy director of prison industries for a private sector employment project, the employer shall place a job order with a duration of at least 30 days with the nearest workforce development center. The job order shall be listed statewide in all centers and on the department of workforce development's jobs Internet site.

37.5(3) Employer application.

a. Private sector employers requesting offender labor must submit the following to the deputy director of prison industries:

1. Work program, including job description;
2. Proposed wage rate;
3. Description of job site;
4. Duration of the work; and
5. Copy of the job order listing with workforce development.

b. Upon receiving a written proposal to use offenders in a private sector work program, the deputy director of prison industries shall provide a copy of the private sector work proposal including job descriptions and proposed wages to the workforce development director.

c. The deputy director of prison industries shall send a letter to the department of workforce development requesting verification of the employer's 30-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the county where the employer is located, and the current employment level of the company that will employ the offenders.

d. The deputy director of prison industries and the warden/superintendent at the proposed institution shall review the proposed projects with the board of supervisors and the sheriff in the county where the project will be located.

37.5(4) Verification. The workforce development director shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the deputy director of prison industries in writing:

1. Verification of the employer's 30-day job listing;
2. The number of qualified applicant referrals and hires made as a result of the job order;
3. The average wage rate for the proposed job(s);
4. The wage range;
5. The current unemployment rate for the county where the employer is located; and
6. The current employment levels of the company that will employ the offenders based upon the most recent quarter for which data is available.

37.5(5) Prevailing wages. The deputy director of prison industries shall obtain employment levels in the locale of the proposed job(s) and the prevailing wages for the job(s) in question from the department of workforce development prior to authorizing any private sector work program. The deputy director of prison industries will consider the average wage rate and wage range from the department of workforce development for the appropriate geographic area for which occupational wage information is available. The appropriate geographic area may be statewide.

To reduce possible displacement of civilian workers, the deputy director of prison industries shall advise prospective employers and eligible offenders of the following requirements:

1. Offenders shall not be eligible for unemployment compensation while incarcerated.
2. Before the employer initiates work utilizing offender labor, the deputy director of prison industries shall provide the baseline number of jobs as established by the department of workforce development.
3. In January and July of each year, the deputy director of prison industries shall receive from the department of workforce development the actual number of civilian work-

CORRECTIONS DEPARTMENT[201](cont'd)

ers by employer and shall compile a side-by-side comparison for each employer. A copy of the side-by-side comparison will be provided to the advisory board and workforce development director semiannually.

37.5(6) Ineligible projects. The deputy director of prison industries shall evaluate the information from the department of workforce development to verify nondisplacement of civilian workers. Employment of offenders in private industry shall not displace employed workers, apply to skills, crafts, or trades in which there is a local surplus of labor, or impair existing contracts for employment or services.

37.5(7) Notification. The deputy director of prison industries shall provide a copy of the private sector work proposal and the department of workforce development review of the private sector work proposal to the following:

1. Governor's office;
2. Speaker of the house;
3. President of the senate;
4. Warden/superintendent at the proposed work site;
5. Local labor organization(s);
6. Director of workforce development; and
7. Department of Justice, Washington D.C.

Within 14 calendar days of receiving the department of workforce development review, the deputy director of prison industries will consolidate the recommendations for review and approval by the director of corrections.

37.5(8) Prison industries advisory board review. Following approval by the director of corrections, the deputy director of prison industries shall forward the final proposal to the prison industries advisory board with the recommendation to approve or disapprove the work program, including all correspondence from the department of workforce development, the Department of Justice, and any local official who has offered comments.

The deputy director of prison industries shall provide written documentation to the prison industries advisory board confirming that the proposed work project will not displace civilian workers. If displacement occurs, the deputy director of prison industries shall advise the private employer that the employer will be given 30 days to become compliant or the department of corrections will terminate the use of offender labor.

37.5(9) Disputes. Anyone who believes that the private sector work program violates this rule shall advise the department of workforce development. A written complaint may be filed in accordance with workforce development board rule 877— 1.5(84A). The workforce development director shall consult with the deputy director of prison industries before the workforce development board makes a final recommendation(s) to resolve any complaint.

The deputy director of prison industries will assist the department of workforce development in compiling all information necessary to resolve the dispute. The workforce development board shall notify the deputy director of prison industries and interested parties in writing of the recommended action to resolve a complaint.

This rule is intended to implement Iowa Code section 904.809.

ARC 9776A

CORRECTIONS DEPARTMENT[201]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 904.701, the Department of Corrections hereby gives Notice of Intended Action to amend Chapter 37, "Iowa State Industries," Iowa Administrative Code.

Proposed new rule 37.6(904) establishes application procedures for employers wishing to use offender labor in construction or maintenance projects. This rule provides that the Workforce Development Department shall address and resolve disputes from anyone who believes that employers utilizing offender labor while working under contract with the state of Iowa have displaced employed workers, have employed offenders in skills, crafts, or trades in which there is a local surplus of labor, or have impaired existing contracts for employment or services.

Any interested person may make written suggestions or comments on the proposed rule on or before April 25, 2000. Such written materials should be sent to Deputy Director of Prison Industries, 420 Keo Way, Des Moines, Iowa 50309.

There will be a public hearing on April 25, 2000, from 11 a.m. to 1 p.m. in the Second Floor Conference Room, 420 Keo Way, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

Any persons who intend to attend the public hearing and have special requirements should contact the Department of Corrections and advise of special needs.

The Department of Corrections approved this rule on March 3, 2000.

This rule is intended to implement Iowa Code section 904.701.

The following amendment is proposed.

Amend 201—Chapter 37 by adopting the following **new** rule:

201—37.6(904) Utilization of offender labor in construction and maintenance projects.

37.6(1) Definitions.

"Director" means the chief executive officer of the department of corrections.

"Employer" means a contractor or subcontractor providing maintenance or construction services under contract to the department of corrections or under the department of general services.

"Workforce development director" means the chief executive officer of the Iowa department of workforce development.

37.6(2) Scope. Utilization of offender labor applies only to contractors or subcontractors providing construction or maintenance services to the department of corrections. The contract authority for providing construction or maintenance services may be the department of general services.

CORRECTIONS DEPARTMENT[201](cont'd)

37.6(3) Employer application. Employers working under contract with the state of Iowa may submit an application to the department of corrections to employ offenders. Requests or such labor shall not include work release offenders asigned to community-based corrections under Iowa Code hapter 905.

a. Prior to submitting an application, the employer will place with the nearest workforce development center a job order with a duration of at least 30 days. The job order will be listed statewide in all centers and on the department of workforce development's jobs Internet site.

b. The employer's application shall include:

1. Scope of work, including type of work and required number of workers;
2. Proposed wage rate;
3. Location;
4. Duration; and
5. Reason for utilizing offender labor.

c. The department of corrections shall verify through he department of workforce development the employer's 0-day job listing, the average wage rate for the job(s) the offenders will perform, the current unemployment rate in the ounty where the employer is located, and the current emloyment level of the employer that will employ the offendrs.

37.6(4) Verification. The director of workforce development shall verify the employment levels and prevailing wages paid for similar jobs in the area and provide to the diector, in writing:

1. Verification of the employer's 30-day job listing;
2. The number of qualified applicant referrals and hires made as a result of the job order;
3. The average wage rate for the proposed job(s);
4. The wage range;
5. The prevailing wage as determined by the U.S. Deartment of Labor;
6. The current unemployment rate for the county where he employer is located;
7. The current employment levels of the employer that will employ the offenders based upon the most recent quarter or which data is available.

37.6(5) Safety training. The employer shall document hat all offenders employed in construction and maintenance rojects receive a 10-hour OSHA safety course provided ree of charge by the department of workforce development.

37.6(6) Prevailing wages. The director will not authorize n employer to employ offenders in hard labor programs without obtaining from the department of workforce develpment employment levels in the locale of the proposed jobs and the prevailing wages for the jobs in question. The averge wage rate and wage range from the department of workorce development will be based on the appropriate georaphic area for which occupational wage information is vailable. The appropriate geographic area may be statewide.

To reduce any potential displacement of civilian workers, he director shall advise prospective employers and eligible ffenders of the following requirements:

1. Offenders will not be eligible for unemployment ompensation while incarcerated.
2. Before the employer initiates work utilizing offender abor, the director shall provide the baseline number of jobs s established by the department of workforce development.
3. If the contract to employ offender labor exceeds six months, the director shall request and receive from the workorce development director the average wage rates and wage ranges for jobs currently held by offenders and current employment levels of employers employing offenders and shall compile a side-by-side comparison of each employer.

37.6(7) Disputes. Anyone who believes that the employer's application violates this rule shall present concerns in writing to the workforce development board. A written complaint may be filed with the workforce development board for any dispute arising from the implementation of the employer's application in accordance with the workforce development board's rule 877—1.6(84A). The workforce development board shall consult with the director prior to making recommendations. The director will assist the workforce development board in compiling all information necessary to resolve the dispute. The workforce development board shall notify the director and interested parties in writing of the corrective action plan to resolve the dispute.

This rule is intended to implement Iowa Code section 904.701.

ARC 9766A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to amend Chapter 15, "Requirements for Special Education Endorsements," Iowa Administrative Code.

The purpose of these amendments is to clarify the educational requirements for student teaching in special education endorsement programs, thereby providing more options for the acceptance of out-of-state preparation experience; to modify the student teaching or practicum requirements for adding an instructional special education endorsement to an existing license, thereby eliminating the requirement for multiple student teaching or practicum experiences at the same instructional level; to eliminate the dual student teaching experience required for the "mild/moderate mental disabilities" endorsement; to clarify the name of the endorsement for those serving "severe and profound" students; and to provide another option for the issuance of the "multicategorical" endorsement.

The Board has documented the need for these amendments through its practical work with applicants from out-of-state institutions and with current classroom teachers of special education seeking to add new endorsements to their existing licenses.

There will be a public hearing on the proposed amendments at 2 p.m. on April 25, 2000, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentations at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

Grand Avenue, Des Moines, Iowa 50319-0147, or at (515) 281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed amendments by 4:30 p.m. on April 26, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These amendments are intended to implement Iowa Code chapter 272.

The following amendments are proposed.

ITEM 1. Amend rule 282—15.1(272) as follows:

282—15.1(272) ~~Program requirements for special~~ *Special* education teaching endorsements.

15.1(1) *Program requirements.*

~~1~~ *a.* Baccalaureate or master's degree from a regionally accredited institution.

~~2~~ *b.* Completion of an approved human relations component.

~~3~~ *c.* Professional education core: completed coursework or evidence of competency in:

(1) Structure of American education.

(2) Philosophies of education.

(3) Professional ethics and legal responsibilities.

(4) Psychology of teaching.

(5) Audiovisual/media/computer technology.

(6) Human growth and development related to the grade level endorsement desired.

(7) Completion of pre-student teaching field-based experiences in special education.

d. Student teaching. Each applicant for an Iowa license with a special education instructional endorsement must file evidence of completing an approved student teaching program in special education. This experience must be full-time in an approved special education classroom. An approved special education classroom is one which is recognized by the state in terms of the respective state rules for special education.

This special education student teaching experience shall qualify for each special education instructional endorsement sought on an original application for Iowa licensure if at the same grade level.

15.1(2) *Adding special education instructional endorsements to Iowa licenses. After the issuance of a practitioner license, an individual may add other special education instructional endorsements to that license upon proper application provided current requirements for the endorsement(s) have been met. However, if an applicant is seeking to add a special education instructional endorsement at the same level, elementary or secondary, as other endorsements held, the student teaching component set out in the rules for added endorsement areas is not required.*

However, if the applicant seeks to add an endorsement at a different level, that is, from elementary to secondary or from secondary to elementary, the required student teaching at the other level must be completed.

ITEM 2. Amend subrule 15.2(2) as follows:

15.2(2) Mental disabilities: mild/moderate.

a. Prekindergarten-kindergarten mental disabilities. Meet the requirements for early childhood—special education. Refer to 15.2(9).

b. K-6 mental disabilities: mild/moderate.

(1) K-12 introduction/characteristics of mental disabilities to include the etiology of the disability, a historical perspective of its treatment, an overview of current trends in the treatment of the disability, and a study of the impact of th disability on the child and family.

(2) K-6 curriculum, methods and materials course fo students with mild mental disabilities (to include the con cepts of career-vocational education, transition, and integra tion).

(3) K-12 functional, age-appropriate, longitudinal curric ulum development (life skills) course for students with mod erate mental disabilities which should include:

1. Assessment and evaluation.
2. Instructional methodology.
3. Integration and social interactions in regular school and community environments.
4. Transition process from school to community envi ronments.
5. Career-vocational programming.

(4) A course of a general survey nature in the area of ex ceptional children.

(5) A course or courses in the collection and use of aca demic and behavioral data for the educational diagnosis, as sessment and evaluation of special education pupils which should include:

1. Norm-referenced instruments (including behaviora rating measures).
2. Criterion-referenced instruments.
3. Ecological assessment techniques.
4. Systematic observation.
5. Individual trait or personality assessments.
6. Social functioning data.
7. Application of assessment results to individualized program development and management.

(6) Coursework or evidence of competency in:

1. Individual behavioral management, behaviora change strategies, and classroom management.
2. Methods and strategies for working with parents, regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

(7) K-6 student teaching in *a* mild *or in a moderate* mental disabilities categorical program.

~~(8) K-6 student teaching in moderate mental disabilities categorical program.~~

~~There must be a student teaching experience with both mildly and moderately handicapped students; however, one practicum may be completed if the experiences and responsibilities are comparable to student teaching.~~

c. 7-12 mental disabilities: mild/moderate.

(1) Same as K-6 mental disabilities except that the mild methods and *the* mild *or moderate* student teaching must be completed *at the* 7-12 *level* instead of K-6.

(2) A course in career-vocational programming for special education students.

ITEM 3. Amend subrule 15.2(3) as follows:

15.2(3) Mental disabilities: ~~moderate/~~severe*/ and* profound. The holder of this endorsement is authorized to teach students with ~~moderate,~~ severe and profound multiple handicaps from age 5 to age 21 (and to a maximum allowable age in accordance with Iowa Code section 256B.8).

a. Prekindergarten-kindergarten mental disabilities. Meet the requirements for early childhood—special education. Refer to 15.2(9).

b. K-12 mental disabilities: ~~moderate/~~severe*/ and* profound.

(1) K-12 introduction/characteristics of mental disabilities to include the etiology of the disability, a historical perspective of its treatment, an overview of current trends in the

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

treatment of the disability, and a study of the impact of the disability on the child and family.

~~(2) K-12 functional, age-appropriate, longitudinal curriculum development (life skills) course for students with moderate mental disabilities which should include:~~

~~1. Assessment and evaluation.~~

~~2. Instructional methodology.~~

~~3. Integration and social interactions in regular schools and community environments.~~

~~4. Transition process from school to community environments.~~

~~5. Career-vocational programming.~~

~~(3)~~ *(2)* K-12 functional, age-appropriate, longitudinal curriculum development (life skills) course for students with severe~~/~~ *and* profound multiple handicaps which should include:

1. Assessment and evaluation.
2. Instructional methodology covering adaptations and the concept of partial participation.
3. Integration and social interactions in regular schools and community environments.
4. Transition process from school to community environments.
5. Career-vocational programming.

~~(4)~~ *(3)* A course of a general survey nature in the area of exceptional children.

~~(5)~~ *(4)* Coursework or evidence of competency in:

1. Individual behavioral management, behavioral change strategies, and classroom strategies.
2. Methods and strategies for working with parents, regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

~~(6) K-6 or 7-12 student teaching with students who experience moderate mental disabilities.~~

~~(7)~~ *(5)* K-6 or 7-12 student teaching experience with students with severe~~/~~ *and* profound multiple handicaps.

~~There must be a student teaching experience with both moderate and severe/profound multiply handicapped students; however, one practicum may be completed if the experiences and responsibilities are comparable to student teaching.~~

ITEM 4. Amend subrule 15.2(8) as follows:

15.2(8) Multicategorical resource teacher—mildly handicapped.

a. *Option 1*—K-6 multicategorical resource. The holder of this endorsement must meet the requirements to serve as a teacher of the nonhandicapped. See rule 282—14.18(272).

(1) A K-12 introductory course for providing educational services to the mildly disabled youngsters in multicategorical programs which should include current trends and issues for serving these youngsters, basic theoretical and practical approaches, educational alternatives, implication of federal and state statutes and related services, and the importance of the multidisciplinary team in providing more appropriate educational programming.

(2) A K-6 methods and strategies course which includes numerous models for providing curricular and instructional methodologies utilized in the education of the mildly handicapped.

(3) Two strategy courses chosen from the following list:

1. A methods course for mental disabilities.
2. A methods course for learning disabilities.
3. A methods course for behavioral disorders.
4. A course in remedial reading.
5. A course in remedial mathematics.

(4) A course of a general survey nature in the area of exceptional children.

(5) A course or courses in the collection and use of academic and behavioral data for the educational diagnosis, assessment, and evaluation of special education pupils which should include:

1. Norm-referenced instruments (including behavioral rating measures).
2. Criterion-referenced instruments.
3. Ecological assessment techniques.
4. Systematic observation.
5. Individual trait or personality assessments.
6. Social functioning data.
7. Application of assessment results to individualized program development and management.

(6) Coursework or evidence of competency in:

1. Individual behavioral management, behavioral change strategies, and classroom management.
2. Methods and strategies for working with parents, support services personnel, regular classroom teachers, paraprofessionals, and other individuals involved in the educational program.

(7) Student teaching in a K-6 multicategorical resource room—mildly handicapped.

b. *Option 1*—7-12 multicategorical resource.

(1) The holder of this endorsement must meet the requirements to serve as a teacher of the nonhandicapped. See rule 282—14.18(272).

(2) Same as K-6 except that student teaching and the instructional strategies course for the multicategorical resource room must be 7-12 instead of K-6.

(3) A course in career-vocational programming for special education students.

c. Option 2—K-6 multicategorical resource. To obtain this endorsement, the applicant must hold a valid Iowa license with either a K-6 or 7-12 special education instructional endorsement and must meet the following basic requirements in addition to those set out above in 15.2(8)"a"(1) through (7).

(1) Child growth and development with emphasis on the emotional, physical, and mental characteristics of elementary age children, unless completed as part of the professional education core. See 282—subrule 14.19(3).

(2) Methods of and materials for teaching elementary language arts.

(3) Remedial reading.

(4) Elementary curriculum methods and materials, unless completed as part of another elementary level endorsement program (e.g., 282—subrule 14.20(2), 14.20(3), or 14.20(12) or a similar elementary endorsement program).

(5) Methods of and materials for teaching elementary mathematics.

d. Option 2—7-12 multicategorical resource. To obtain this endorsement, the applicant must hold a valid Iowa license with either a K-6 or 7-12 special education instructional endorsement and must meet the following basic requirements in addition to those set out above in 15.2(8)"a"(1) through (6).

(1) Adolescent growth and development with emphasis on the emotional, physical, and mental characteristics of adolescent age children, unless completed as part of the professional education core. See 282—subrule 14.19(3).

(2) Adolescent literacy or secondary content area reading.

(3) Secondary or adolescent reading diagnosis and remediation.

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

(4) Methods of and materials for teaching adolescents with mathematics difficulties or mathematics for the secondary level learning disabilities teacher.

(5) Secondary methods unless completed as part of the professional education core. See 282—subrule 14.19(3).

(6) Student teaching and the instructional strategies course for the multicategorical resource room must be 7-12 instead of K-6.

(7) A course in career-vocational programming for special education students.

ARC 9765A

EDUCATIONAL EXAMINERS BOARD[282]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 272.2, the Board of Educational Examiners hereby gives Notice of Intended Action to adopt a new Chapter 22, "Paraeducator Certificates," Iowa Administrative Code.

This new chapter is intended to implement Iowa Code section 272.6, which requires the Board of Educational Examiners to adopt rules pursuant to Iowa Code chapter 17A relating to a multi-level voluntary licensing system ranging from paraeducator generalist to paraeducator specialist.

There will be a public hearing on the proposed new rules at 1 p.m., April 25, 2000, in Conference Room 3 North, Third Floor, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa. Persons may present their views at the public hearing orally or in writing. Persons who wish to make oral presentation at the public hearing may contact the Executive Director, Board of Educational Examiners, Grimes State Office Building, East 14th and Grand Avenue, Des Moines, Iowa 50319-0147, or at (515)281-5849, prior to the date of the public hearing.

Any interested person may make written comments or suggestions on the proposed rules until 4:30 p.m. on Wednesday, April 26, 2000. Written comments and suggestions should be addressed to Dr. Anne E. Kruse, Executive Director, Board of Educational Examiners, at the above address.

These proposed rules are intended to implement Iowa Code section 272.6.

The following **new** rules are proposed:

CHAPTER 22
PARAEDUCATOR CERTIFICATES

282—22.1(272) Paraeducator certificates. Iowa paraeducator certificates are issued upon application filed on a form provided by the board of educational examiners.

282—22.2(272) Approved paraeducator certificate programs. An applicant for an initial paraeducator certificate who completes the paraeducator preparation program from a recognized Iowa paraeducator approved program shall have the recommendation from the designated certifying official at the recognized area education agency, local education agency, community college, or institution of higher education where the preparation was completed. A recognized Iowa paraeducator approved program is one which has it program of preparation approved by the state board of education according to standards established by the board.

282—22.3(272) Issue date on original certificate. A certificate is valid only from and after the date of issuance.

282—22.4(272) Validity. The paraeducator certificate shall be valid for five years.

282—22.5(272) Certificate fee.

22.5(1) Issuance of certificates. The fee for the issuance of the paraeducator certificate shall be $25.

22.5(2) Adding areas of concentration. The fee for the addition of each area of concentration to a paraeducator certificate, following the issuance of the initial paraeducato certificate and any area(s) of concentration, shall be $10.

282—22.6(272) Prekindergarten through grade 12 paraeducator generalist certificate.

22.6(1) Applicants must possess a minimum of a high school diploma or a graduate equivalent diploma.

22.6(2) Applicants shall be disqualified for any of the following reasons:

a. The applicant is less than 21 years of age.

b. The applicant has been convicted of child abuse or sexual abuse of a child.

c. The applicant has been convicted of a felony.

d. The applicant's application is fraudulent.

e. The applicant's certification from another state is suspended or revoked.

f. The applicant fails to meet board standards for application for an initial or renewed certificate.

22.6(3) Qualifications or criteria for the granting or revocation of a certificate or the determination of an individual's professional standing shall not include membership or nonmembership in any teacher or paraeducator organization.

22.6(4) Applicants shall have successfully completed a least 90 clock hours of training in the areas of behavior management, exceptional child and at-risk child behavior, collaboration skills, interpersonal relations skills, child and youth development, technology, and ethical responsibilities and behavior.

22.6(5) Applicants shall have successfully completed the following list of competencies so that, under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Support a safe, positive teaching and learning environment including the following competencies:

(1) Follow prescribed health, safety, and emergency school and classroom policy and procedures.

(2) As directed, prepare and organize materials to support teaching and learning.

(3) Use strategies and techniques for facilitating the integration of individuals with diverse learning needs in various settings.

(4) Assist with special health services.

(5) Assist in adapting instructional strategies and materials according to the needs of the learner.

(6) Assist in gathering and recording data about the performance and behavior of individuals.

(7) Assist in maintaining a motivational environment.

(8) Assist in various instructional arrangements (e.g., large group, small group, tutoring).

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

b. Assist in the development of physical and intellectual development including the following competencies:

(1) Assist with the activities and opportunities that encourage curiosity, exploration, and problem-solving that are appropriate to the development levels and needs of all children.

(2) Actively communicate with children and provide opportunities and support for children to understand, acquire, and use verbal and nonverbal means of communicating thoughts and feelings.

(3) Actively communicate and support high expectations that are shared, clearly defined and appropriate.

(4) Make and document observations appropriate to the individual with specific learning needs.

(5) Use strategies that promote the learner's independence.

(6) Assist in monitoring progress and providing feedback to the appropriate person.

c. Support social, emotional, and behavioral development including the following competencies:

(1) Provide a supportive environment in which all children, including children with disabilities and children at risk of school failure, can begin to learn and practice appropriate and acceptable behaviors as individuals and groups.

(2) Assist in developing and teaching specific behaviors and procedures that facilitate safety and learning in each unique school setting.

(3) Assist in the implementation of individualized behavior management plans, including behavior intervention plans for students with disabilities.

(4) Model and assist in teaching appropriate behaviors as a response to inappropriate behaviors.

(5) Use appropriate strategies and techniques in a variety of settings to assist in the development of social skills.

(6) Assist in modifying the learning environment to manage behavior.

d. Establish positive and productive relations including the following competencies:

(1) Demonstrate a commitment to a team approach to interventions.

(2) Maintain an open, friendly, and cooperative relationship with each child's family, sharing information in a positive and productive manner.

(3) Communicate with colleagues, follow instructions and use problem-solving skills that will facilitate working as an effective member of the school team.

(4) Foster respectful and beneficial relationships between families and other school and community personnel.

(5) Function in a manner that demonstrates a positive regard for the distinctions among roles and responsibilities of paraprofessionals, professionals, and other support personnel.

e. Integrate effectively the technology to support student learning including the following competencies:

(1) Establish the environment for the successful use of educational technology.

(2) Support and strengthen technology planning and integration.

(3) Improve support systems for technical integration.

(4) Operate computers and use technology effectively.

f. Practice ethical and professional standards of conduct on an ongoing basis including the following competencies:

(1) Demonstrate a commitment to share information in a confidential manner.

(2) Demonstrate a willingness to participate in ongoing staff development and self-evaluation, and apply constructive feedback.

(3) Abide by the criteria of professional practice and rules of the board of educational examiners.

22.6(6) An applicant for a certificate under these rules shall demonstrate that the requirements of the certificate have been met and the burden of proof shall be on the applicant.

282—22.7(272) Paraeducator area of concentration. An area of concentration is not required, but optional. Applicants must currently hold or have previously held an Iowa paraeducator generalist certificate. Applicants may complete one or more areas of concentration, but must complete at least 45 clock hours in each area of concentration.

22.7(1) Early childhood—prekindergarten through grade 3. The paraeducator shall successfully complete the following list of competencies so that under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Reinforce skills, strategies, and activities involving individuals or small groups.

b. Participate as a member of the team responsible for developing service plans and educational objectives for parents and their children.

c. Listen to and communicate with parents in order to gather information for the service delivery team.

d. Demonstrate knowledge of services provided by health care providers, social services, education agencies, and other support systems available to support parents and provide them with the strategies required to gain access to these services.

e. Demonstrate effective strategies and techniques to stimulate cognitive, physical, social, and language development in the student.

f. Gather information as instructed by the classroom teacher about the performance of individual children and their behaviors, including observing, recording, and charting, and share information with professional colleagues.

g. Communicate and work effectively with parents and other primary caregivers.

22.7(2) Special needs—prekindergarten through grade 12. The paraeducator shall successfully complete the following list of competencies so that under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Understand and implement the goals and objectives in an individualized education plan (IEP).

b. Demonstrate an understanding of the value of serving children and youth with disabilities and special needs in inclusive settings.

c. Assist in the instruction of students in academic subjects using lesson plans and instructional strategies developed by teachers and other professional support staff.

d. Gather and maintain data about the performance and behavior of individual students and confer with special and general education practitioners about student schedules, instructional goals, progress, and performance.

e. Use appropriate instructional procedures and reinforcement techniques.

f. Operate computers, use assistive technology and adaptive equipment that will enable students with special needs to participate more fully in general education.

22.7(3) English as a second language—prekindergarten through grade 12. The paraeducator shall successfully complete the following list of competencies so that, under the di-

EDUCATIONAL EXAMINERS BOARD[282](cont'd)

rection and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Operate computers and use technology that will enable students to participate effectively in the classroom.

b. Work with the classroom teacher as collaborative partners.

c. Demonstrate knowledge of the role and use of primary language of instruction in accessing English for academic purposes.

d. Demonstrate knowledge of instructional methodologies for second language acquisition.

e. Communicate and work effectively with parents or guardians of English as a second language students in their primary language.

f. Demonstrate knowledge of appropriate translation and interpretation procedures.

22.7(4) Career and transitional programs—grades 5 through 12. The paraeducator shall successfully complete the following list of competencies so that, under the direction and supervision of a qualified classroom teacher, the paraeducator will be able to:

a. Assist in the implementation of career and transitional programs.

b. Assist in the implementation of appropriate behavior management strategies for career and transitional students and those students who may have special needs.

c. Assist in the implementation of assigned performance and behavior assessments including observation, recording, and charting for career and transitional students and those students who may have special needs.

d. Provide training at job sites using appropriate instructional interventions.

e. Participate in pre-employment, employment, or transitional training in classrooms or at off-campus sites.

f. Communicate effectively with employers and employees at work sites, and personnel or members of the public in other transitional learning environments.

282—22.8 to **22.11** Reserved.

282—22.12(272) Prekindergarten through grade 12 advanced paraeducator certificate. Applicants for the prekindergarten through grade 12 advanced paraeducator certificate shall have met the following requirements.

22.12(1) Currently hold or have previously held an Iowa paraeducator generalist certificate.

22.12(2) Possess an associate's degree or have earned 62 semester hours of college coursework from a regionally accredited institution of higher education.

22.12(3) Complete a minimum of two semester hours of coursework involving at least 100 clock hours of a supervised practicum with children and youth. These two semester hours of practicum may be part of an associate degree or part of the earned 62 semester hours of college coursework.

282—22.13(272) Renewal requirements. The paraeducator certificate may be renewed upon application, a $25 renewal fee, and verification of successful completion of coursework totaling three units in any combination listed below.

1. One unit may be earned through a planned staff development renewal course related to paraeducators in accordance with guidelines approved by the board of educational examiners.

2. One unit may be earned for each semester hour of college credit.

These rules are intended to implement Iowa Code section 272.6.

ARC 9773A

EDUCATION DEPARTMENT[281]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 6, "Appeal Procedures," Iowa Administrative Code.

These amendments implement Iowa Code chapter 17A contested case appeal procedures of a proposed decision.

No waiver provision is included because the Board of Education has adopted agencywide waiver rules.

Any interested person may submit oral or written suggestions or comments on or before April 25, 2000, by addressing them to Susan Anderson, Administrative Law Judge, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146, telephone (515)281-5295.

There will be a public hearing on April 25, 2000, at 1 p.m. in the State Board Room, Grimes State Office Building, Des Moines, Iowa, at which persons may present their views orally and in writing.

These amendments are intended to implement Iowa Code sections 17A.4 and 290.1.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 9774A**. The content of that submission is incorporated by reference.

ENVIRONMENTAL PROTECTION COMMISSION[567]
and
NATURAL RESOURCE COMMISSION[571]

Notice of Public Meetings

At the direction of the Governor, the Department of Natural Resources is embarking on a department-wide project to review administrative rules. The goal is to present rules that are up-to-date, meet present and future needs, are plain-spoken and direct and are necessary to carry out the laws of Iowa and the federally mandated programs.

This notice is intended to offer the opportunity to comment orally, in writing or electronically on Department rules. We will begin holding public meetings in April for the following rule groupings at the dates, times, and locations indicated. Comments on these rule groupings may be presented at these meetings, by mail or electronically, by April 30 to be considered in this review process. Written comments should be directed to the contact person listed below, Department of Natural Resources, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50309.

To file comments electronically, to see the Department rules review plan, and for updates on the progress of the rules review project, please use the Department Web site:

ENVIRONMENTAL PROTECTION COMMISSION[567](cont'd)

www.state.ia.us/dnr/ruleshtml.htm. Other Department program areas will be holding public meetings in May and June.

Air Quality

Contact: Corey McCoid, (515)281-6061, fax (515) 242-5094

April 10, 4 p.m., Air Quality Bureau, 7900 Hickman Road, Urbandale

April 13, 6 p.m., Public Library, 123 South Linn Street, Iowa City

April 18, 6 p.m., Iowa Western Community College, 906 Sunnyside Lane, Atlantic

April 25, 6:30 p.m., Public Library, 225 2nd Street SE, Mason City

Solid Waste and Waste Management

Contacts: Lavoy Haage, (515)281-4968, fax (515) 281-8895; Brian Tormey, (515)281-8927, fax (515) 281-8895

April 6, 2 p.m., Wallace State Office Building, 5th Floor Conference Room, 502 East Ninth Street, Des Moines

April 11, 6 p.m., Iowa Western Community College, Room 101, 906 Sunnyside Lane, Atlantic

April 12, 6 p.m., University of Iowa Oakdale Campus, Oakdale Hall Auditorium, I-80 Exit 240 North

April 13, 6 p.m., North Iowa Area Community College, Muse-Norris Complex, Room 180A, Mason City

Hazardous Conditions and Standards for Cleanup of Contaminated Property

Contact: Lambert Nnadi, (515)281-4117, fax (515) 281-8895

April 10, 6 p.m., Public Library, 225 2nd Street SE, Mason City

April 12, 6 p.m., Iowa Western Community College, 906 Sunnyside Lane, Atlantic

April 17, 6 p.m., University of Iowa Oakdale Campus, Oakdale Hall, Room 118, I-80 Exit 240 North

April 20, 3:30 p.m., Wallace State Office Building Auditorium, 502 East Ninth Street, Des Moines

Underground Storage Tanks

Contact: Paul Nelson, (515)281-8779, fax (515) 281-8895

April 10, 4 p.m., Wallace State Office Building, 5th Floor Conference Room, 502 East Ninth Street, Des Moines

April 12, 4 p.m., Public Library, 123 South Linn Street, Iowa City

April 18, 4 p.m., Iowa Western Community College, 906 Sunnyside Lane, Atlantic

April 25, 4 p.m., Public Library, 225 2nd Street SE, Mason City

Fisheries, Wildlife and Law Enforcement

Contact: Randy Edwards, (515)281-6154, fax (515) 281-6794

ICN meetings being held simultaneously on April 13, 6:30 p.m. in Ankeny, Carroll, Clear Lake, Council Bluffs, Creston, Decorah, Dubuque, Iowa City, Ottumwa, Sioux City, and Spencer. Please call for exact locations.

Parks, Recreation and Preserves

Contact: Arnie Sohn, (515)281-5814, fax (515)281-6794

May 4, 7 p.m., University of Iowa Oakdale Campus, Oakdale Hall, Gold Room, I-80 Exit 240 North

May 11, 7 p.m., Public Library, 225 2nd Street SE, Mason City

May 17, 7 p.m., Iowa Western Community College, 906 Sunnyside Lane, Atlantic

May 25, 7 p.m., Wallace State Office Building Auditorium, 502 East Ninth Street, Des Moines

Forests and Prairies

Contact: Jim Bulman, (515)281-5441, fax (515) 281-6794

June 5, 5 p.m., University of Iowa Oakdale Campus, Oakdale Hall, Gold Room, I-80 Exit 240 North

June 6, 5 p.m., North Iowa Area Community College, Muse-Norris Complex, Room 180D, Mason City

June 13, 5 p.m., Iowa Western Community College, 906 Sunnyside Lane, Atlantic

June 15, 4 p.m., DNR Air Quality Building, 7900 Hickman Road, Urbandale

ARC 9748A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of 1998 Iowa Acts, chapter 1213, section 9, the Department of Human Services proposes to amend Chapter 25, "Disability Services Management," appearing in the Iowa Administrative Code.

The Seventy-seventh General Assembly, in 1998 Iowa Acts, chapter 1213, section 8, subsection 3, established a risk pool fund to be used to cover an unanticipated cost in excess of a county's current fiscal year budget amount for the mental health, mental retardation, and developmental disabilities services fund. Basic eligibility requires a projected need in excess of the sum of 105 percent of the county's current fiscal year budget amount and any amount of the county's prior fiscal year accrual ending services fund balance in excess of 25 percent of the county's gross expenditures from the services fund in the prior fiscal year.

A Risk Pool Board was also established consisting of two county supervisors, two county auditors, a member of the state-county management committee created in Iowa Code section 331.438 who was not appointed by the Iowa State Association of Counties, a member of the county finance committee created in Iowa Code chapter 333A who is not an elected official, and two single entry point process administrators, all appointed by the Governor, subject to confirmation by two-thirds of the members of the Senate, and one member appointed by the director of the Department of Human Services. Members of the Board were appointed by the Governor in October of 1999 and their names submitted to the Senate in November of 1999. The Board held its first meeting in January of 2000.

Any county wishing to receive assistance from the risk pool must apply to the Risk Pool Board by April 1. The legislature appropriated $2 million for the fund for fiscal year 2000 and $2 million for fiscal year 2001. The total amount of risk pool assistance to counties shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool, the amount of assistance paid shall be prorated among the counties eligible for assistance. There are provisions for repaying the risk pool funds under specified conditions.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These rules establish the Risk Pool Board to administer the risk pool fund established by the legislature and the requirements for counties to receive assistance from the fund.

These rules do not provide for waivers in specified situations because the requirements for composition of the risk pool and Risk Pool Board, eligibility for funds, and for awarding and repayment of funds are all stated in the Iowa Code. These requirements cannot be waived by rule.

The substance of these rules is also Adopted and Filed Emergency and is published herein as **ARC 9749A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Consideration will be given to all written data, views, and arguments thereto received by the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, Des Moines, Iowa 50319-0114, on or before April 26, 2000.

These rules are intended to implement Iowa Code section 426B.5, subsection 3.

ARC 9750A

HUMAN SERVICES DEPARTMENT[441]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 234.6, 239B.4(4), and 249A.4, the Department of Human Services proposes to amend Chapter 41, "Granting Assistance," Chapter 65, "Administration," and Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The United States Department of Agriculture has notified the Department of Human Services that the Department has the option of exempting, for food stamp purposes, the earnings of persons who are temporarily employed by the Bureau of the Census during the period from April 1, 2000, through January 31, 2001. The United States Department of Agriculture is allowing this exemption at the request of the Bureau of the Census as an incentive for persons to take census employment. The Department of Human Services has decided to take this option and exempt census income for food stamp recipients.

The Department has made the decision to also exempt the census income for the Family Investment Program, the Family Medical Assistance Program, and for FMAP-related Medicaid programs to match food stamp policy.

These amendments do not provide for waiver in specified situations because federal food stamp law does not allow for any waivers and these amendments only provide additional benefits.

The substance of these amendments is also Adopted and Filed Emergency and is published herein as **ARC 9751A**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Consideration will be given to all written data, views, an arguments thereto received by the Office of Policy Analysis Department of Human Services, Hoover State Office Build ing, Des Moines, Iowa 50319-0114, on or before April 26 2000.

These amendments are intended to implement Iowa Cod sections 234.12, 239B.2(2), 239B.7, and 249A.4.

ARC 9756A

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 505.8 and Iowa Code Supplement section 514K.1, the Insurance Divi sion gives Notice of Intended Action to amend Chapter 35 "Accident and Health Insurance," Iowa Administrative Code.

The proposed amendment sets forth the types of information to be collected by the Division from health maintenance organizations and insurers using a preferred provider arrangement for the purpose of publishing a consumer guide. The amendment also provides for the annual filing of the information and the form in which it shall be filed with the Division.

Any person may make written comments on the proposed rules on or before April 25, 2000. These comments should be directed to Rosanne Mead, Assistant Commissioner, Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Comments may also be transmitted by E-mail to rosanne.mead@comm6.state.ia.us or by fax to (515) 281-5692.

A public hearing will be held at 10 a.m. on April 25, 2000, at the offices of the Insurance Division, 330 Maple Street, Des Moines, Iowa 50319. Persons wishing to provide oral comments should contact Rosanne Mead no later than April 24, 2000, to be placed on the agenda.

These rules are intended to implement Iowa Code Supplement section 514K.1(2).

The following amendment is proposed.

Amend 191—Chapter 35 by adopting the following **new** rules:

CONSUMER GUIDE

191—35.35(514K) Purpose. These rules implement Iowa Code Supplement section 514K.1(2) which requires the commissioner and the director of public health to annually publish a consumer guide. These rules apply to all carriers providing health insurance coverage in the individual, small employer group and large group markets that utilize a preferred provider arrangement and to all health maintenance organizations.

191—35.36(514K) Information filing requirements.

35.36(1) Each health maintenance organization and insurer using a preferred provider arrangement shall annually

INSURANCE DIVISION[191](cont'd)

file with the division no later than March 1 the following information by plan as requested by the division:

a. Health plan employer data information set (HEDIS).

b. Network composition.

c. Other information determined to be beneficial to consumers including but not limited to consumer survey information.

35.36(2) Each health maintenance organization and insurer using a preferred provider arrangement shall transmit the above-requested information by electronic mail or diskette in a format prescribed by the division.

191—35.37(514K) Limitation of information published. The division may establish limits on the data to be collected and published in the event the division believes the information is not statistically relevant and would not be beneficial to consumers.

These rules are intended to implement Iowa Code Supplement section 514K.1.

ARC 9772A

LOTTERY DIVISION[705]

Notice of Termination

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 99E.9(3), the Lottery Division terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on February 9, 2000, as **ARC 9650A** amending Chapter 1, "General Operation of the Lottery," Iowa Administrative Code.

The Notice proposed to adopt new rule 705—1.30(99E) providing a uniform process for the granting of waivers or variances from rules adopted by the Lottery Division in compliance with Executive Order Number 11.

The Lottery Division is terminating the rule making commenced in **ARC 9650A** and will renotice the proposed amendments to incorporate further changes and clarifications to requirements under Executive Order Number 11.

ARC 9769A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 15, "General License Regulations," Iowa Administrative Code.

This amendment combines two rules dealing with volunteer safety/education instructor certification for bow and fur harvester, snowmobile and all-terrain vehicle, boating safety and hunter education. This will serve to simplify and provide more uniformity to the overall instructor certification process.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 25, 2000. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the Law Enforcement Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 25, 2000, at 2 p.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code section 483A.27.

The following amendment is proposed.

Rescind rules **571—15.9(483A)** and **571—15.10(483A)**, adopt the following **new** rule and renumber **571—15.11(483A)** and **571—15.12(483A)** as **571—15.10(483A)** and **571—15.11(483A)**:

571—15.9(483A) Volunteer bow and fur harvester education instructors, snowmobile and all-terrain vehicle (ATV) safety instructors, boating safety instructors and hunter education instructors.

15.9(1) Purpose. Pursuant to Iowa Code sections 321G.23(2), 462A.1 and 483A.27(4), the department will certify volunteer instructors to teach bow, fur harvester, snowmobile, ATV, boating and hunter education courses.

15.9(2) Definitions. For the purpose of this rule:

"Certified instructor" means a person who has met all criteria in this rule for one or more of the above-named courses.

"Course" means the department's bow, fur harvester, snowmobile, ATV, boating and hunter education and ethics courses.

"Department" means the Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034.

"Instructor applicant" means a person who has applied to become a certified volunteer instructor for one of the above-named courses.

15.9(3) Minimum qualifications. The following conditions must be satisfied before any person can become a certified instructor. Failure to meet these conditions will result in the denial of the application. An applicant may be disqualified if the applicant has accumulated any habitual offender points pursuant to rule 571—15.6(481A), or other license suspension by the court or department. The instructor applicant will be notified of the denial by the recreational safety coordinator. An instructor applicant shall:

a. Submit an application as provided by the department to the local conservation officer or recreational safety officer.

b. Be at least 18 years of age.

c. Have experience in handling equipment, such as firearms, bows and arrows, furbearer traps, snowmobiles, ATVs and various navigational vessels, that is necessary for the various prescribed courses.

NATURAL RESOURCE COMMISSION[571](cont'd)

d. Have completed the course as defined in subrule 15.9(2).

e. Attend and pass an instructor's training and certification course administered by the department.

f. Submit to a background check. This check will include, but not be limited to, a criminal history check as provided by the department of public safety. A record of a felony conviction will disqualify the applicant. A record of serious or aggravated misdemeanors may disqualify the applicant based on type of offense and year committed.

g. Successfully complete the apprenticeship as required in subrule 15.9(4).

15.9(4) Instructor applicant apprenticeship. In addition to subrule 15.9(3), the following conditions must be satisfied to complete the instructor applicant apprenticeship:

a. Participate in one course.

b. Apprentice with a certified instructor.

The recreational safety officer may make the determination as to which certified instructor will be supervising the instructor applicant during the apprenticeship.

15.9(5) Certified education instructor responsibilities. A certified instructor has the following responsibilities:

a. To complete all prerequisites to becoming an instructor as provided in subrules 15.9(3) and 15.9(4).

b. To follow all policies and procedures as set forth in the current "Instructor Procedures Manual."

c. To assist in the recruitment and training of additional volunteer instructors.

d. To recruit and train students in the applied-for prescribed course program.

e. To actively promote the program in the instructor's county and to arrange for publicity for each new class.

f. To maintain order and discipline in the classroom and outdoor classroom at all times.

g. To accurately fill out required forms and reports for each class and mail that material to the recreational safety coordinator within 15 days after completion of the course.

h. To teach the course as prescribed by the department.

i. To maintain a file on all students that the instructor teaches.

j. To actively participate in one course every two years. If this requirement is not met, the instructor's certification may be terminated after notification by letter by the recreational safety coordinator. The person may reapply to become a volunteer safety education instructor pursuant to subrule 15.9(3).

k. To attend a minimum of one continuing education instructor workshop every three years for hunter education as provided by the department.

15.9(6) Grounds for revocation of instructor certification. The department may, at any time, seek to revoke the instructor certification of any person who:

a. Fails to meet the instructor responsibilities as outlined in subrules 15.9(4) and 15.9(5).

b. Fails to follow the policies and procedures as set forth in the current "Instructor Procedures Manual."

c. Falsifies any information as may be required by the department.

d. Handles any equipment in an unsafe manner, or allows any student or other instructor to handle equipment in a reckless or unsafe manner.

e. Is convicted of or forfeits bond for any fish and game, snowmobile, ATV or navigation violation of this state or any other state.

f. Uses abusive or foul language while conducting a course.

g. Participates in a course while under the influence of alcohol or any illegal drug.

h. Has substantiated complaints filed against the instructor by the public, department personnel or other certified instructor(s).

i. Fails to meet the requirements in subrule 15.9(5), paragraphs "j" and "k."

j. Is convicted of a felony or an aggravated or serious misdemeanor as defined in the statutes of this state. This would also include any felonies or comparable misdemeanors of any other state.

k. Receives compensation directly or indirectly from students for time spent preparing for or participating in a course.

15.9(7) Termination of certification. Any certified instructor has the right, at any time, to voluntarily terminate certification. If an instructor voluntarily terminates certification or certification is terminated by the department, the instructor must return to the department the certification card and all materials that were provided.

15.9(8) Compensation for instructors. Instructor applicants and certified instructors shall not receive any compensation for their time either directly or indirectly from students while preparing for or participating in a course. However, instructor applicants and certified instructors may require students to pay for actual course-related expenses involving facilities, meals or materials other than those provided by the department.

15.9(9) Hearing rights. If the department seeks to revoke an instructor certification pursuant to subrule 15.9(6), the department shall provide written notice of intent to revoke the certification as provided in 561—7.16(17A,455A). If the certified instructor requests a hearing, it shall be conducted in accordance with 561—Chapter 7.

This rule is intended to implement Iowa Code sections 321G.23(2), 462A.1 and 483A.27.

ARC 9768A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 16, "Public, Commercial, Private Docks and Dock Management Areas," Iowa Administrative Code.

These amendments extend the current "general dock permit" expiration date from March 1, 1999, to March 1, 2005, for private docks in compliance with rule 16.3(461A) and set the term length for general permits at five years by definition. These amendments will not change the current private dock standards or required specifications.

Any interested person may make written suggestions or comments on the proposed amendments on or before April 25, 2000. Such written materials should be directed to the Law Enforcement Bureau, Department of Natural Re-

NATURAL RESOURCE COMMISSION[571](cont'd)

sources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-6794. Persons who wish to convey their views orally should contact the Law Enforcement Bureau at (515)281-4515 or at the Law Enforcement Bureau offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 25, 2000, at 1 p.m. in the Fourth Floor West Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code section 461A.4.

The following amendments are proposed.

ITEM 1. Amend rule **571—16.1(461A)**, definition of "general permit," as follows:

"General permit" means a permit issued as a rule of this chapter to authorize maintenance of an eligible class of private docks. The owner of a private dock that is eligible for coverage under a general permit need not file an individual dock permit application. *Unless otherwise specified, a general permit is valid for five years.*

ITEM 2. Amend rule 571—16.3(461A), introductory paragraph, as follows:

571—16.3(461A) General permit for certain private docks on lakes. This rule constitutes a general permit for certain private docks on lakes as defined in 571—16.1(461A). This general permit expires March 1, ~~1999~~ *2005*. This general permit authorizes maintenance of private docks conforming to the standard conditions set forth in 571—16.5(461A) and the following additional criteria:

ARC 9770A

NATURAL RESOURCE COMMISSION[571]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 34, "Community Forestry Challenge Grant Program," Iowa Administrative Code.

This amendment clarifies the rules for the community tree planting grants program and expands sources of funding.

Any interested person may make written suggestions or comments on the proposed amendment on or before April 25, 2000. Such written materials should be directed to the Forestry Division, Department of Natural Resources, Wallace State Office Building, Des Moines, Iowa 50319-0034; fax (515)281-8894. Persons who wish to convey their views orally should contact the Forestry Division at (515)281-8657 or at the Division offices on the fourth floor of the Wallace State Office Building.

There will be a public hearing on April 25, 2000, at 2 p.m. in the Fourth Floor East Conference Room of the Wallace State Office Building at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is also Adopted and Filed Emergency and is published herein as **ARC 9771A**. The content of that submission is incorporated by reference.

This amendment is intended to implement Iowa Code sections 456A.20 and 461A.2.

ARC 9762A

NURSING BOARD[655]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby gives Notice of Intended Action to amend Chapter 6, "Nursing Practice for Registered Nurses/Licensed Practical Nurses," Iowa Administrative Code.

These amendments rescind a subrule prohibiting the initiation of infusion pumps by the LPN and amend a subrule regarding the hanging of hypertonic solutions by the LPN.

Any interested person may make written comments or suggestions on or before April 25, 2000. Such written materials should be directed to the Executive Director, Board of Nursing, RiverPoint Business Park, 400 S.W. 8th Street, Suite B, Des Moines, Iowa 50309-4685. Persons who want to convey their views orally should contact the Executive Director at (515)281-3256, or in the Board office at 400 S.W. 8th Street, by appointment.

These amendments are intended to implement Iowa Code section 152.1.

The following amendments are proposed.

ITEM 1. Amend subrule **6.5(4)**, paragraph **"b,"** as follows:

b. Administration of blood and blood products; vasodilators, vasopressors, oxytoxics, chemotherapy, colloid therapy, total parenteral nutrition, ~~hypertonic solutions,~~ anticoagulants, antiarrhythmics, ~~and~~ thrombolytics *and solutions with a total osmolarity of 600 or greater.*

ITEM 2. Rescind subrule **6.5(4)**, paragraph **"c,"** and reletter paragraphs **"d"** and **"e"** as **"c"** and **"d."**

ARC 9757A

PHARMACY EXAMINERS BOARD[657]

Notice of Termination

Pursuant to the authority of Iowa Code sections 124.301, 147.76, and 272C.4, the Board of Pharmacy Examiners terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on October 6, 1999, as **ARC 9374A**, proposing to amend Chapter 6, "General Pharmacy Licenses," Chapter 7, "Hospital Pharmacy Licenses," Chapter 8, "Minimum Standards for the Practice of Pharmacy," Chapter 15, "Correctional Facility Pharmacy Licenses," and Chapter 36, "Discipline," Iowa Administrative Code.

The Notice proposed that the pharmacist in charge of each Iowa pharmacy, annually and at any time that a new license is issued, complete a self-assessment of the pharmacy. The proposed amendments also included required actions if an assessment disclosed deficiencies in the operations or practices of the pharmacy and provided for disciplinary sanctions for noncompliance with the requirements of the self-assessment rules.

The Board is terminating the rule making commenced in **ARC 9374A** based on comments received from and concerns expressed by pharmacists. Based on the Board's assessment, the amendments would have imposed excessive burdens on pharmacists and defeated the primary purpose of the self-assessment, which is education. The Board intends, after further discussion and development of self-assessment forms, to submit Notice of Intended Action on less burdensome rules.

PHARMACY EXAMINERS BOARD[657]

Notice of Public Hearing

Executive Order Number 8 directs each state agency and board with rule-making authority to comprehensively review its rules and submit a report to the Governor's Office no later than November 1, 2001. The Board of Pharmacy Examiners' plan for regulatory review provides for at least one public hearing to seek public input and comment on the Board's rules.

Notice is hereby given that a public hearing will be held on Wednesday, April 26, 2000, at 9 a.m. to hear oral comments on the chapters listed below. The hearing will be held in a conference room at 400 S.W. Eighth Street, Suite E, Des Moines, Iowa. To ensure that everyone is accorded an opportunity to speak, the Board reserves the right to limit oral presentations at the public hearing.

In addition, any interested person may present written comments, data, views, and arguments no later than April 26, 2000, on any of the rules in these chapters. Written materials may be delivered to the offices of the Board of Pharmacy Examiners, 400 S.W. Eighth Street, Suite E, Des Moines, Iowa 50309-4688, be submitted via Internet E-mail to IowaBPE@excite.com, or be transmitted by fax to (515) 281-4609.

Comments will be heard on rules in the following chapters of 657 Iowa Administrative Code: Chapter 10, "Controlled Substances"; Chapter 11, "Drugs in Emergency Medical Service Programs"; Chapter 12, "Precursor Substances"; and Chapter 18, "Anabolic Steroids."

ARC 9767A

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 180, "Board of Optometry Examiners," and adopt new Chapter 181, "Continuing Education," Iowa Administrative Code.

The proposed amendments rescind the current endorsement rule and adopt in lieu thereof a new rule which clarifies licensure by endorsement; rescind the current continuing education rules; adopt a new chapter for continuing education; renumber the rule regarding grounds for discipline; and amend cross references to rules that are no longer in use.

Any interested person may make written comments on the proposed amendments no later than April 26, 2000, addressed to Rosalie Steele, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

The Division sent letters to the public for comment and six letters were received in return. Division staff also had input on these rules. The comments received were discussed by the Board and decisions were made based on need, clarity, intent and statutory authority, cost and fairness.

A public hearing will be held on April 26, 2000, from 9 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code section 147.76 and chapter 272C.

The following amendments are proposed.

ITEM 1. Rescind rule 645—180.6(154) and adopt in lieu thereof the following **new** rule:

645—180.6(154) Licensure by endorsement. An applicant who has been a licensed optometrist under laws of another jurisdiction for one year or more shall file an application for licensure by endorsement with the board office. The following requirements must be satisfied prior to licensure to practice optometry in Iowa through the procedure of licensure by endorsement.

180.6(1) Application for licensure by endorsement to practice optometry in this state shall be made to the board of optometry examiners on a form provided by the board which must be complete.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

180.6(2) Applications must be filed with the board along with the following:

a. Proof of graduation with a doctor of optometry degree from an accredited school and, in the case of foreign graduates, adherence to the current requirements of the National Board of Examiners in Optometry to sit for the examination.

b. Evidence of successful completion of the examination of the National Board of Examiners in Optometry that was current at the time of initial licensure, or the examination that is currently offered by the National Board of Examiners in Optometry.

c. An applicant licensed to practice optometry in any state prior to January 1, 1986, shall supply evidence of completion of a course provided by an institution accredited by a regional or professional accreditation organization which is recognized or approved by the council on postsecondary accreditation of the United States Department of Education, which has particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa. The course shall include a minimum of 40 hours of didactic education and 60 hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa. An applicant shall have completed an additional 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases.

d. Proof of licensure and evidence of one year of active practice in another state, territory or district of the United States immediately preceding the date of application that has a similar scope of practice as determined by the board. When the scope of practice is different, the applicant shall make available to the board evidence of completion of additional hours of training related to the area of the deficiency as prescribed by the board. The board may waive the requirement of one year of active practice if during the above mentioned one-year period, the applicant was:

(1) Teaching optometry;
(2) A military optometrist;
(3) A supervisory or administrative optometrist; or
(4) A researcher in optometry.

e. Verification by an official statement from each state board of examiners regarding the status of the applicant's license, including date of licensure, expiration date and available information regarding any pending or prior investigation that has resulted in disciplinary action. The applicant shall request such statements from all states in which the applicant is currently or was formerly licensed.

f. Statement as to any claims, complaints, judgments or settlements, pending or final, made with respect to the applicant arising out of the alleged negligence or malpractice in rendering professional services as an optometrist.

ITEM 2. Rescind and reserve rules **645—180.12(154)** to **645—180.18(154,272C)**.

ITEM 3. Renumber rule **645—180.115(272C)** as **645—180.11(272C)**.

ITEM 4. Amend renumbered rule 645—180.11(272C), introductory paragraph, as follows:

645—180.11(272C) Grounds for discipline. The board may impose any of the disciplinary sanctions set forth in ~~rule 180.113(272C)~~ *the rules*, including civil penalties in an amount not to exceed $1,000 or maximum allowed, when the board determines that the licensee is guilty of any of the following acts or offenses:

ITEM 5. Amend renumbered subrule 180.11(19) as follows:

180.11(19) Failure to file the reports required by rule 645—~~180.101~~ *9.3*(272C) concerning acts or omissions committed by another licensee.

ITEM 6. Adopt **new** 645—Chapter 181 as follows:

CHAPTER 181
CONTINUING EDUCATION

645—181.1(154) Definitions. For the purpose of these rules, the following definitions shall apply:

"Active license" means the license of a person who is acting, practicing, functioning, and working in compliance with license requirements.

"Administrator" means the administrator of the board of optometry examiners.

"Approved program/activity" means a continuing education program/activity meeting the standards set forth in these rules, which has received advance approval by the board pursuant to these rules.

"Approved sponsor" means a person or an organization sponsoring continuing education activities that has been approved by the board as a sponsor pursuant to these rules. During the time an organization, educational institution, or person is an approved sponsor, all continuing education activities of such organization, educational institution, or person may be deemed automatically approved.

"Audit" means the selection of licensees for verification of satisfactory completion of continuing education requirements during a specified time period or the selection of providers for verification of adherence to continuing provider requirements during a specified time period.

"Board" means the board of optometry examiners.

"Continuing education" means planned, organized learning acts designed to maintain, improve, or expand a licensee's knowledge and skills in order for the licensee to develop new knowledge and skills relevant to the enhancement of practice, education, or theory development to improve the safety and welfare of the public.

"Hour of continuing education" means a clock hour spent by a licensee in actual attendance at and completion of approved continuing education activity.

"Inactive license" means the license of a person who is not engaged in practice in the state of Iowa.

"Lapsed license" means a license that a person has failed to renew as required, or the license of a person who has failed to meet stated obligations for renewal within a stated time.

"License" means license to practice.

"Licensee" means any person licensed to practice as an optometrist in the state of Iowa.

645—181.2(154) Continuing education requirements.

181.2(1) The biennial continuing education compliance period shall extend for a two-year period between July 1 and June 30 of each even-numbered year.

a. Requirements for nontherapeutic licensees. Each biennium, each person who is licensed to practice as an optometrist in this state and who is not therapeutically certified shall be required to complete a minimum of 30 hours of continuing education approved by the board. Nontherapeutic licensees must comply with Iowa continuing education rules for license renewal and reinstatement by meeting the continuing education requirements in the state of practice.

b. Requirements for therapeutic licensees. Each biennium, each person who is licensed to practice as a therapeutic licensee in this state shall be required to complete a mini-

mum of 50 hours of continuing education approved by the board. A minimum of 20 hours of continuing education per biennium shall be in the treatment and management of ocular disease. Therapeutic licensees must comply with Iowa continuing education rules for license renewal and reinstatement regardless of the licensee's place of residence or place of practice.

181.2(2) Requirements of new licensees. Those persons licensed for the first time shall not be required to complete continuing education as a prerequisite for the first renewal of their licenses. Continuing education hours acquired anytime from the initial licensing until the second license renewal may be used. The new licensee will be required to complete a minimum of 50 hours of continuing education per biennium for each subsequent license renewal.

181.2(3) Hours of continuing education credit may be obtained by attending and participating in a continuing education activity. These hours must be approved by the board or otherwise meet the requirements herein and be approved by the board pursuant to statutory provisions and the rules that complement them.

181.2(4) No hours of continuing education shall be carried over into the next biennium.

181.2(5) It is the responsibility of each licensee to finance the cost of continuing education.

645—181.3(154) Standards for approval.

181.3(1) General criteria. A continuing education activity which meets all of the following criteria is appropriate for continuing education credit if it is determined by the board that the continuing education activity:

a. Constitutes an organized program of learning which contributes directly to the professional competency of the licensee;

b. Pertains to common subject matters which integrally relate to the practice of the profession;

c. Is conducted by individuals who have specialized education, training and experience by reason of which said individuals should be considered experts concerning the subject matter of the program. The application must be accompanied by a paper, manual or outline which substantively pertains to the subject matter of the program and reflects program schedule, goals and objectives. The board may request the qualifications of presenters.

d. Fulfills stated program goals, objectives, or both; and

e. Provides proof of attendance to licensees in attendance including:

(1) Date, location, course title, presenter(s);

(2) Numbers of program contact hours. (One contact hour usually equals one hour of continuing education credit.); and

(3) Official signature or verification by program sponsor.

181.3(2) Specific criteria.

a. Continuing education hours of credit may be obtained by attending:

(1) The continuing education programs of the Iowa Optometric Association, the American Optometric Association, the American Academy of Optometry, and national regional optometric congresses, schools of optometry and all state optometric associations. The department of ophthalmology of the school of medicine of the University of Iowa shall be one of the approved providers of continuing education for Iowa optometrists;

(2) Postgraduate study through an accredited school or college of optometry;

(3) Meetings or seminars that are approved and certified for optometric continuing education by the Association of Regulatory Boards of Optometry's Council on Optometric Practitioner Education Committee (COPE); or

(4) Continuing education activities of an approved sponsor.

b. The maximum number of hours in each category in each biennium is as follows:

(1) Twelve hours of credit for local study group programs that have prior approval or an approved sponsorship.

(2) Ten hours of credit for correspondence courses, which include written and electronically transmitted material and have a post-course test. Certification of the continuing education requirements and of passing the test must be given by the institution providing the continuing education, and that institution must be accredited by a regional or professional accreditation organization which is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education.

(3) Six hours of credit may be used for practice management courses.

(4) Two hours of credit may be used for dependent adult abuse and child abuse identification.

(5) Four hours of credit for current certification in CPR, by the American Heart Association, the American Red Cross or an equivalent organization, may be used.

(6) Twenty hours of credit may be used for postgraduate study courses.

(7) Twenty hours of credit in the treatment and management of ocular disease from the University of Iowa may be used.

645—181.4(154) Approval of sponsors, programs, and activities for continuing education.

181.4(1) Approval of sponsors. An applicant who desires approval as a sponsor of courses, programs, or other continuing education activities shall, unless exempted elsewhere in these rules, apply for approval to the board on the form designated by the board stating the applicant's educational history for the preceding two years or proposed plan for the next two years.

a. The form shall include the following:

(1) Date, place, course title(s) offered and outline of content;

(2) Total hours of instruction presented;

(3) Names and qualifications of instructors, including résumé or vitae; and

(4) Evaluation form(s).

b. Records shall be retained by the sponsor for four years.

c. Attendance record report. The person or organization sponsoring an approved continuing education activity shall provide a certificate of attendance or verification to the licensee providing the following information:

(1) Program date(s);

(2) Course title and presenter;

(3) Location;

(4) Number of clock hours attended and continuing education hours earned;

(5) Name of sponsor and sponsor number;

(6) Licensee's name; and

(7) Method of presentation.

d. All approved sponsors shall maintain a copy of the following:

(1) The continuing education activity;

(2) List of enrolled licensees' names and license numbers; and

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

(3) Number of continuing education clock hours awarded for a minimum of four years from the date of the continuing education activity.

The sponsor shall submit a report of all continuing education programs conducted in the previous year during the assigned month for reporting designated by the board. The report shall also include a summary of the evaluations completed by the licensees.

181.4(2) Prior approval of programs/activities. An organization or person other than an approved sponsor that desires prior approval of a course, program or other educational activity or that desires to establish accreditation of such activity prior to attendance shall apply for approval to the board on a form provided by the board at least 60 days in advance of the commencement of the activity. The board shall approve or deny such application in writing within 30 days of receipt of such application. The application shall state:

a. The date(s);
b. Course(s) offered;
c. Course outline;
d. Total hours of instruction; and
e. Names and qualifications of speakers and other pertinent information.

The organization or person shall be notified of approval or denial by ordinary mail.

181.4(3) Review of programs. Continuing education programs/activities shall be reported every year at the designated time as assigned by the board. The board may at any time reevaluate an approved sponsor. If, after reevaluation, the board finds there is cause for revocation of the approval of an approved sponsor, the board shall give notice of the revocation to that sponsor by certified mail. The sponsor shall have the right to hearing regarding the revocation. The request for hearing must be sent within 20 days after the receipt of the notice of revocation. The hearing shall be held within 90 days after the receipt of the request for hearing. The board shall give notice by certified mail to the sponsor of the date set for the hearing at least 30 days prior to the hearing. The board shall conduct the hearing in compliance with rule 645—11.9(17A).

181.4(4) Post-approval of activities. A licensee seeking credit for attendance and participation in an educational activity which was not conducted by an approved sponsor or otherwise approved shall submit to the board, within 30 days after completion of such activity, the following:

a. The date(s);
b. Course(s) offered;
c. Course outline;
d. Total hours of instruction and credit hours requested;
e. Names and qualifications of speakers and other pertinent information;
f. Request for credit which includes a brief summary of the activity; and
g. Certificate of attendance or verification.

Within 90 days after receipt of such application, the board shall advise the licensee in writing by ordinary mail whether the activity is approved and the number of hours allowed. A licensee not complying with the requirements of this subrule may be denied credit for such activity.

181.4(5) Voluntary relinquishment. The approved sponsor may voluntarily relinquish sponsorship by notifying the board office in writing.

645—181.5(154) Reporting continuing education by licensee. At the time of license renewal, each licensee shall be required to submit a report on continuing education to the board on a board-approved form.

181.5(1) The information on the form shall include:

a. Title of continuing education activity;
b. Date(s);
c. Sponsor of the activity;
d. Board-approved sponsor number; and
e. Number of continuing education hours earned.

181.5(2) Audit of continuing education report. After each educational biennium, the board will audit a percentage of the continuing education reports before granting the renewal of licenses to those being audited.

a. The board will select licensees to be audited.

b. The licensee shall make available to the board for auditing purposes a copy of the certificate of attendance or verification for all reported activities that includes the following information:

(1) Date, location, course title, schedule (brochure, pamphlet, program, presenter(s)), and method of presentation;

(2) Number of contact hours for program attended; and

(3) Certificate of attendance or verification indicating successful completion of course.

c. For auditing purposes, the licensee must retain the above information for two years after the biennium has ended.

d. Submission of a false report of continuing education or failure to meet continuing education requirements may cause the license to lapse and may result in formal disciplinary action.

e. All renewal license applications that are submitted late (after the end of the compliance period) may be subject to audit of continuing education report.

f. Failure to receive the renewal application shall not relieve the licensee of responsibility of meeting continuing education requirements and submitting the renewal fee by the end of the compliance period.

645—181.6(154) Reinstatement of lapsed license. Failure of the licensee to renew within 30 days after expiration date shall cause the license to lapse. A person who allows a license to lapse cannot engage in practice in Iowa without first complying with all regulations governing reinstatement as outlined in the board rules. A person who allows the license to lapse may apply to the board for reinstatement of the license. Reinstatement of the lapsed license may be granted by the board if the applicant:

1. Submits a written application for reinstatement to the board;
2. Pays all of the renewal fees then due;
3. Pays all penalty fees which have been assessed by the board for failure to renew;
4. Pays reinstatement fee; and
5. Provides evidence of satisfactory completion of Iowa continuing education requirements during the period since the license lapsed. The total number of continuing education hours required for license reinstatement is computed by multiplying 50 for therapeutic licensees (with a maximum of 100) and 30 for nontherapeutic licensees (with a maximum of 60) by the number of bienniums since the license lapsed. If the license has lapsed for more than five years, the applicant shall successfully pass the Iowa state optometry jurisprudence examination with a minimum grade of 75 percent.

645—181.7(154,272C) Continuing education waiver for active practitioners. An optometrist licensed to practice optometry shall be deemed to have complied with the continuing education requirements of this state during the period that the licensee serves honorably on active duty in the military

services or as a government employee outside the United States as a practicing optometrist.

645—181.8(154,272C) Continuing education waiver for inactive practitioners. A licensee who is not engaged in practice in the state of Iowa and who is residing within or without the state of Iowa may be granted a waiver of continuing education compliance and obtain a certificate of waiver upon written application to the board. The application shall contain a statement that the applicant will not engage in practice in Iowa without first complying with all regulations governing reinstatement after waiver. The application for a certificate of waiver shall be submitted upon forms provided by the board.

645—181.9(154,272C) Continuing education waiver for physical disability or illness. The board may, in individual cases involving physical disability or illness, grant waivers of the minimum education requirements or extension of time within which to fulfill the same or make the required reports. No waiver or extension of time shall be granted unless written application therefor shall be made on forms provided by the board and signed by the licensee and appropriate licensed health care practitioners. The board may grant waiver of the minimum educational requirements for any period of time not to exceed one calendar year from the onset of disability or illness. In the event that the physical disability or illness upon which a waiver has been granted continues beyond the period of waiver, the licensee must reapply for an extension of the waiver. The board may, as a condition of any waiver granted, require the applicant to make up a certain portion or all of the minimum educational requirements waived by such methods as may be prescribed by the board.

645—181.10(154,272C) Reinstatement of inactive practitioners. Inactive practitioners who have been granted a waiver of compliance with these rules and obtained a certificate of exemption shall, prior to engaging in the practice of optometry in the state of Iowa, satisfy the following requirements for reinstatement.

181.10(1) Submit written application for reinstatement to the board upon forms provided by the board with appropriate reinstatement fee; and

181.10(2) Furnish in the application evidence of one of the following:

a. Full-time practice in another state of the United States or the District of Columbia and completion of continuing education for each biennium of inactive status substantially equivalent in the opinion of the board to that required under these rules; or

b. Completion of a total number of hours of approved continuing education computed by multiplying 50 for therapeutic licensees or 30 for nontherapeutic licensees by the number of bienniums a certificate of exemption shall be in effect for such applicant; or

c. Successful completion of any or all parts of the national license examination as deemed necessary by the board, successfully completed within one year immediately prior to the submission of such application for reinstatement.

645—181.11(272C) Hearings. In the event of denial, in whole or part, of any application for approval of a continuing education program or credit for continuing education activity, the applicant, licensee or program provider shall have the right within 20 days after the sending of the notification of denial by ordinary mail to request a hearing which shall be held within 90 days after receipt of the request for hearing. The hearing shall be conducted by the board or an administrative law judge designated by the board, in substantial compliance with the hearing procedure set forth in rule 645—11.9(17A).

These rules are intended to implement Iowa Code section 272C.2 and chapter 154.

ARC 9758A

PUBLIC HEALTH DEPARTMENT[641]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147A.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 130, "Emergency Medical Services Training Grants," Iowa Administrative Code.

The proposed amendments will update definitions to be consistent with other chapters regarding emergency medical services and also allow the use of training grant money to be spent for certification, recertification, and written examination fees.

The Department has not provided specific provisions for a waiver or variance from rules in Chapter 130. A party seeking a waiver or variance from rules in Chapter 130 should do so pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

The Department of Public Health will hold a public hearing over the Iowa Communications Network (ICN) on Tuesday, April 25, 2000, from 1 to 2 p.m. Sites participating in the ICN broadcast include the following:

S National Guard Armory, 11 East 23rd Street, Spencer
S National Guard Armory, 1712 LaClark Road, Carroll
S National Guard Armory, 1160 10th Street SW, Mason City
S Department of Public Health, ICN Room, Sixth Floor, Lucas State Office Building, 321 East 12th Street, Des Moines
S National Guard Armory, 195 Radford Road, Dubuque
S National Guard Armory, 501 Highway 1 South, Washington

At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. Any person who plans to attend the public hearing and who may have special requirements, such as hearing or mobility impairments, should contact the Department of Public Health and advise of specific needs.

Any oral or written comments must be received on or before April 25, 2000. Comments should be addressed to Gary Ireland, EMS Bureau Chief, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

These rules are intended to implement 1999 Iowa Acts, chapter 201, and Iowa Code chapter 135.

The following amendments are proposed.

ITEM 1. Amend rule **641—130.1(135)** as follows:

Amend the following definitions:

"Ambulance service" means any privately or publicly owned service program which utilizes ambulances in order

PUBLIC HEALTH DEPARTMENT[641](cont'd)

to provide patient transportation and ~~emergency~~ medical care. ~~at the scene of an emergency or while en route to a hospital or during transfer from one medical care facility to another or to a private home.~~

"~~CEHs~~ *CEH*" means continuing education ~~hours~~ *hour* which ~~are~~ *is* based upon a minimum of 50 minutes of training per hour.

"Continuing education" means ~~approved~~ training *approved by the department* which is ~~received after becoming~~ *obtained by a* certified ~~as an EMS~~ *emergency medical care* provider to maintain, *improve, or expand relevant* skills and knowledge and to satisfy renewal of certification requirements. ~~This includes emergency medical training for members of the general public.~~

"Emergency medical care personnel" *or "provider"* means ~~any individual currently certified by the department pursuant to Iowa Code section 147A.6~~ *an individual who has been trained to provide emergency and non-emergency medical care at the first responder, EMT-basic, EMT-intermediate, EMT-paramedic level or other certification levels adopted by rule by the department, and who has been issued a certificate by the department.*

"Nontransport service" means any privately or publicly owned ~~rescue or first response~~ *EMS* service program ~~which~~ *that* does not provide patient transportation (except when no ambulance is available or in a disaster situation). ~~and utilizes only first response vehicles to provide emergency medical care at the scene of an emergency.~~

"Service program" *or "service"* means any emergency medical care ambulance or nontransport service *that has received authorization by the department.*

Rescind the following definition:

~~"EMS provider" means emergency medical care personnel, other health care practitioners or members of the general public involved in the provision of emergency medical care.~~

ITEM 2. Amend subrule 130.4(2) as follows:

130.4(2) Eligible costs. Costs which are eligible for EMS training fund expenditures include:

a. Reimbursement of tuition, fees and materials following successful completion of an EMS course. Practical *and written* examination fees may also be included.

b. and c. No change.

ITEM 3. Amend subrule 130.4(3) as follows:

130.4(3) Ineligible costs. Costs which are not eligible for funding include, but are not limited to, the following:

a. No change.

b. ~~Certification/recertification fees;~~

c. to m. No change.

n. ~~Written examination fees.~~

ITEM 4. Amend **641—Chapter 130** by amending the implementation clause as follows:

These rules are intended to implement ~~1995 Iowa Acts, House File 530~~ *1999 Iowa Acts, chapter 201*, and Iowa Code chapter 135 ~~as amended by 1995 Iowa Acts, Senate File 178~~.

ARC 9761A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 410, "Special Mobile Equipment," Iowa Administrative Code.

1999 Iowa Acts, chapter 13, section 28, repealed Iowa Code section 321.21, which provided for the issuance of special mobile equipment plates and certificates. The proposed amendments remove references to the application process and issuance of special mobile equipment plates and certificates. However, a certificate of title and registration may be obtained in accordance with Iowa Code chapter 321 for a motor truck, trailer or semitrailer which has special mobile equipment permanently attached. Information was added concerning which office answers questions regarding special mobile equipment.

No waiver provisions were included in these amendments. These amendments are an interpretation of statute, and waivers are not appropriate to the subject matter.

Any person or agency may submit written comments concerning these proposed amendments or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tgeorge@max.state.ia.us.
5. Be received by the Director's Staff Division no later than April 25, 2000.

A meeting to hear requested oral presentations is scheduled for Thursday, April 27, 2000, at 8 a.m. in the conference room of the Motor Vehicle Division, which is located on the upper level of Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

These amendments are intended to implement Iowa Code sections 321.18 and 321.20 and Iowa Code Supplement section 321E.12.

Proposed rule-making actions:

ITEM 1. Amend rule 761—410.1(321) as follows:

761—410.1(321) General.

410.1(1) Special mobile equipment is defined in Iowa Code section 321.1.

410.1(2) Special mobile equipment is exempt from the titling and registration provisions of Iowa Code sections 321.18 and 321.20. However, a certificate of title *and registration* may be obtained in accordance with ~~761—Chapter 400~~ *Iowa Code chapter 321* for *a motor truck, trailer or*

TRANSPORTATION DEPARTMENT[761](cont'd)

semitrailer with special mobile equipment ~~that is~~ *permanently* attached ~~to a motor truck, trailer or semitrailer. To obtain a certificate of title, the owner must pay the title fee, but need not obtain a special mobile equipment plate and certificate of identification.~~

410.1(3) *Questions regarding special mobile equipment may be directed by mail to the Office of Motor Carrier Services, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines; or by telephone at (515)237-3264.*

This rule is intended to implement Iowa Code sections 321.1, 321.18 and ~~321.21~~ *321.20*.

ITEM 2. Rescind rules **761—410.2(321)** and **761—410.3(321E)**.

ITEM 3. Adopt the following **new** rule:

761—410.2(321E) Special mobile equipment transported on a registered vehicle. The movement of special mobile equipment or component parts of special mobile equipment transported on a vehicle registered for the gross weight of the vehicle without load, as provided in Iowa Code Supplement section 321E.12, is subject to the following:

410.2(1) A vehicle registered for its gross weight without load shall not be used to transport special mobile equipment for hire.

410.2(2) If the special mobile equipment is leased, the lease agreement or a certified copy of the lease agreement shall be carried in the cab of the transporting vehicle.

410.2(3) All movements of special mobile equipment shall comply with the size and weight limits in Iowa Code chapter 321 unless a permit to exceed these limits is obtained in accordance with Iowa Code chapter 321E.

This rule is intended to implement Iowa Code Supplement section 321E.12.

ARC 9764A

TRANSPORTATION DEPARTMENT[761]

Notice of Intended Action

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 529, "For-Hire Interstate Motor Carrier Authority," Iowa Administrative Code.

No changes to the federal regulations have occurred. However, the Code of Federal Regulations was updated in October 1999, and the Department needs to cite the most current version in these rules.

Any person or agency may submit written comments concerning this proposed amendment or may submit a written request to make an oral presentation. The comments or request shall:

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: tgeorge@max.state.ia.us.
5. Be received by the Director's Staff Division no later than April 25, 2000.

A meeting to hear requested oral presentations is scheduled for Thursday, April 27, 2000, at 10 a.m. in the conference room of the Motor Vehicle Division, which is located on the upper level of Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

The meeting will be canceled without further notice if no oral presentation is requested.

This amendment is intended to implement Iowa Code chapter 327B.

Proposed rule-making action:

Amend rule 761—529.1(327B) as follows:

761—529.1(327B) Motor carrier regulations. The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-379, dated October 1, ~~1998~~ *1999*, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library.

NOTICE—USURY

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

March 1, 1999 — March 31, 1999	6.75%
April 1, 1999 — April 30, 1999	7.00%
May 1, 1999 — May 31, 1999	7.25%
June 1, 1999 — June 30, 1999	7.25%
July 1, 1999 — July 31, 1999	7.50%
August 1, 1999 — August 31, 1999	8.00%
September 1, 1999 — September 30, 1999	8.00%
October 1, 1999 — October 31, 1999	8.00%
November 1, 1999 — November 30, 1999	8.00%
December 1, 1999 — December 31, 1999	8.00%
January 1, 2000 — January 31, 2000	8.00%
February 1, 2000 — February 29, 2000	8.25%
March 1, 2000 — March 31, 2000	8.75%
April 1, 2000 — April 30, 2000	8.50%

ARC 9760A

WORKERS' COMPENSATION DIVISION[876]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 86.8, the Workers' Compensation Commissioner hereby gives Notice of Intended Action to amend Chapter 1, "Purpose and Func-

WORKERS' COMPENSATION DIVISION[876](cont'd)

tion"; Chapter 2, "General Provisions"; Chapter 4, "Contested Cases"; Chapter 5, "Declaratory Orders"; Chapter 8, "Substantive and Interpretive Rules"; Chapter 9, "Public Records and Fair Information Practices"; and Chapter 12, "Formal Review and Waiver of Rules," Iowa Administrative Code.

Item 1 amends the implementation clause to correct an Iowa Code reference to section 84A.2 which has been transferred to 84A.5 by the Iowa Code Editor.

Item 2 amends rule 2.4(85) to allow for lay testimony and other evidence in addition to medical opinions based on the AMA guides in determining an injured worker's disability. This change makes the rule consistent with supreme court decisions, including Miller v. Lauridsen Foods, Inc., 525 N.W.2d 417 (Iowa 1994) and Terwilliger v. Snap-on Tools Corp., 529 N.W.2d 267 (Iowa 1995).

Item 3 changes a reference to Iowa Rule of Civil Procedure 105, which was moved to rule 116, effective January 24, 1998.

Item 4 corrects a reference to a declaratory order and a reference to the form number for a patient's waiver.

Item 5 amends rule 4.17(85,86,17A) regarding exchange of records to specify that all records received pursuant to a patient's waiver as well as medical records will be promptly served on opposing parties.

Item 6 changes references to 1998 Iowa Acts to Iowa Code section 17A.17.

Item 7 adds the agency fax number to the agency rule that currently allows for filing by fax.

Item 8 changes a reference to 1998 Iowa Acts to Iowa Code subsection 17A.9(5).

Item 9 changes a reference to 1998 Iowa Acts to Iowa Code subsection 17A.9(1) and corrects a reference to a declaratory order.

Item 10 changes a reference to 1998 Iowa Acts to Iowa Code section 17A.9.

Item 11 removes the requirement that the commissioner review the fee structure for the allowable costs for duplication of medical records on a specific date each year.

Item 12 changes a reference to 1998 Iowa Acts to Iowa Code section 85B.9A.

Items 13, 14 and 15 specify that declaratory rulings and declaratory orders are open records.

Item 16 amends the implementation clause by adding Iowa Code section 17A.4(1)"b."

The Division of Workers' Compensation has determined that these proposed amendments will not necessitate additional annual expenditures exceeding $100,000 by political subdivisions or agencies which contract with political subdivisions. Therefore, no fiscal note accompanies this Notice.

The Division of Workers' Compensation has determined that these amendments will not have an impact on small business within the meaning of Iowa Code section 17A.4A.

None of the proposed amendments includes a waiver provision because rule 876—12.4(17A) provides the specified situations for waiver of Workers' Compensation Division rules.

Any interested person may make written suggestions or comments on these proposed amendments on or before April 25, 2000, to the Workers' Compensation Commissioner, Division of Workers' Compensation, 1000 East Grand Avenue, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code sections 17A.3(1)"a" and "b," 17A.4(1)"b," 17A.9, 17A.12, 17A.17, 22.7, 84A.5, 85.27, 85B.9A, 86.8, 86.13, 86.18, and 86.24.

The following amendments are proposed.

ITEM 1. Amend **876—Chapter 1** by amending the implementation clause as follows:

These rules are intended to implement Iowa Code sections 17A.3(1)"a" and "b" and ~~84A.2~~ *84A.5*.

ITEM 2. Amend rule 876—2.4(85) as follows:

876—2.4(85) Guides to evaluation of permanent impairment. The Guides to the Evaluation of Permanent Impairment published by the American Medical Association are adopted as a guide for determining permanent partial disabilities under Iowa Code section 85.34(2)"a" to "s." The extent of loss or percentage of permanent impairment may be determined by use of this guide and payment of weekly compensation for permanent partial scheduled injuries made accordingly. Payment so made shall be recognized by the workers' compensation commissioner as a prima facie showing of compliance by the employer or insurance carrier with the foregoing sections of the Iowa Workers' Compensation Act. Nothing in this rule shall be construed to prevent the presentations of other medical opinions or guides *or other material evidence* for the purpose of establishing that the degree of permanent ~~impairment~~ *disability* to which the claimant would be entitled would be more or less than the entitlement indicated in the AMA guide.

This rule is intended to implement Iowa Code section 85.34(2).

ITEM 3. Amend rule 876—4.2(86), introductory paragraph, as follows:

876—4.2(86) Separate evidentiary hearing or consolidation of proceedings. In addition to applying the provision of Iowa rule of civil procedure ~~105~~ *116*, a person presiding over a contested case proceeding in a workers' compensation matter may conduct a separate evidentiary hearing for determination of any issue in the contested case proceeding which goes to the whole or any material part of the case. An order determining the issue presented shall be issued before a hearing is held on the remaining issues. The issue determined in the separate evidentiary hearing shall be precluded at the hearing of the remaining issues. If the order on the separate issue does not dispose of the whole case, it shall be deemed interlocutory for purposes of appeal.

ITEM 4. Amend rule **876—4.6(85,86,17A)**, first and second unnumbered paragraphs, as follows:

The original notice Form 100, Form 100A, Form 100B, Form 100C, or a determination of liability reimbursement for benefits paid and recovery of interest form shall provide for the data required in Iowa Code section 17A.12(2) and shall contain factors relevant to the contested case proceedings listed in 4.1(85,85A,85B,86,87,17A). The Form 100 is to be used for all contested case proceedings except as indicated in this rule. The Form 100A is to be used for the contested case proceedings provided for in subrules 4.1(11) and 4.1(12). The Form 100B is to be used for the contested case proceeding provided for in subrule 4.1(8). The Form 100C is to be used for the contested case proceeding provided for in subrule 4.1(14) and rule 4.48(17A,85,86). The application and consent order for payment of benefits under Iowa Code section 85.21 is to be used for contested case proceedings brought under Iowa Code section 85.21. When a commutation is sought, the Form No. 9 or Form No. 9A must be filed in addition to any other document. The petition for declaratory ~~ruling~~ *order*, approval of attorney fees, determination of compliance and other proceedings not covered in the original notice forms must accompany the original notice.

WORKERS' COMPENSATION DIVISION[876](cont'd)

At the same time and in the same manner as service of the original notice and petition, the claimant shall serve a patient's waiver using Form ~~309-5173~~ *14-0043* (authorization for release of information regarding claimants seeking workers' compensation benefits) which shall not be revoked until conclusion of the contested case.

ITEM 5. Amend rule 876—4.17(85,86,17A) as follows:

876—4.17(85,86,17A) Service of ~~medical~~ records and reports. Each party to a contested case shall serve all *records received pursuant to a patient's waiver (Form 14-0043—authorization for release of information regarding claimants seeking workers' compensation benefits) and* medical records and reports concerning the injured worker in the possession of the party upon each opposing party not later than 20 days following filing of an answer or, if not then in possession of a party, within 10 days of receipt. Medical records and reports are records of medical practitioners and institutions concerning the injured worker. Medical practitioners and institutions are medical doctors, osteopaths, chiropractors, dentists, nurses, podiatrists, psychiatrists, psychologists, counselors, hospitals, clinics, persons engaged in physical or vocational rehabilitation or evaluation for rehabilitation, all other practitioners of the healing arts or sciences, and all other institutions in which the healing arts or sciences are practiced. Each party shall serve a notice accompanying the records and reports identifying the records and reports served by the name of the practitioner or institution *or other source* and date of the records and reports and, if served later than 20 days following filing of the answer, stating the date when the records and reports were received by the party serving them. Pursuant to 4.14(86), the notice and records and reports shall not be filed with the workers' compensation commissioner. A party failing to comply with the provisions of this rule shall, if the failure is prejudicial to an opposing party, be subject to the provisions of 4.36(86). This rule does not require a party to serve any ~~medical~~ record or report that was previously served by another party in a contested case proceeding.

This rule is intended to implement Iowa Code sections 86.8 and 86.18.

ITEM 6. Amend rule 876—4.38(17A) as follows:

Amend subrules 4.38(2) and 4.38(4) as follows:

4.38(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 agency 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 ~~as amended by 1998 Iowa Acts, chapter 1202, section 19,~~ and rule 4.38(17A).

4.38(4) If a party asserts disqualification on any appropriate ground, including those listed in subrule 4.38(1), the party shall file a motion supported by an affidavit pursuant to ~~1998 Iowa Acts, chapter 1202, section 19, subsection 7~~ *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 recusal but must establish the grounds by the introduction of evidence into the record.

If the workers' compensation commissioner, chief deputy workers' compensation commissioner or deputy workers' compensation commissioner determines that recusal is appropriate, that person shall withdraw. If that person determines that withdrawal is not required, that person shall enter an order to that effect.

Amend the implementation clause as follows:

This rule is intended to implement Iowa Code section 17A.17 ~~as amended by 1998 Iowa Acts, chapter 1202, section 19~~.

ITEM 7. Amend rule 876—4.39(17A,86) as follows:

876—4.39(17A,86) Filing by facsimile transmission (fax). All documents filed with the agency pursuant to this chapter and Iowa Code section 86.24 except an original notice and petition requesting a contested case proceeding (see Iowa Code section 17A.12(9)) may be filed by facsimile transmission (fax). A copy shall be filed for each case involved. A document filed by fax is presumed to be an accurate reproduction of the original. If a document filed by fax is illegible, a legible copy may be substituted and the date of filing shall be the date the illegible copy was received. The date of filing by fax is the date the document is received by the agency. The agency will not provide a mailed file-stamped copy of documents filed by fax. *The agency fax number is (515)281-6501.*

ITEM 8. Amend subrule 5.8(1) as follows:

5.8(1) Time frames for action. Within 30 days after receipt of a petition for a declaratory order, the workers' compensation commissioner or the commissioner's designee shall take action on the petition as required by ~~1998 Iowa Acts, chapter 1202, section 13, subsection 5~~ *Iowa Code section 17A.9(5).*

ITEM 9. Amend rule 876—5.9(17A) as follows:

Amend subrules 5.9(1) and 5.9(3) as follows:

5.9(1) The workers' compensation commissioner shall not issue a declaratory order where prohibited by ~~1998 Iowa Acts, chapter 1202, section 13, subsection 1~~ *Iowa Code section 17A.9(1),* and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. to 10. No change.

5.9(3) Filing of new petition. Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the workers' compensation commissioner's refusal to issue ~~a ruling~~ *an order.*

ITEM 10. Amend **876—Chapter 5** by amending the implementation clause as follows:

These rules are intended to implement ~~1998 Iowa Acts, chapter 1202, section 13~~ *Iowa Code section 17A.9.*

ITEM 11. Amend **876—8.9(85,86)**, second unnumbered paragraph, as follows:

A medical provider or its agent shall furnish an employer or insurance carrier copies of the initial as well as final clinical assessment without cost when the assessments are requested as supporting documentation to determine liability or for payment of a medical provider's bill for medical services. When requested, a medical provider or its agent shall furnish a legible duplicate of additional records or reports. Except as otherwise provided in this rule, the amount to be paid for furnishing duplicates of records or reports shall be

WORKERS' COMPENSATION DIVISION[876](cont'd)

the actual expense to prepare duplicates not to exceed: $20 for 1 to 20 pages; $20 plus $1 per page for 21 to 30 pages; $30 plus $.50 per page for 31 to 100 pages; $65 plus $.25 per page for 101 to 200 pages; $90 plus $.10 per page for more than 200 pages, and the actual expense of postage. No other expenses shall be allowed. ~~On May 10, 1996, and on an annual basis thereafter, the fee structure imposed shall be reviewed by the commissioner to determine if the charges paid for duplication consistently reflect the actual expense of a medical provider or its agent in providing duplicates of records or reports.~~

ITEM 12. Amend rule **876—8.10(85B)**, implementation clause, as follows:

This rule is intended to implement ~~1998 Iowa Acts, chapter 1160, section 7, and~~ Iowa Code ~~section~~ *sections 85B.9A and* 86.8.

ITEM 13. Amend rule **876—9.1(17A,22,85-87)**, definition of "open record," as follows:

"Open record" means a record other than a confidential record, including but not limited to the record of *declaratory rulings, declaratory orders,* contested case proceedings, decisions, orders, rulings, settlements, and opinions of the agency.

ITEM 14. Amend subrule 9.12(2) as follows:

9.12(2) The record of *declaratory rulings, declaratory orders,* contested case proceedings, decisions, orders, rulings, settlements, and opinions are open for public inspection and copying.

ITEM 15. Amend subrule **9.13(1)"d"(6)** as follows:

(6) Declaratory rulings *and declaratory orders*. Records may contain information about persons making requests for declaratory rulings, *declaratory orders* or comments from other persons concerning the rulings *or orders*. This information is collected pursuant to Iowa Code section 17A.9. These records may be stored in an automated data processing system and may have the capability of retrieval by a personal identifier.

ITEM 16. Amend **876—Chapter 12** by amending the implementation clause as follows:

These rules are intended to implement Iowa Code ~~section~~ *sections 17A.4(1)"b" and* 17A.7 ~~as amended by 1998 Iowa Acts, chapter 1202, section 11~~.

ARC 9774A

EDUCATION DEPARTMENT[281]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 256.7(5), the Board of Education hereby amends Chapter 6, "Appeal Procedures," Iowa Administrative Code.

In accordance with Iowa Code chapter 17A, these amendments add procedures for contested case proceedings to the Department rules regarding appealing proposed decisions. No waiver provision is included because the Board of Education has adopted agencywide waiver rules.

In compliance with Iowa Code subsection 17A.4(2), the Board finds that notice and public participation are unnecessary as the amendments make departmental rules consistent with the Iowa administrative procedure Act.

The Board also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of these amendments, 35 days after publication, should be waived and these amendments should be made effective upon filing on March 17, 2000, as they confer a benefit upon the citizens of Iowa.

These amendments are also published herein under Notice of Intended Action as **ARC 9773A** to allow for public comment.

These amendments are intended to implement Iowa Code sections 17A.4 and 290.1.

These amendments became effective March 17, 2000.

The following amendments are adopted.

Amend rule 281—6.17(290,17A) by adopting the following **new** subrules and renumbering existing subrules **6.17(4)** to **6.17(7)** as **6.17(7)** to **6.17(10)**:

6.17(4) Any adversely affected party may appeal a proposed decision to the state board within 20 days after the date of the proposed decision.

6.17(5) An appeal of a proposed decision is initiated by filing a timely notice of appeal with the office of the director. 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 names and addresses of the parties initiating the appeal;

b. The proposed decision to be appealed;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision;

d. The relief sought; and

e. The grounds for relief.

6.17(6) Unless otherwise ordered, within 15 days of the party's filing of the notice of appeal, each appealing party may file exceptions and briefs. Within 10 days after the filing of exceptions and briefs by the appealing party, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. An opportunity for oral arguments may be given with the consent of the board. Written requests to present oral argument shall be filed with the briefs.

[Filed Emergency 3/17/00, effective 3/17/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9749A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of 1998 Iowa Acts, chapter 1213, section 9, the Department of Human Services hereby amends Chapter 25, "Disability Services Management," appearing in the Iowa Administrative Code.

The Seventy-seventh General Assembly, in 1998 Iowa Acts, chapter 1213, section 8, subsection 3, established a risk pool fund to be used to cover an unanticipated cost in excess of a county's current fiscal year budget amount for the mental health, mental retardation, and developmental disabilities services fund. Basic eligibility requires a projected need in excess of the sum of 105 percent of the county's current fiscal year budget amount and any amount of the county's prior fiscal year accrual ending services fund balance in excess of 25 percent of the county's gross expenditures from the services fund in the prior fiscal year.

A Risk Pool Board was also established consisting of two county supervisors, two county auditors, a member of the state-county management committee created in Iowa Code section 331.438 who was not appointed by the Iowa State Association of Counties, a member of the county finance committee created in Iowa Code chapter 333A who is not an elected official, and two single entry point process administrators, all appointed by the Governor, subject to confirmation by two-thirds of the members of the Senate, and one member appointed by the director of the Department of Human Services. Members of the Board were appointed by the Governor in October of 1999 and their names submitted to the Senate in November of 1999. The Board held its first meeting in January of 2000.

Any county wishing to receive assistance from the risk pool must apply to the Risk Pool Board by April 1. The legislature appropriated $2 million for the fund for fiscal year 2000 and $2 million for fiscal year 2001. The total amount of risk pool assistance to counties shall be limited to the amount available in the risk pool for a fiscal year. If the total amount of eligible assistance exceeds the amount available in the risk pool, the amount of assistance paid shall be prorated among the counties eligible for assistance. There are provisions for repaying the risk pool funds under specified conditions.

These rules establish the Risk Pool Board to administer the risk pool fund established by the legislature and the requirements for counties to receive assistance from the fund.

These rules do not provide for waivers in specified situations because the requirements for composition of the risk pool and Risk Pool Board, eligibility for funds, and for awarding and repayment of funds are all stated in the Iowa Code. These requirements cannot be waived by rule.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these rules implement 1998 Iowa Acts, chapter 1213, section 9, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these rules should be waived and these rules made effective March 8, 2000, as authorized by 1998 Iowa Acts, chapter 1213, section 9.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These rules are also published herein under Notice of Intended Action as **ARC 9748A** to allow for public comment.

The Mental Health and Developmental Disabilities Commission adopted these rules March 7, 2000.

These rules are intended to implement Iowa Code section 426B.5, subsection 3.

These rules became effective March 8, 2000.

The following rules are adopted.

ITEM 1. Reserve rules **441—25.56** to **441—25.60**.

ITEM 2. Amend **441—Chapter 25** by adopting the following **new** Division V.

DIVISION V
RISK POOL FUNDING

PREAMBLE

These rules establish a risk pool board to administer the risk pool fund established by the legislature and the requirements for counties for receiving and repaying funding from the fund.

441—25.61(426B) Definitions.

"Aggregate application" means the request for funding when a county has an unanticipated cost for mental health, mental retardation, and developmental disabilities services fund expenditures that would result in the county's current fiscal year budget exceeding the sum of 105 percent of the county's current fiscal year budget amount and the county's prior fiscal year accrual ending fund balance exceeding 25 percent of the prior fiscal year gross services fund expenditures.

"Available pool" means those funds remaining in the risk pool less any actuarial and other direct administrative costs.

"Commission" means the mental health and developmental disabilities commission.

"Division" means the mental health and developmental disabilities division of the department of human services.

"Individual application" means the request for funding when a county has individuals who have unanticipated disability conditions with an exceptional cost and the individuals are either new to the county's service system or the individuals' disability conditions have changed or are new.

"Loan" means the risk pool funds a county received in a fiscal year in which the county did not levy the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A.

441—25.62(426B) Risk pool board. This nine-member board consists of two county supervisors, two county auditors, a member of the state-county management committee created in Iowa Code section 331.438 who was not appointed by the Iowa state association of counties, a member of the county finance committee created in Iowa Code chapter 333A who is not an elected official, and two single entry point process administrators, all appointed by the governor, subject to confirmation by two-thirds of the members of the senate, and one member appointed by the director of the department of human services.

25.62(1) Organization.

a. The members of the board shall annually elect from the board's voting membership a chairperson and vice-chairperson of the board.

b. Members appointed by the governor shall serve three-year terms.

25.62(2) Duties and powers of the board. The board's powers and duties are to make policy and to provide direction for the administration of the risk pool established by Iowa Code section 426B.5, subsection 3. In carrying out these duties, the board shall do all of the following:

a. Recommend to the commission for adoption rules governing the risk pool fund.

b. Determine application requirements to ensure prudent use of risk pool assistance.

c. Accept or reject applications for assistance in whole or in part.

d. Review the fiscal year-end financial records for all counties that are granted risk pool assistance and determine if repayment is required.

e. Approve actuarial and other direct administrative costs to be paid from the pool.

25.62(3) Board action.

a. A quorum shall consist of two-thirds of the membership appointed and qualified to vote.

b. When a quorum is present, an action is carried by a majority of the qualified members of the board.

25.62(4) Board minutes.

a. Copies of administrative rules and other materials considered are made part of the minutes by reference.

b. Copies of the minutes are kept on file in the office of the administrator of the division of mental health and developmental disabilities.

25.62(5) Board meetings.

a. The board shall meet in April of each year and may hold special meetings at the call of the chairperson or at the request of a majority of the voting members.

b. Any county making application for risk pool funds must be present at the board meeting where that request will be considered. The division shall notify the county of the date, time and location of the meeting. Any other persons with questions about the date, time or location of the meeting may contact the Administrator, Division of Mental Health and Developmental Disabilities, Department of Human Services, Hoover State Office Building, Fifth Floor, 1305 East Walnut, Des Moines, Iowa 50309-0114, telephone (515) 281-5874.

c. The board shall comply with applicable provisions of Iowa's open meetings law, Iowa Code chapter 21.

25.62(6) Records. Any records maintained by the board or on behalf of the board shall be made available to the public for examination in compliance with Iowa's open records law, Iowa Code chapter 22. To the extent possible, prior to submitting applications, records and documents, applicants shall delete any confidential information. These records shall be maintained in the office of the division of mental health and developmental disabilities.

25.62(7) Conflict of interest. A board member cannot be a part of any presentation to the board of that board member's county's application for risk pool funds nor can the board member be a part of any action pertaining to that application.

25.62(8) Robert's Rules of Order. In cases not covered by these rules, Robert's Rules of Order shall govern.

441—25.63(426B) Application process.

25.63(1) Who may apply. A county may make an aggregate or individual application at any time on or before April 1 of any given year for the current fiscal year budget whenever the projected need exceeds the sum of 105 percent of the county's current fiscal year budget amount and the county's prior fiscal year accrual ending fund balance exceeds 25 percent of the prior fiscal year gross services fund expenditures.

HUMAN SERVICES DEPARTMENT[441](cont'd)

The purpose of the mental health risk pool is to assist counties whose expenditures in the mental health, mental retardation, and developmental disabilities services fund exceed budgeted costs due to unanticipated expenses for new individuals or other unexpected factors. The mental health risk pool is not intended for multiyear usage or as a source of planned revenue.

25.63(2) How to apply. The county shall send Form 470-3723, Risk Pool Application, plus 15 copies, to the division. The division must receive the application no later than 4:30 p.m. on April 1 of each year; or, if April 1 is a holiday, a Saturday or Sunday, the division must receive the application no later than 4:30 p.m. on the first working day following. Facsimiles and electronic mail are not acceptable. The application shall be signed and dated by both the chairperson of the county board of supervisors and the central point of coordination administrator. Staff of the division shall notify each county of receipt of the county's application.

The county shall attach the following forms to the application:

a. Form 634A, Revenues Detail.

b. Form 634B, Service Area Detail (pages 1 to 10).

c. Form 634C, Service Area 4 Supporting Detail (pages 1 to 8).

d. Form 638R, Statement of Revenues, Expenditures, and Changes in Fund Balance—Actual and Budget (2 pages).

e. If the budget has been amended, Form 653A-R, Record of Hearing and Determination on the Amendment to County Budget (sheet 2), for both the current fiscal year budget, as last amended, and the prior fiscal year gross services fund expenditures.

25.63(3) Request for additional information. Staff shall review all applications for completeness. If an application is not complete, staff of the division shall contact the county within four working days after April 1 or the first working day thereafter, if April 1 is a holiday, a Saturday or Sunday, and request the information needed to complete the application. The county shall submit the required information within five working days from the date of the division's request for the additional information.

441—25.64(426B) Methodology for awarding risk pool funding.

25.64(1) Notice of decision. The risk pool board shall notify the chair of the applying county's board of supervisors of the board's action. Copies shall be sent to the county auditor and the central point of coordination administrator.

25.64(2) Distribution of funds. The total amount of the risk pool shall be limited to the available pool for a fiscal year. If the total dollar amount of the approved applications exceeds the available pool, the board shall prorate the amount paid for an approved application. The funds will be prorated to each county based upon the proportion each approved county's request is of the total amount of all approved requests.

441—25.65(426B) Repayment provisions.

25.65(1) Required repayment. Counties shall be required to repay risk pool funds in the following situations:

a. A loan was granted to the county because the county did not levy the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund under Iowa Code section 331.424A. The county shall be required to repay the risk pool loan funds in the succeeding fiscal year.

b. The county had levied the maximum amount allowed for the county's mental health, mental retardation, and developmental disabilities services fund, but the county's actual need for risk pool assistance was less than the amount of risk pool assistance granted to the county. The county shall refund the difference between the amount of assistance granted and the actual need.

25.65(2) Year-end report. Each county granted risk pool funds shall complete a year-end financial report. The division shall review the accrual information and notify the mental health risk pool board if any county that was granted assistance in the prior year received more than the county's actual need based on the submitted financial report.

25.65(3) Notification to county. The chairperson of the mental health risk pool board shall notify each county by January 1 of each fiscal year of the amount to be reimbursed. The county shall reimburse the risk pool within 30 days of receipt of notification by the chairperson of the mental health risk pool board. If a county fails to reimburse the mental health risk pool, the board may request a revenue offset through the department of revenue and finance. Copies of the overpayment and request for reimbursement shall be sent to the county auditor and the central point of coordination administrator of the county.

441—25.66(426B) Appeals. The risk pool board may accept or reject an application for assistance from the risk pool fund in whole or in part. The decision of the board is final and is not appealable.

These rules are intended to implement Iowa Code section 426B.5, subsection 3.

[Filed Emergency 3/8/00, effective 3/8/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9751A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 234.6, 239B.4(4), and 249A.4, the Department of Human Services hereby amends Chapter 41, "Granting Assistance," Chapter 65, "Administration," and Chapter 75, "Conditions of Eligibility," appearing in the Iowa Administrative Code.

The United States Department of Agriculture has notified the Department of Human Services that the Department has the option of exempting, for food stamp purposes, the earnings of persons who are temporarily employed by the Bureau of the Census during the period from April 1, 2000, through January 31, 2001. The United States Department of Agriculture is allowing this exemption at the request of the Bureau of the Census as an incentive for persons to take census employment. The Department of Human Services has decided to take this option and exempt census income for food stamp recipients.

The Department has made the decision to also exempt the census income for the Family Investment Program, the Family Medical Assistance Program, and for FMAP-related Medicaid programs to match food stamp policy.

HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waiver in specified situations because federal food stamp law does not allow for any waivers and these amendments only provide additional benefits.

The Department of Human Services finds that notice and public participation are impracticable because there is not time to allow public comment and participation and have these amendments effective by April 1, 2000, when the census will begin. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on the clients involved as this income will not adversely affect their eligibility and benefits. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

These amendments are also published herein under Notice of Intended Action as **ARC 9750A** to allow for public comment.

The Council on Human Services adopted these amendments March 8, 2000.

These amendments are intended to implement Iowa Code sections 234.12, 239B.2(2), 239B.7, and 249A.4.

These amendments became effective April 1, 2000.

The following amendments are adopted.

ITEM 1. Amend subrule **41.27(7)** by adopting the following **new** paragraph **"ak"**:

ak. All census earnings received by temporary workers from the Bureau of the Census for Census 2000 during the period of April 1, 2000, through January 31, 2001.

ITEM 2. Amend subrule 65.29(3) as follows:

65.29(3) Exclusion of income from ~~1990~~ *2000* census employment. ~~Any compensation~~ *All earnings* received ~~from the United States Department of Commerce resulting from employment in the 1990 Decennial Census~~ *by temporary workers from the Bureau of the Census for Census 2000 during the period of April 1, 2000, through January 31, 2001,* shall be excluded from income.

ITEM 3. Amend subrule **75.57(7)** by adopting the following **new** paragraph **"ah"**:

ah. All census earnings received by temporary workers from the Bureau of the Census for Census 2000 during the period of April 1, 2000, through January 31, 2001.

[Filed Emergency 3/8/00, effective 4/1/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9771A

NATURAL RESOURCE COMMISSION[571]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code subsection 455A.5(6), the Natural Resource Commission hereby amends Chapter 34, "Community Forestry Challenge Grant Program (CFCGP)," Iowa Administrative Code.

This amendment clarifies the rules for community tree planting grants and expands sources of funding.

In compliance with Iowa Code section 17A.4(2), the Commission finds that notice and public participation are impracticable because of the immediate need for changes in the rules to help clarify the grant program rules.

The Commission also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing with the Administrative Rules Coordinator on March 17, 2000, as it confers a benefit upon communities and organizations by making it easier to apply for and utilize the community tree planting grants program.

The Natural Resource Commission adopted this amendment on March 9, 2000.

This amendment is also published herein under Notice of Intended Action as **ARC 9770A** to allow public comment.

This amendment is intended to implement Iowa Code sections 456A.20 and 461A.2.

This amendment became effective March 17, 2000.

The following amendment is adopted.

Amend 571—Chapter 34 as follows:

CHAPTER 34
COMMUNITY FORESTRY ~~CHALLENGE~~ GRANT PROGRAM ~~(CFCGP)~~ *(CFGP)*

571—34.1(461A) Purpose. The purpose of this chapter is to define procedures for cost sharing between state and local public agencies or volunteer organizations to assist them in developing comprehensive community street and park tree programs or to establish ~~a one-time demonstration~~ community tree planting *projects* on public lands ~~within~~ *that benefit the citizens of the state of* Iowa.

571—34.2(461A) Definitions.

"Administrator" means the administrator of the forestry division of the department, also known as the state forester.

~~"CFCGP"~~ *"CFGP"* means the community forestry ~~challenge~~ grant program.

"Community" means an incorporated city, town or village within the state of Iowa.

"Department" means the Iowa department of natural resources.

"Director" means the director of the Iowa department of natural resources.

"Division" means the forestry division of the Iowa department of natural resources.

"Iowa urban and community forestry council" means the group of professionals and volunteer leaders selected by the forestry division administrator to advise the division on urban and community forestry programs, also known as the council.

"Organization" means governmental or nongovernmental agencies, formal groups such as service clubs and other volunteer groups.

"Public lands" means land owned by state, county or local governments.

"Urban and community forestry" means the planning, planting and maintenance of trees in communities or public recreation areas.

571—34.3(461A) Availability of funds. Funds to institute the ~~CFCGP~~ *CFGP* program ~~are~~ *may be* derived through federal allocations pursuant to Section 9 of the Cooperative Forestry Assistance Act (16 U.S.C. 2105), *from state legislative allocations and other sources.*

571—34.4(461A) Eligibility of forestry development projects. Forestry development grants (maximum $5,000) may include, but are not necessarily limited to, the following:

1. Hiring a new full- or part-time city forester.

NATURAL RESOURCE COMMISSION[571](cont'd)

2. Internships for forestry, horticulture or landscape architect to perform community forestry work.
3. Completing a 100 percent street and park tree inventory.
4. City tree ordinance development or revision.
5. City employee or volunteer community forestry training.
6. Development of community forestry master plans.
7. Community forestry youth and adult education programs.
8. City forestry planting site design development.

571—34.5(461A) Eligibility of ~~demonstration~~ *community tree planting* projects. A ~~one-time~~ cost-share grant (maximum ~~$3,000~~ *$5,000*) is available ~~per~~ *for a* community or ~~volunteer~~ organization for ~~a demonstration~~ *landscape and conservation tree planting* ~~project~~ *projects.* ~~that may include, but is not necessarily limited to, the following:~~

~~1. Tree or landscape plantings on public areas.~~
~~2. Tree or landscape maintenance projects on public areas.~~
~~3. Site improvements around public trees.~~
~~4. Site developments around public trees.~~
~~5. Construction mitigation around public trees.~~

571—34.6(461A) Projects not eligible. The following types of projects are not eligible for assistance from the ~~CFCGP~~ *CFGP*:

1. Acquisition of land.
2. Replacement of normally allocated local government funds.
3. Any type of development or planting that will not improve public ~~enjoyment, access,~~ *benefits* or safety.
4. Projects with a total grant request of less than $500.
5. Any project or project costs incurred prior to notification of the sponsoring agency by the forestry division administrator that a grant has been approved.

571—34.7(461A) Eligible applicants. Eligible projects may be submitted by regional or local units of Iowa state, county or city government, local governmental departments, school districts, volunteer organizations and service clubs involved with local urban and community forestry resources. Eligible projects must occur within the state of Iowa.

571—34.8(461A) Establishing project priorities. The forestry division administrator shall appoint a ~~three-member challenge grant committee~~ *minimum three-member ranking committee* representing a cross section of the Iowa urban and community forestry council for the purpose of reviewing, establishing priorities for cost sharing and ranking applications for approval by the administrator. This committee will review and rank all proposals received on a competitive basis for: demonstrated need, cash match, community involvement, new project, cost effectiveness, meeting Tree City USA requirements, ~~and having a completed community tree assessment or inventory~~ *storm damage documentation and other issues pertinent to urban forestry in Iowa.*

571—34.9(461A) Application procedures. Announcements concerning the application procedures will be issued by the administrator each year. A maximum ~~four-page~~ *six-page* proposal must be received by the Forestry Division Administrator, Wallace State Office Building, Des Moines, Iowa 50319-0034, no later than 4:30 p.m. on the last working day identified in the announcement. The proposal should briefly describe the eligible applicant~~,~~ *and* detail project request, total budget, source of match and completion date. For ~~demonstration~~ *community tree planting* projects, an 8″ ¢ 11″ site map must be included in addition to the proposal.

This proposal must be signed by an authorized official of state, regional or local government under whose jurisdiction the project will occur, indicating that the project funds will be spent in accordance with the proposal and all applicable federal and state laws, rules and regulations. The applicant must sign a statement relinquishing the department or the Iowa urban and community forestry council from any liability associated with this project.

571—34.10(461A) Requirements for funding. In order to qualify for funding, state, regional or local units of government, school districts, volunteer organizations and service clubs must comply with the following requirements:

34.10(1) The project(s) must be on public land within the state of Iowa (for example, streets, boulevards, parks, schools, cemeteries).

34.10(2) A ~~50-50~~ *$1 for $1* minimum match of requested funds is required.

34.10(3) In-kind contributions are allowed *for the forestry development projects only* if specific for the proposed project. *Tree planting projects require cash match $1 for $1 only.* ~~The entire 50 percent match may be in-kind contributions. These~~ *All* in-kind costs *for the forestry development projects* must be documented. Allowable in-kind costs include, but are not limited to, the following:

a. Volunteer labor (reasonable local rates).
b. Value of locally purchased or donated trees to be planted on public areas.
c. Value of wood mulch and other tree protective devices (reasonable local rates).

34.10(4) Only plant materials, products and services purchased from Iowa firms are eligible for ~~demonstration~~ *tree planting* projects. ~~Shrubs and nonwoody plants are eligible if in combination with trees.~~

571—34.11(461A) Project agreements.

34.11(1) A cooperative agreement approved by the administrator between the *department and the* local grant recipient describing the work to be accomplished and specifying the amount of the grant and the project completion date will be negotiated as soon as possible after a grant has been approved. Maximum time period for project completion shall be ~~18 months~~ *stated in the grant announcement*, unless an extension approved by the administrator is authorized.

34.11(2) Cooperative agreements between the department and the local ~~project~~ *grant* recipient may be amended to increase or decrease project scope or to increase or decrease project costs and fund assistance. Any increase in fund assistance will be subject to the availability of ~~federal~~ funds. Amendments to increase scope or fund assistance must be approved by the administrator before work is commenced or additional costs are incurred.

571—34.12(461A) Reimbursement procedures. Financial assistance from the community forestry ~~challenge~~ grant program will be in the form of reimbursement grants which will be made on the basis of the approved percentage of all eligible expenditures up to the amount of the approved grant.

Reimbursement requests must be submitted by the grant recipient on project billing forms provided by the department at the completion of the project.

For forestry development projects and ~~demonstration~~ *community tree planting* projects, grant recipients shall provide documentation as required by the department to substantiate all project expenditures.

NATURAL RESOURCE COMMISSION[571](cont'd)

Tree planting grant recipient organizations must be willing to sign a ten-year maintenance agreement for trees planted on public lands before reimbursement of costs is approved.

These rules are intended to implement Iowa Code section 461A.2.

[Filed Emergency 3/17/00, effective 3/17/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9752A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services hereby amends Chapter 53, "Rent Subsidy Program," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 8, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 26, 2000, as **ARC 9612A**.

The rent subsidy program is designed to provide rental assistance to persons who participate in a home- and community-based service (HCBS) waiver program and who were discharged from a medical institution in which they have resided, at risk of institutional placement, or able to leave a medical institution by use of services provided under an HCBS waiver upon turning 18 years of age during the last year of their institutional stay.

An eligible person may receive assistance in meeting rental expense and, in the initial two months of eligibility, in purchasing necessary household furnishings and supplies.

These amendments revise policy governing the rent subsidy program as follows:

S The basis of the maximum rental assistance payment is increased from 100 percent to 110 percent of the maximum prevailing fair market rent under guidelines of the applicable United States Department of Housing and Urban Development (HUD) low-rent housing program in the area where the person's residence is located, less 30 percent of the gross income of the individual consumer.

The Department of Housing and Urban Development (HUD) published interim regulations in the May 14, 1999, Federal Register at 24 CFR 982.503(b) and final regulations in the October 21, 1999, Federal Register allowing public housing authorities to establish the payment standard amount for a unit size at any level between 90 percent and 110 percent of the published Fair Market Rental for that unit size. The Department has decided to use the maximum guideline established by HUD to establish the amount of the rental assistance.

This change will, in most cases, result in increased monthly payments to participants. This increase is the same as would be experienced by participants in the federal rental assistance program, and makes the Department's program consistent with the federal program payment structure.

S Time-limited policy regarding eligibility criteria that is no longer in effect is deleted.

S The reference to one-bedroom homes is clarified.

S Statutory references are updated.

These amendments do not provide for waivers in specified situations because they only provide additional benefits, delete an outdated provision, clarify language, and update statutory references.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 217.6 and 1999 Iowa Acts, chapter 203, section 11, subsection 3.

These amendments shall become effective June 1, 2000.

The following amendments are adopted.

ITEM 1. Amend the parenthetical implementation following each rule in **441—Chapter 53** as follows:

(~~77GA,ch1218~~ *78GA,ch203*)

ITEM 2. Amend subrule 53.2(2) as follows:

53.2(2) Discharged from a medical institution. Except as provided in subrules 53.2(4) and 53.2(5), the person shall have been discharged from a medical institution on or after July 1, 1995, and immediately prior to receiving HCBS services. ~~For a period of 60 days after April 1, 1999, persons who were discharged from a medical institution immediately prior to entering an HCBS program between July 1, 1995, and June 30, 1996, shall receive first consideration for eligibility and participation in this program if they demonstrate a need for rental assistance. These persons shall not replace anyone who is actively participating in this program at the time of their application. During this 60-day period, applications may be submitted by anyone, although first consideration will be given to the persons described above, whose applications will be acted upon in the order they are received. At the end of the 60-day period, all applications received during that time from persons not described above shall be considered in the chronological order that they were received and, if applicable, participation in the program shall be approved retroactive to the date that would have been allowed had an application been processed immediately on receipt.~~

ITEM 3. Amend subrule 53.3(2) as follows:

53.3(2) Date of application. The date of the application shall be the date the application, including written verification of income and written verification of application to other rental assistance programs, is received by the division of mental health and developmental disabilities. ~~Applications received through June 30, 1999, on behalf of persons who would have met all of the qualifying criteria between July 1, 1998, and their date of application will be assessed for payment consideration retroactive to July 1, 1998, or the date between July 1, 1998, and the date of application on which the applicant would have met all eligibility criteria.~~

ITEM 4. Amend subrule 53.4(2) as follows:

53.4(2) Maximum monthly payment for rent. Assistance for rent shall be equal to the rent paid, not to exceed *110 percent of* the maximum prevailing fair market rent under guidelines of the applicable United States Department of Housing and Urban Development (HUD) low-rent housing program in the area where the person's residence is located, less 30 percent of the gross income of the individual consumer. The fair market rent used shall be that for a one-bedroom *home* or a proportionate share of rental costs in living units containing more than one bedroom.

ITEM 5. Amend **441—Chapter 53**, implementation clause, as follows:

These rules are intended to implement Iowa Code section 217.6 and ~~1998~~ *1999* Iowa Acts, chapter ~~1218~~ *203*, section 11, subsection 3.

[Filed 3/8/00, effective 6/1/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9753A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 114, "Licensing and Regulation of All Group Living Foster Care Facilities for Children," and Chapter 185, "Rehabilitative Treatment Services," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 8, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 26, 2000, as **ARC 9614A**.

These amendments revise the placement criteria in Chapter 185 for children to be served in a highly structured residential facility and establish criteria for readmission to the program. An exception process is also added for children who do not meet the placement criteria. The definition of "highly structured juvenile program" in Chapter 114 is revised to remove duplicative policy.

Highly structured juvenile programs, more commonly known as boot camps, are programs lasting 90 days, which have a high degree of structure that stresses discipline, physical activity, and education.

Current policy requires that young men admitted to highly structured group foster care be 15 to 17 years old; be adjudicated delinquent on a charge that is at least an aggravated misdemeanor, but is not a forcible felony; be unable to live in a family situation due to severe social, emotional, and behavioral disabilities; and not be entering the program within 60 days of another residential placement.

Young men who do not meet these criteria enter the program by a Director's exception to policy as set forth at rule 441—1.8(217). There has been a substantial volume of admission by exceptions, particularly for boys who have been adjudicated delinquent for crimes less serious than aggravated misdemeanors.

These amendments maintain the age criteria. A requirement that the adjudicated crime be at least a serious misdemeanor has been substituted for the current requirement of an aggravated misdemeanor. In addition, the prohibition against entering the program within 60 days of another residential placement has been deleted and a requirement is added that youth not be able to benefit from further community-based services at the time of placement, but be able to successfully return to the community following intensive short-term residential treatment.

These amendments also change the process by which exceptions are granted. Young men who meet the criteria for admission will be deemed part of the target population for admission. Candidates for admission who are not part of the target population may be admitted with the approval of a Department regional administrator or designee. A regional administrator or designee may delegate this authority to the chief juvenile court officers or designees. The Department and juvenile court services will be required to keep data on the children placed who lack one or more of the target population characteristics.

The proposed target populations better identify the categories of young men most likely to benefit from the rigor and structure of these programs. The new process for exceptions to policy will have two benefits: it will translate into policy current best practice in providing this type of residential program to those most likely to benefit from it, and it will save caseworker time in processing exceptions.

The Department has also had several requests for exceptions to policy to allow readmission to the programs. These amendments provide that program participants may be readmitted to the program for an additional 30, 60, or 90 days. A readmission shall be decided upon and processed in the same manner as the original admission, using the same criteria. A readmission should be a rare occurrence, used only when troublesome behaviors, diagnoses or problems arise late in the original placement, and more time in the program will benefit the child.

The Department and juvenile court services are required to keep data on the children placed who lack one or more of the target population characteristics and on the children who are readmitted to a program.

These amendments do provide a process for waiver of the highly structured juvenile program admission criteria by Department regional administrators or their designees or, if so delegated, by chief juvenile court officers or their designees. Individuals may request a waiver of other criteria under the Department's general rule on exceptions at rule 441—1.8(217).

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code sections 234.38 and 237.3.

These amendments shall become effective June 1, 2000.

The following amendments are adopted.

ITEM 1. Amend rule **441—114.2(237)**, definition of "highly structured juvenile program," as follows:

"Highly structured juvenile program" means a *short-term* treatment program ~~for adjudicated delinquent youth, aged 15 to 17, who are unable to live in a family situation due to severe social, emotional and behavioral disabilities, who have not experienced a residential placement in the last 60 days, have a prior adjudication of delinquency, have committed a public offense that is an aggravated misdemeanor or above, and have not committed a forcible felony. These programs have~~ *lasting 90 days and having* a high degree of structure that stresses discipline, physical activity, and education~~, and are short-term placements with a length of stay of 90 days. Program participants are assembled in cohorts (groups of youth adjudicated delinquent as to the criteria listed above) which are managed by the juvenile court. Each cohort is a number that is one-third of the program, with a cohort scheduled to finish the 90-day program every 30 days. Discharge planning must be started within the first 30 calendar days of placement. Specialized behavior management techniques are used several times per day. In addition, youth receiving the highly structured juvenile program shall require and receive treatment several times daily to enhance their social skills. In addition to the intensive programming and structure, the youth are provided 24-hour awake supervision~~.

These programs must be licensed as either community residential facilities under this chapter or as comprehensive residential facilities under 441—Chapter 115 and certified to provide rehabilitative treatment services under 441—Chapter 185. Programs shall have the ability to use a physically secure setting dependent upon the level of the license.

ITEM 2. Amend subrule 185.83(4) as follows:

185.83(4) Highly structured juvenile program. A highly structured juvenile program ~~provides treatment in a facility licensed under 441—Chapter 114 or 115 for adjudicated de-~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

~~linquent youth from the ages of 15 to 17 years who are unable to live in a family situation due to severe social, emotional and behavioral disabilities and who have not experienced a residential placement in the last 60 days~~ *must meet the following requirements for licensing, admissions, readmission and discharge, and program and services.* ~~The youth require a high degree of supervision, and a structure that stresses discipline, physical activity, education, and social skill development due to their aggressive behavior which includes a prior adjudication of delinquency and commitment of a public offense that is an aggravated misdemeanor or above, but not a forcible felony.~~

a. Licensing. Facilities shall be licensed under 441—Chapter 114 or 115.

b. Admission criteria. Characteristics of the target population to be served by this program include young men who:

(1) Are aged 15, 16, or 17.

(2) Have been adjudicated delinquent for a public offense that is a serious misdemeanor or above, but is not a forcible felony.

(3) Are not able to benefit further from community-based services at the time of placement, but would be able to successfully return to the community following intensive short-term residential treatment.

Regional administrators for the department, in consultation with juvenile court services, shall have authority to place youth that lack one or more target population characteristics on a case-by-case basis. A regional administrator or designee may delegate this authority to the chief juvenile court officers or their designees. The department and juvenile court services shall keep data on the children placed who lack one or more of the target population characteristics.

c. Readmission and discharge. Program participants may be readmitted to the program for an additional 30, 60, or 90 days. A readmission shall be decided upon and processed in the same manner as the original admission, using the same criteria. A readmission should be a rare occurrence, used only when troublesome behaviors, diagnoses or problems arise late in the original placement, and more time in the program will benefit the child. The department and juvenile court services shall keep data on the children readmitted to the program.

There are no temporary discharges from the highly structured program to detention or other placement for discipline purposes.

d. Program and services. This program is a short-term treatment program with a length of stay of 90 days. Program participants are assembled in cohorts (groups of youth ~~adjudicated delinquent as to the criteria listed above~~ *that advance through the program together*) ~~which are managed by the juvenile court~~. Each cohort is a number that is one-third of the program, with a cohort scheduled to finish the 90-day program in 30 days. Discharge planning must be started within the first 30 calendar days of placement.

~~Specialized behavior management techniques are used several times per day. In addition, youth receiving the highly structured juvenile program shall require and receive treatment several times daily to enhance their social skills. In addition to the intensive programming and structure, the youth are provided 24-hour awake supervision.~~

~~a.~~ *(1)* Youth ~~in the highly structured juvenile program~~ shall receive ~~the following services:~~ restorative living skills development as needed and social skills development several times per day.

(2) One hour of therapy and counseling services shall be provided every week to each youth.

~~b.~~ *(3)* The prime programming time hours and staff-to-client ratio shall meet the treatment and supervision needs of the youth served as specified in 185.10(8)"c"(4).

~~c.~~ *(4)* The payment for the daily rate shall be calculated based on a 30-day month. If, however, the department is able to provide payment based on the actual number of days in a month, rates shall be adjusted accordingly.

~~d.~~ *(5)* The unit of service for highly structured juvenile residential treatment shall be one day.

~~e.~~ *(6)* Services shall be provided on a face-to-face basis with the child.

~~f.~~ *(7)* Duration shall not exceed three calendar months.

(8) Youth shall have supervision 24 hours a day by awake staff.

[Filed 3/8/00, effective 6/1/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9754A

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services hereby amends Chapter 152, "Contracting," appearing in the Iowa Administrative Code.

The Council on Human Services adopted these amendments March 8, 2000. Notice of Intended Action regarding these amendments was published in the Iowa Administrative Bulletin on January 26, 2000, as **ARC 9615A**.

These amendments allow the effective date of a rehabilitative treatment and supportive services contract to be the day following the final signing by the Department Director or designee unless a later effective date is agreed upon by the provider and the Department. Current policy requires the contract to be effective the first day of the month following signature.

The Department is seeking to shorten time frames for approving contracts in order to facilitate access to services. This change may reduce the time from final signature of a contract by the Director to the effective date by up to 30 days.

These amendments do not provide for waivers in specified situations because providers may request a waiver of the contract effective date under the Department's general rule on exceptions at rule 441—1.8(217).

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 234.6.

These amendments shall become effective June 1, 2000.

The following amendments are adopted.

ITEM 1. Amend rule 441—152.8(234) as follows:

441—152.8(234) Term of contract. The term of the contract shall be for not more than two years, effective the ~~first~~ day ~~of the month~~ following the signature of the director of the department or the director's designee, *unless the provider and department agree to a later specified date.*

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 2. Amend subrule 152.22(6) as follows:

152.22(6) Contract effective date. When the agreed-upon contract conditions have been met, the effective date of ~~the~~ *a new* contract, *a renewed contract or an amendment to add a new service code to the contract* is the ~~first~~ day ~~of an agreed-upon month~~ following signature of the director of the department or the director's designee, *unless the provider and the department agree to a later specified date.* A contract can only be effective if signed by all parties as required in subrule 152.22(4).

[Filed 3/8/00, effective 6/1/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9763A

NURSING BOARD[655]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3 and 147.76, the Board of Nursing hereby adopts amendments to Chapter 2, "Nursing Education Programs," Iowa Administrative Code.

These amendments establish a performance standard for graduates of board-approved programs on the national licensure examination (NCLEX) for registered nurses and licensed practical nurses.

These amendments were published in the Iowa Administrative Bulletin on January 12, 2000, as **ARC 9607A**. These amendments are identical to those published under Notice.

These amendments will become effective May 10, 2000.

These amendments are intended to implement Iowa Code section 152.5.

The following amendments are adopted.

ITEM 1. Amend rule **655—2.1(152)** by adopting the following **new** definition in alphabetical order:

NCLEX. NCLEX means National Council Licensure Examination, the currently used examination.

ITEM 2. Adopt the following **new** rule 655—2.10(152) and renumber rule **655—2.10(152)** as **655—2.11(152)**:

655—2.10(152) Results of graduates who take the licensure examination for the first time. The program shall notify the board when the program or district national licensure examination passing percentage is lower than 95 percent of the national passing percentage for two consecutive calendar years. The NCLEX passing percentage shall be based on all first-time applicants for RN or LPN licensure in any jurisdiction who take the examination within six months of graduation. Upon notification by the program, the board shall implement the following process:

1. The program shall submit to the board within six months an institutional plan for assessment and improvement of NCLEX results, including outcomes and time lines. The plan shall address administration, faculty, students, curriculum, resources, policies and the nursing advisory committee.

2. The program shall submit annual progress reports to the board while the NCLEX passing percentage remains below 95 percent of the national passing percentage.

3. The board may initiate provisional program approval as specified in subrule 2.2(3) if the program or district NCLEX average does not equal or exceed 95 percent of the national passing percentage within two calendar years.

[Filed 3/16/00, effective 5/10/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9759A

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 136C.3, the Department of Public Health adopts amendments to Chapter 38, "General Provisions"; Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials"; Chapter 40, "Standards for Protection Against Radiation"; Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials"; Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists"; Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations"; and Chapter 46, "Minimum Requirements for Tanning Facilities," Iowa Administrative Code.

The following itemizes the adopted amendments.

Item 1 changes the title of Chapter 38 to clarify that these general provisions apply to radiation machines and radioactive materials.

Items 2, 9, 24, 37, and 103 amend the rules to reflect current federal codes.

Items 3, 25, 39, 40, 56, 64, and 65 move definitions from Chapters 39 to 45 to Chapter 38 because they apply to and are used in more than one chapter. Some of the definitions are amended or new definitions are adopted because of agreements with the Nuclear Regulatory Commission (NRC) and Food and Drug Administration (FDA) that require that the agency adopt certain language.

Items 4, 38, 50, 55, 63, 75, and 100 apply language that will allow the rules to apply to all chapters for which the agency is responsible.

Item 5 adds fees for food sterilization and bone densitometry which are new categories. Bone densitometry was previously included in Category 1 of the annual fee schedule. The fee for food sterilization is based on the time required to review the approval requests and oversee testing. After the Administrative Rules Review Committee review, there was a question regarding the fee increase for food sterilization from $80 to $1000. The increase is necessary to recover costs based on the time spent on review for the first food sterilization unit. The approval process staff time increased considerably because of the increased potential impact on public health and safety. The fee will only impact four to six new facilities.

Item 6 increases examination fees to allow the Bureau of Radiological Health to recover the cost of administering the examination.

Item 7 ties certification fees to Chapter 42 only.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Items 8, 14, 15, 16, 17, 18, 19, 21, 22, 23, 27, 28, 29, 30, 31, 32, 33, 34, 35, 36, 51, 52, 53, 58, 59, 79, 80, 81, 82, 83, 84, 85, 86, 87, 88, 89, 90, 91, 92, 94, 95, 96, 97, 101, and 102 are amended or adopted because of an agreement with the NRC that requires that the Bureau adopt certain language.

Item 10 requires a permanent location with a non-wireless telephone for persons in order to obtain a registration or license. The term "non-wireless" is from federal language. This will allow the department to distinguish between in-state and out-of-state businesses in order to determine regular versus reciprocity fees.

Item 11 changes the registration of facilities that are required to register with the agency from personnel dosimetry services to processor services. Personnel dosimetry services are already regulated by the federal government but processor services are not. Many of the problems with poor quality X-ray films are the result of processors.

Items 12 and 20 change the number of days to match other references allowing three working days.

Item 13 corrects references and deletes a procedure that has not been used for several years.

Items 26, 41, 54, 55, and 98 correct language or references.

Items 42 and 43 have portions stricken because the manufacturers provide the information required.

Items 44 and 46 are for clarification.

Item 45 places a portion of the law into the rules to allow easier enforcement.

Items 48, 49, 60, 61, 62, and 76 revise language to match what is accepted nationally and published by the Conference of Radiation Control Program Directors, Inc. (CRCPD) and on which the Bureau's X-ray compliance program is based.

Items 66, 67, 68, 69, 70, 71, 72, 73, and 74 are adopted or amended because of an agreement with the FDA that requires the Department to adopt certain language.

Item 77 adds grounds for discipline to the operator certification rules when an operator performs exposures that the operator is not trained or authorized to perform. This is important in preventing unnecessary patient exposure and misdiagnosis.

Item 78 corrects the name of the national accrediting body.

In Item 99, a subrule is rescinded because the information required is included on the application form.

Item 104 adds language that was omitted when the rules were amended in 1998; it is important that the warnings are read by the customer annually in order to remind the customer about the possible hazards of tanning.

These amendments have been reviewed based on the principles set forth in Executive Order Number 9. Many changes could not be made because of the federal compatibility requests.

These rules are subject to waiver pursuant to the Department's exemption provision contained at 641—38.3(136C). For this reason, the Department has not provided a specific provision for waiver of these particular rules.

Notice of Intended Action was published in the Iowa Administrative Bulletin on January 26, 2000, as **ARC 9629A**.

A public hearing was held on February 29, 2000, at 8:30 a.m., Conference Room, Fifth Floor South, Side 1, Lucas State Office Building, Des Moines, Iowa 50319. There were no persons in attendance. Six sets of written comments were received, reviewed, considered and incorporated as appropriate. The changes made from the Notice of Intended Action are listed below:

In Item 3, the words "routine or accidental releases of" were added to the third sentence in the definition of "residual radioactivity" because of an NRC compatibility request.

In Item 42, the first sentence of 41.1(3)"f"(1)"2" was stricken based on public comment that time-temperatures in the current rule were not representative of current manufacturer recommendations.

In Item 46, the catchwords of 41.1(6) were changed to indicate that veterinary is excluded. This change was based on comments from the State Veterinarian's Office.

In Item 57, the words "or its intensity profile" were added to the definition of "filter" as suggested by public comment.

In Item 65, the FDA requested that definitions be added that were identical to the wording in the federal code.

In Item 66, paragraph 41.6(2)"a" was amended by adding catchwords and subparagraph (2). In 41.6(2)"b"(8), the phrase "authorization process" was changed to "accreditation process" because the two processes are different. These changes are to match wording from original federal language.

In Item 68, the words "general radiographer" were deleted and "radiologic technologist" inserted. In Items 67, 68, 70, and 72, the word "supplier" was deleted and "facility" inserted. In Items 66 and 70, the words "radiation physicist" were changed to "medical physicist." This was an FDA request for uniformity.

In Item 68, the FDA requested that the previous wording in existing subrule 41.6(3) be rescinded and wording identical to that in the federal code be adopted in new subrule 41.6(3).

In Item 69, 41.6(4)"b"(7) was renumbered as (8) and the wording was changed to clarify that a distinct section is required. The other subparagraphs were reorganized for ease in reading. The phrase "a timely manner" was changed to designate a more specific time frame.

In Item 72, on request from the FDA, wording in 41.6(5)"k"(1), introductory paragraph, was changed from "examinations are performed" to "clinical films are processed." In 41.6(5)"k"(1)"1," the phrase "or minus" was deleted. In 41.6(5)"k"(4)"3," the phrase "47 pounds (209 newtons)" was changed to "45 pounds (200 newtons)." In 41.6(5)"k"(5)"7," the first bulleted paragraph was amended and the second bulleted paragraph was not adopted. In 41.6(5)"k"(8)"1," another reference was added at the end of the paragraph. These changes were made to correct errors from original federal language. Subparagraph 41.6(5)"k"(7), mobile units, was not adopted. Subsequent subparagraphs were renumbered.

In Item 73, catchwords were added to paragraphs "a" to "t" in subrule 41.6(6) for ease in reading. In 41.6(6)"l"(5), the last sentence was deleted to match federal language.

In Item 74, Appendix I has been rescinded. References are included in the body of the rules and, therefore, this appendix is not needed.

In Item 93, the symbol "E" after "8.9.2" was corrected to read "(c)" because of an NRC compatibility request.

These amendments will become effective May 10, 2000.

These amendments are intended to implement Iowa Code chapter 136C.

The following amendments are adopted.

ITEM 1. Amend the title of **641—Chapter 38** as follows:

CHAPTER 38
GENERAL PROVISIONS *FOR RADIATION MACHINES AND RADIOACTIVE MATERIALS*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 2. Amend subrule 38.1(2) as follows:

38.1(2) All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~July 1, 1999~~ *May 10, 2000.*

ITEM 3. Amend rule **641—38.2(136C)** as follows:

Amend the following definitions:

"Background radiation" means radiation from cosmic sources~~,~~; naturally occurring radioactive materials, including radon~~,~~ *(*except as a decay product of source or special nuclear material~~,~~*);* and ~~including~~ global fallout as it exists in the environment from the testing of nuclear explosive devices *or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee.* "Background radiation" does not include sources of radiation from radioactive materials regulated by the agency.

"Beam monitoring system" means a system designed *and installed in the radiation head* to detect and measure the radiation present in the useful beam.

"High radiation area" means an area, accessible to individuals, in which radiation levels *from radiation sources external to the body* could result in an individual's receiving a dose equivalent in excess of 1 mSv (0.1 rem) in 1 hour at 30 centimeters from any source of radiation or *30 centimeters* from any surface that the radiation penetrates.

"Interlock" means a device ~~arranged or connected such that the occurrence of an event or condition is required before a second event or condition can occur or continue to occur~~ *preventing the start or continued operation of equipment unless certain predetermined conditions prevail.*

"Irradiation" means the exposure of *a living being or* matter to ionizing radiation.

"Misadministration" means the administration of:

1. to 3. No change.

4. Radiation doses received from teletherapy, linear accelerator therapy, deep X-ray machine therapy or superficial therapy; involving the wrong patient or human research subject, wrong mode of treatment or wrong treatment site;

When the treatment consists of three or fewer fractions ~~or~~ *and* the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

When the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

5. and 6. No change.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation from licensed or unlicensed and registered or unregistered sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received from background radiation, ~~as a patient from medical practices,~~ *from any medical administration the individual has received, from exposure to individuals administered sources of radiation and released in accordance with 41.2(27),* from voluntary participation in medical research programs, or as a member of the public.

"Public dose" means the dose received by a member of the public from exposure to sources of radiation possessed by a licensee, registrant, or other person, or to any other source of radiation under the control of a licensee, registrant, or other person. It does not include occupational dose or doses received from background radiation, ~~as a patient from medical practices,~~ *from any medical administration the individual has received, from exposure to individuals administered sources of radiation and released in accordance with 41.2(27)* or from voluntary participation in medical research programs.

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

"Barrier" (see "Protective barrier").

"Beam axis" means the axis of rotation of the beam-limiting device.

"Beam-limiting device" means a field defining collimator, integral to the system, which provides a means to restrict the dimensions of the X-ray field or useful beam.

"Bone densitometry unit" means a medical device which uses electronically produced ionizing radiation to determine the density of bone structures of human patients.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

1. Release of the property for unrestricted use and termination of the license; or

2. Release of the property under restricted conditions and termination of the license.

"Detector" (see "Radiation detector").

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Kilovolt (kV)(kilo electron volt (keV))" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of 1000 volts in a vacuum.

"Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

"Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

1. The useful beam, and

2. Radiation produced when the exposure switch or timer is not activated.

"Lens dose equivalent (LDE)" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"mA" means milliampere.

"Mammogram" means an image produced through radiography of the breast.

"Mammography" means radiography of the breast.

"Mammography unit" means an assemblage of components for the production of X-rays for use during mammography, including, at a minimum: an X-ray generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the supporting structures for these components.

"Primary protective barrier" (see "Protective barrier").

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"Protective barrier" means a barrier used to reduce radiation exposure. The types of protective barriers are as follows:

1. "Primary protective barrier" means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure.

2. "Secondary protective barrier" means a barrier sufficient to attenuate the stray radiation to the required degree.

"Radiation detector" means a device which, in the presence of radiation, provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

"Radiographic imaging system" means any system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

"Residual radioactivity" means radioactivity in structures, materials, soils, groundwater, and other media at a site resulting from activities under the licensee's control. This includes radioactivity from all licensed and unlicensed sources used by the licensee, but excludes background radiation. It also includes radioactive materials remaining at the site as a result of routine or accidental releases of radioactive material at the site and previous burials at the site, even if those burials were made in accordance with the provisions of 641—Chapter 40 or any previous state or federal licenses, rules or regulations.

"Secondary dose monitoring system" means a system which will terminate irradiation in the event of failure of the primary dose monitoring system.

"Secondary protective barrier" (see "Protective barrier").

"Shutter" means a device attached to the tube housing assembly which can intercept the entire cross-sectional area of the useful beam and which has a lead equivalency not less than that of the tube housing assembly.

"Simulator (radiation therapy simulation system)" means any X-ray system intended for localizing the volume to be exposed during radiation therapy and reproducing the position and size of the therapeutic irradiation field.

"SSD" means the distance between the source and the skin entrance plane of the patient (see "Target-to-skin distance (TSD)").

"Stray radiation" means the sum of leakage and scattered radiation.

"Target-to-skin distance (TSD)" means the distance measured along the beam axis from the center of the front surface of the X-ray target or electron scattering foil to the surface of the irradiated object or patient.

"Termination of irradiation" means the stopping of irradiation in a fashion which will not permit continuance of irradiation without the resetting of operating conditions at the control panel.

"Tube housing assembly" means the tube housing with tube installed. It includes high-voltage or filament transformers, or both, and other appropriate elements when such are contained within the tube housing.

"Very high radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual's receiving an absorbed dose in excess of 500 rad (5 Gy) in 1 hour at 1 meter from a source of radiation or 1 meter from any surface that the radiation penetrates.

Rescind the following definition:

~~"Eye dose equivalent" means the external dose equivalent to the lens of the eye at a tissue depth of 0.3 centimeter (300 mg/cm^2).~~

ITEM 4. Amend subrule 38.3(1) as follows:

38.3(1) General provision. The agency may, upon application therefor or upon its own initiative, grant such exemptions or exceptions from the requirements of ~~these rules~~ *the rules in 641—Chapters 38 to 46* as it determines are authorized by law and will not result in undue hazard to public health and safety or property. *Application for exemptions or exceptions should be made in accordance with 641—Chapter 178.*

ITEM 5. Amend subrule **38.8(1)**, paragraph **"a,"** as follows:

a. Each registrant shall, at the time of registration and the anniversary date thereafter, as long as the registrant owns the radiation machine, remit to the agency a fee sufficient to defray the cost of registering the equipment with the department. All fees shall be paid annually in the form of a check or money order made payable to the Iowa Department of Public Health. The fees to be paid shall be in the amount computed by the following schedule:

ANNUAL FEE SCHEDULE

	Type of X-ray machine	Fee per tube	Maximum fee
1.	Medical	$51	$1500
2.	Osteopathy	$51	$1500
3.	Chiropractic	$51	$1500
4.	Dentistry	$39	$1000
5.	Podiatry	$39	$1000
6.	Veterinary Medicine	$25	--
7.	(Industrial/ Nonmedical Use)	$50	--
8.	*Food* Sterilization	~~$80~~ *$1000*	--
9.	Accelerators	$100	--
10.	Electron Microscope	$20	--
11.	*Bone Densitometry*	*$25*	--

Fees for radiation machines not listed in the above schedule shall not be less than $50 per unit/tube.

ITEM 6. Amend subrule **38.8(3)**, paragraph **"a,"** as follows:

a. A nonrefundable fee of ~~$100~~ *$125* shall be submitted with each application for taking an industrial radiography examination to become certified by the agency.

ITEM 7. Amend subrule 38.8(6), introductory paragraph, as follows:

38.8(6) Certification fees. Diagnostic radiographers, radiation therapists, and nuclear medicine technologists *(as defined in 641—Chapter 42)*, other than licensed practitioners of the healing arts, are required to pay fees sufficient to defray the cost of administering 641—Chapter 42. Fees are as follows:

ITEM 8. Adopt **new** rule 641—38.10(136C) as follows:

641—38.10(136C) Deliberate misconduct.

38.10(1) Any licensee, registrant, applicant for a license or certificate of registration, employee of a licensee, registrant or applicant; or any contractor (including a supplier or consultant), subcontractor, employee of a contractor or subcontractor of any licensee or registrant or applicant for a license or certificate of registration, who knowingly provides to any licensee, applicant, registrant, contractor, or subcontractor any components, equipment, materials, or other goods or services that relate to a licensee's, registrant's or applicant's activities in this rule, may not:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

a. Engage in deliberate misconduct that causes or would have caused, if not detected, a licensee, registrant, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license or registration issued by the agency; or

b. Deliberately submit to the agency, a licensee, registrant, applicant, or a licensee's, registrant's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the agency.

38.10(2) A person who violates paragraph 38.10(1)"a" or "b" may be subject to enforcement action in accordance with the procedures in 641—38.9(136C).

38.10(3) For the purposes of paragraph 38.10(1)"a," deliberate misconduct by a person means an intentional act or omission that the person knows:

a. Would cause a licensee, registrant, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the agency; or

b. Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, applicant, contractor, or subcontractor.

ITEM 9. Amend subrule 39.1(3) as follows:

39.1(3) All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~July 1, 1999~~ *May 10, 2000.*

ITEM 10. Amend subrule **39.3(2)**, paragraph **"a,"** as follows:

a. Apply for registration of such facility with the agency prior to the operation of a radiation machine facility. In order to register equipment, the person must have a permanent office located in Iowa that has a *non-wireless* telephone, employee and equipment, and storage for records regarding the equipment and operator certification. Application for registration shall be completed on forms furnished by the agency and shall include the appropriate fee from 641—38.8(136C).

ITEM 11. Amend subrule **39.3(3)**, paragraph **"d,"** as follows:

d. For the purpose of 39.3(3), services may include but shall not be limited to:

(1) Installation and servicing of radiation machines and associated radiation machine components;

(2) Calibration of radiation machines or radiation measurement instruments or devices;

(3) Radiation protection or health physics consultations or surveys; and

(4) ~~Personnel dosimetry services.~~ *Processor or processor servicing, or both.*

ITEM 12. Amend subrule **39.3(10)**, paragraph **"a,"** introductory paragraph, as follows:

a. Whenever any radiation machine is to be brought into the state, for any temporary use, the person proposing to bring such machine into the state shall give written notice to the agency at least ~~two~~ *three* working days before such machine is to be used in the state. The notice shall include:

ITEM 13. Amend subrule 39.4(24) as follows:

39.4(24) Filing application for specific licenses.

a. to d. No change.

~~e. In the application, the applicant may incorporate by reference information contained in previous applications, statements, or reports filed with the agency, provided such references are clear and specific.~~

~~f~~ *e.* Applications and documents submitted to the agency may be made available for public inspection except that the agency may withhold any document or part thereof from public inspection if disclosure of its content is not required in the public interest and would adversely affect the interest of a person concerned.

~~g~~ *f.* (1) Each application to possess radioactive materials in unsealed form, on foils or plated sources, or sealed in glass in excess of the quantities in Appendix G of this chapter, must contain either:

1. and 2. No change.

(2) One or more of the following factors may be used to support an evaluation submitted under ~~39.4(24)"g"(1)"1"~~ *39.4(24)"f"(1)"1"* of this subrule:

1. to 7. No change.

(3) An emergency plan for responding to a release of radioactive material submitted under ~~39.4(24)"g"(1)"2"~~ *39.4(24)"f"(1)"2"* must include the following information:

1. to 13. No change.

(4) No change.

ITEM 14. Amend subrule **39.4(26)**, paragraph **"e,"** as follows:

e. Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from 39.4(26)"f," including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. *The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate and a signed original of the financial instrument obtained to satisfy the requirements of 39.4(26)"f."*

ITEM 15. Amend subparagraph **39.4(26)"f"(2)**, introductory paragraph, as follows:

(2) A surety method, insurance, or other guarantee method. These methods guarantee that decommissioning costs will be paid should the licensee default. A surety method may be in the form of a surety bond, letter of credit, or line of credit. A parent company guarantee of funds for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix F of this chapter. A parent company guarantee may not be used in combination with other financial methods to satisfy the requirements of this subrule. *For commercial corporations that issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs based on a financial test may be used if the guarantee and test are as contained in Appendix H of this chapter. For commercial companies that do not issue bonds, a guarantee of funds by the applicant or licensee for decommissioning costs may be used if the guarantee and test are as contained in Appendix I of this chapter. For nonprofit entities, such as colleges, universities, and nonprofit hospitals, a guarantee of funds by the applicant or licensee may be used if the guarantee and test are as contained in Appendix J of this chapter. A guarantee by the applicant or licensee may not be used in combination with any other financial methods used to satisfy the requirements of paragraph 39.4(26)"f" or in any situation where the applicant or licensee has a parent company holding majority control of the voting stock of the company.* Any surety method or insurance used to provide financial assurance for decommissioning must contain the following conditions:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 16. Amend subrule **39.4(26)**, paragraph **"f,"** by adopting **new** subparagraph **(5)** as follows:

(5) When a governmental entity assumes custody and ownership of a site, an arrangement that is deemed acceptable by such governmental entity.

ITEM 17. Rescind subrule **39.4(27)**, paragraph **"e,"** and adopt the following **new** paragraph in lieu thereof:

e. Use of sealed sources in industrial radiography. In addition to the requirements set forth in 39.4(25), a specific license for use of sealed sources in industrial radiography will be issued if the application contains:

(1) A schedule or description of the program for training radiographic personnel which specifies:

1. Initial training,
2. Periodic training,
3. On-the-job training, and
4. Methods to be used by the licensee to determine the knowledge, understanding, and ability of radiographic personnel to comply with agency rules, licensing requirements, and the operating and emergency procedures of the applicant;

(2) Written operating and emergency procedures, including all items listed in Appendix D of 641—Chapter 45;

(3) A description of the internal inspection system or other management control to ensure that radiographic personnel follow license provisions, rules of the agency, and the applicant's operating and emergency procedures;

(4) A list of permanent radiographic installations and descriptions of permanent storage and use locations. Radioactive material shall not be stored at a permanent storage location or used at a permanent use location unless such storage or use location is specifically authorized by the license. A storage or use location is permanent if radioactive material is stored at the location for more than 90 days and any of the following applies to the location:

1. Non-wireless telephone service is established by the licensee;
2. Industrial radiographic services are advertised for or from the location;
3. Industrial radiographic operations are conducted at other sites due to arrangements made from the location;

(5) A description of the organization of the industrial radiographic program, including delegations of authority and responsibility for operation of the radiation safety program;

(6) A description of the program for inspection and maintenance of radiographic exposure devices and transport and storage containers (including applicable items in 641—subrule 45.1(8) and 641—Chapter 45, Appendix A); and

(7) If a license application includes underwater radiography, a description of:

1. Radiation safety procedures and radiographer responsibilities unique to the performance of underwater radiography;
2. Radiographic equipment and radiation safety equipment unique to underwater radiography; and
3. Methods for gas-tight encapsulation of equipment;

(8) If a license application includes offshore platform or lay-barge radiography, a description of:

1. Transport procedures for radioactive material to be used in industrial radiographic operations;
2. Storage facilities for radioactive material; and
3. Methods for restricting access to radiation areas.

ITEM 18. Amend subparagraph **39.4(33)"j"(2)**, introductory paragraph, as follows:

(2) Conduct a radiation survey of the premises where the licensed activities were carried out and submit a report of the results of this survey unless the licensee demonstrates ~~that the premises are suitable for release in some other manner~~ *in some other manner that the premises are suitable for release in accordance with the criteria for decommissioning in 641—40.28(136C) through 641—40.31(136C).* The licensee shall, as appropriate:

ITEM 19. Amend subparagraph **39.4(33)"k"(3)** as follows:

(3) A radiation survey has been performed which demonstrates that the premises are suitable for release ~~in accordance with state of Iowa requirements;~~ or other information submitted by the licensee is sufficient *to demonstrate that the premises are suitable* for release in accordance with ~~state of Iowa requirements~~ *the criteria for decommissioning in 641— 40.28(136C) through 641—40.31(136C).*

ITEM 20. Amend subparagraph **39.4(90)"a"(3)** as follows:

(3) The out-of-state licensee shall notify the agency in writing at least three *working* days prior to engaging in activities in the state. Such notification shall indicate the location, period, and type of proposed possession and use within the state, and shall be accompanied by a copy of the pertinent licensing document initially. If, for a specific case, the three-day period would impose an undue hardship on the out-of-state licensee, the licensee may, upon application to the agency, obtain permission to proceed sooner. The agency may waive the requirement for filing additional written notifications during the remainder of the one-year reciprocity period following the receipt of the initial notification from a person engaging in activities under the general license provided by 39.4(90)"a."

ITEM 21. Rescind rule 641—39.5(136C) and adopt the following **new** rule in lieu thereof:

641—39.5(136C) Transportation of radioactive material. All persons who transport radioactive material or deliver radioactive material to a carrier for transport must comply with the provision contained in 10 CFR Part 71 as it applies to the state of Iowa.

ITEM 22. Rescind and reserve **641—Chapter 39, Appendix E.**

ITEM 23. Amend **641—Chapter 39** by adopting the following **new** Appendices H, I and J:

Appendix H

Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test, a company must meet all of the following criteria:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. Tangible net worth at least ten times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used).

2. Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate for the total of all facilities or parts thereof (or the current amount required if certification is used).

3. A current rating for its most recent bond issuance of AAA, AA, or A as issued by Standard and Poor's (S&P) or Aaa, Aa, or A as issued by Moody's.

B. To pass the financial test, a company must meet all of the following additional requirements:

1. The company must have at least one class of equity securities registered under the Securities Exchange Act of 1934.

2. The company's independent certified public accountant must have compared the data used by the company in the financial test, which is derived from the independently audited, year-end financial statements for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

3. After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

C. If the licensee no longer meets the requirements of Section II.A. of this appendix, the licensee must send immediate notice to the agency of its intent to establish alternate financial assurance as specified in these rules within 120 days of such notice.

III. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee will remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the agency. Cancellation may not occur, however, during the 120 days beginning on the date of receipt of the notice of cancellation by the agency, as evidenced by the return receipt.

B. The licensee shall provide alternative financial assurance as specified in these rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

D. The licensee will promptly forward to the agency and the licensee's independent auditor all reports covering the latest fiscal year filed by the licensee with the Securities and Exchange Commission pursuant to the requirements of Section 13 of the Securities and Exchange Act of 1934.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee will provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service. If the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by both Standard and Poor's and Moody's, the licensee no longer meets the requirements of Section II.A. of this appendix.

F. The applicant or licensee must provide to the agency a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

Appendix I

Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning by Commercial Companies That Have No Outstanding Rated Bonds

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the company passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. To pass the financial test, a company must meet the following criteria:

1. Tangible net worth greater than $10 million, or at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

2. Assets located in the United States amounting to at least 90 percent of total assets or at least ten times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the company is responsible as self-guaranteeing licensee and as parent-guarantor.

3. A ratio of cash flow divided by total liabilities greater than 0.15 and a ratio of total liabilities divided by net worth less than 1.5.

B. In addition, to pass the financial test, a company must meet all of the following requirements:

1. The company's independent certified public accountant must have compared the data used by the company in the financial test, which is required to be derived from the independently audited year-end financial statement based on United States generally accepted accounting practices for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform the agency within 90 days of any matters that may cause the auditor to believe that the data specified in the financial test should be adjusted and that the company no longer passes the test.

2. After the initial financial test, the company must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

3. If the licensee no longer meets the requirements of Section II.A. of this appendix, the licensee must send notice to the agency of intent to establish alternative financial assurance as specified in these rules. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternative finan-

cial assurance within 120 days after the end of such fiscal year.

III. Company Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the agency. Cancellation may not occur until an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in the regulations within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

D. The applicant or licensee must provide to the agency a written guarantee (a written commitment by a corporate officer) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

Appendix J
Criteria Relating to Use of Financial Tests and Self-Guarantees for Providing Reasonable Assurance of Funds for Decommissioning by Nonprofit Colleges, Universities, and Hospitals

I. Introduction

An applicant or licensee may provide reasonable assurance of the availability of funds for decommissioning based on furnishing its own guarantee that funds will be available for decommissioning costs and on a demonstration that the applicant or licensee passes the financial test of Section II of this appendix. The terms of the self-guarantee are in Section III of this appendix. This appendix establishes criteria for passing the financial test for the self-guarantee and establishes the terms for a self-guarantee.

II. Financial Test

A. For colleges and universities to pass the financial test, a college or university must meet either the criteria in Section II.A.1. or the criteria in Section II.A.2. of this appendix.

1. For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's (S&P) or Aaa, Aa, or A as issued by Moody's.

2. For applicants or licensees that do not issue bonds, unrestricted endowment consisting of assets located in the United States of at least $50 million, or at least 30 times the total current decommissioning cost estimate (or the current amount required if certification is used), whichever is greater, for all decommissioning activities for which the college or university is responsible as a self-guaranteeing licensee.

B. For hospitals to pass the financial test, a hospital must meet either the criteria in Section II.B.1. or the criteria in Section II.B.2. of this appendix:

1. For applicants or licensees that issue bonds, a current rating for its most recent uninsured, uncollateralized, and unencumbered bond issuance of AAA, AA, or A as issued by Standard and Poor's (S&P) or Aaa, Aa, or A as issued by Moody's.

2. For applicants or licensees that do not issue bonds, all the following tests must be met:

(a) (Total revenues less total expenditures) divided by total revenues must be equal to or greater than 0.04.

(b) Long-term debt divided by net fixed assets must be less than or equal to 0.67.

(c) (Current assets and depreciation fund) divided by current liabilities must be greater than or equal to 2.55.

(d) Operating revenues must be at least 100 times the total current decommissioning cost estimate (or the current amount required if certification is used) for all decommissioning activities for which the hospital is responsible as a self-guaranteeing licensee.

C. In addition, to pass the financial test, a licensee must meet all the following requirements:

1. The licensee's independent certified public accountant must have compared the data used by the licensee in the financial test, which is required to be derived from the independently audited year-end financial statements, based on United States generally accepted accounting practices, for the latest fiscal year, with the amounts in such financial statement. In connection with that procedure, the licensee shall inform this agency within 90 days of any matters coming to the attention of the auditor that cause the auditor to believe that the data specified in the financial test should be adjusted and that the licensee no longer passes the test.

2. After the initial financial test, the licensee must repeat passage of the test within 90 days after the close of each succeeding fiscal year.

3. If the licensee no longer meets the requirements of Section I of this appendix, the licensee must send notice to this agency of its intent to establish alternative financial assurance as specified in these rules. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the agency. Cancellation may not occur until an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in these rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

D. The applicant or licensee must provide to the agency a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 24. Amend subrule 40.1(5) as follows:

40.1(5) All references to Code of Federal Regulations (CFR) in this chapter are those in effect on or before ~~July 1, 1999~~ *May 10, 2000.*

ITEM 25. Amend subrule **40.2(2)**, definitions of "declared pregnant woman" and "very high radiation area," as follows:

"Declared pregnant woman" means a woman who has voluntarily informed her employer, in writing, of her pregnancy and the estimated date of conception. *The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.*

~~"Very high radiation area" means an area, accessible to individuals, in which radiation levels could result in an individual receiving an absorbed dose in excess of 500 rad (5 Gy) in 1 hour at 1 meter from a source of radiation or from any surface that the radiation penetrates.~~

ITEM 26. Amend subrule 40.10(2) as follows:

40.10(2) The licensee or registrant shall use, to the extent ~~practicable~~ *practical*, procedures and engineering controls based upon sound radiation protection principles to achieve occupational doses and public doses that are as low as is reasonably achievable (ALARA).

ITEM 27. Amend subparagraph **40.15(1)"b"(1)** as follows:

(1) ~~An eye~~ *A lens* dose equivalent of 15 rem (0.15 Sv), and

ITEM 28. Amend subrule 40.15(3) as follows:

40.15(3) The assigned deep dose equivalent and shallow dose equivalent shall be for the portion of the body receiving the highest exposure determined as follows:

The deep dose equivalent, ~~eye~~ *lens* dose equivalent and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

ITEM 29. Amend subrule 40.20(1) as follows:

40.20(1) The licensee or registrant authorizes a planned special exposure only in an exceptional situation when alternatives that might avoid the ~~higher exposure~~ *dose estimated to result from the planned special exposure* are unavailable or impractical.

ITEM 30. Amend rule 641—40.22(136C) as follows:

641—40.22(136C) Dose *equivalent* to an embryo/fetus.

40.22(1) The licensee or registrant shall ensure that the dose *equivalent* to an embryo/fetus during the entire pregnancy, due to occupational exposure of a declared pregnant woman, does not exceed 0.5 rem (5 mSv). See 40.86(136C) for record-keeping requirements.

40.22(2) No change.

40.22(3) The dose *equivalent* to an embryo/fetus shall be taken as the sum of:

a. The deep dose equivalent to the declared pregnant woman; and

b. The dose *equivalent* to the embryo/fetus from radionuclides in the embryo/fetus and radionuclides in the declared pregnant woman.

40.22(4) If by the time the woman declares pregnancy to the licensee or registrant, the dose *equivalent* to the embryo/fetus has exceeded 0.45 rem (4.5 mSv), the licensee or registrant shall be deemed to be in compliance with 40.22(1) if the additional dose *equivalent* to the embryo/fetus does not exceed 0.05 rem (0.5 mSv) during the remainder of the pregnancy.

ITEM 31. Amend subparagraph **40.36(1)"b"(1)** as follows:

(1) ~~Radiation~~ *The magnitude and extent of radiation* levels; and

ITEM 32. Amend subrule 40.62(2) as follows:

40.62(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to 40.61(136C) provided that the patient could be released from ~~confinement~~ *licensee control* pursuant to ~~641—41.27(136C)~~ *641—subrule 41.2(27).*

ITEM 33. Amend rule 641—40.62(136C) by adopting **new** subrule 40.62(5) as follows:

40.62(5) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under 641—40.61(136C) if:

a. Access to the room is controlled pursuant to 641—subrule 41.2(53); and

b. Personnel in attendance take necessary precautions to prevent an inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this chapter.

ITEM 34. Rescind rule 641—40.75(136C) and adopt the following **new** rule in lieu thereof:

641—40.75(136C) Transfer for disposal and manifests.

40.75(1) Any licensee shipping radioactive waste intended for ultimate disposal at a licensed land disposal facility must document the information required on the Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix D of this chapter.

40.75(2) Each shipment manifest must include a certification by the waste generator as specified in Section II of Appendix D of this chapter.

40.75(3) Each person involved in the transfer for disposal and disposal of waste, including the waste generator, waste collector, waste processor, and disposal facility operator, shall comply with the requirements specified in Section III of Appendix D of this chapter.

ITEM 35. Amend rule 641—40.80(136C) as follows:

641—40.80(136C) General provisions.

40.80(1) Each licensee or registrant shall use the special units curie, rad, rem and roentgen, counts per minute (cpm), disintegrations per minute (dpm), or the SI units becquerel, gray, sievert and coulomb per kilogram, including multiples and subdivisions, and shall clearly indicate the units of all quantities on records required by this chapter.

40.80(2) The licensee or registrant shall make a clear distinction among the quantities entered on the records required by this chapter, such as, total effective dose equivalent, total organ dose equivalent, shallow dose equivalent, ~~eye~~ *lens* dose equivalent, deep dose equivalent, or committed effective dose equivalent.

40.80(3) *In the records required by this chapter, the licensee may record quantities in SI units in parentheses following each of the units specified in 40.80(1). However, all quantities must be recorded as stated in 40.80(1).*

40.80(4) *Notwithstanding the requirements of 40.80(1), when recording information on shipment manifests, as re-*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

quired in 641—40.75(136C), information must be recorded in the International System of Units (SI) or in SI and units as specified in 40.80(1).

ITEM 36. Rescind 641—Chapter 40, Appendix D, and adopt **new Appendix D** as follows:

Appendix D
Requirements for Transfers of Low-Level Radioactive Waste Intended for Disposal at Licensed Land Disposal Facilities and Manifests

As used in this appendix, the following definitions apply:

"Chelating agent" means amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carbolic acid, and glucinic acid).

"Chemical description" means a description of the principal chemical characteristics of a low-level radioactive waste.

"Computer-readable medium" means that the regulatory agency's computer can transfer the information from the medium into its memory.

"Consignee" means the designated receiver of the shipment of low-level radioactive waste.

"Decontamination facility" means a facility operating under an Agreement State or Nuclear Regulatory Commission license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives and, for purposes of this appendix, is not considered to be a consignee for LLW shipments.

"Disposal container" means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"). Note that for some shipments, the disposal container may be the transport package.

"EPA identification number" means the number received by a transporter following application to the administrator of EPA as required by 40 CFR Part 263.

"Forms 540, 540A, 541, 541A, 542, and 542A" are official forms referenced in this appendix. Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, Forms 541 (and 541A) and Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

"Generator" means a licensee operating under an Agreement State or Nuclear Regulatory Commission license who (1) is a waste generator as defined in this rule, or (2) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

"High integrity container (HIC)" means a container commonly designed to meet the structural stability requirements of 10 CFR 61.56, and to meet United States Department of Transportation requirements for a Type A package.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive wastes. For purposes of this appendix, a "geologic repository" as defined in 10 CFR Part 60 is not considered a land disposal facility.

"Package" means the assembly of components necessary to ensure compliance with the packaging requirements of United States Department of Transportation regulations, together with its radioactive contents, as presented for transport.

"Physical description" means the items called for on Form 541 to describe a low-level radioactive waste.

"Residual waste" means low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

"Shipper" means the licensed entity (i.e., the waste generator, waste collector, or waste processor) who offers low-level radioactive waste for transportation, typically consigning this type of waste to a licensed waste collector, waste processor, or land disposal facility operator.

"Shipping paper" means Form 540 and, if required, Form 540A which includes the information required by United States Department of Transportation in 49 CFR Part 172.

"Uniform Low-Level Radioactive Waste Manifest" or "uniform manifest" means the combination of Forms 540, 541 and, if necessary, 542, and their respective continuation sheets as needed, or equivalent.

"Waste collector" means an entity, operating under an Agreement State or Nuclear Regulatory Commission license, whose principal purpose is to collect and consolidate waste generated by others, and to transfer this waste, without processing or repackaging the collected waste, to another licensed waste collector, licensed waste processor, or licensed land disposal facility.

"Waste description" means the physical, chemical and radiological description of a low-level radioactive waste as called for on Form 541.

"Waste generator" means an entity, operating under an Agreement State or Nuclear Regulatory Commission license, who (1) possesses any material or component that contains radioactivity or is radioactively contaminated for which the licensee foresees no further use, and (2) transfers this material or component to a licensed land disposal facility or to a licensed waste collector or processor for handling or treatment prior to disposal. A licensee performing processing or decontamination services may be a "waste generator" if the transfer of low-level radioactive waste from its facility is defined as "residual waste."

"Waste processor" means an entity, operating under an Agreement State or Nuclear Regulatory Commission license, whose principal purpose is to process, repackage, or otherwise treat low-level radioactive material or waste generated by others prior to eventual transfer of waste to a licensed low-level radioactive waste land disposal facility.

"Waste type" means a waste within a disposal container having a unique physical description (i.e., a specific waste descriptor code or description; or a waste sorbed on or solidified in a specifically defined media).

I. Manifest

A waste generator, collector, or processor who transports, or offers for transportation, low-level radioactive waste intended for ultimate disposal at a licensed low-level radioactive waste land disposal facility must prepare a manifest reflecting information requested on applicable Forms 540 (Uniform Low-Level Radioactive Waste Manifest (Shipping Paper)) and 541 (Uniform Low-Level Radioactive Waste Manifest (Container and Waste Description)) and, if necessary, on an applicable Form 542 (Uniform Low-Level Radioactive Waste Manifest (Manifest Index and Regional Compact Tabulation)). Forms 540 and 540A must be com-

pleted and must physically accompany the pertinent low-level waste shipment. Upon agreement between shipper and consignee, Forms 541 and 541A and 542 and 542A may be completed, transmitted, and stored in electronic media with the capability for producing legible, accurate, and complete records on the respective forms. Licensees are not required by this agency to comply with the manifesting requirements of this part when they ship:

(a) LLW for processing and expect its return (i.e., for storage under their license) prior to disposal at a licensed land disposal facility;

(b) LLW that is being returned to the licensee who is the "waste generator" or "generator," as defined in this part; or

(c) Radioactively contaminated material to a "waste processor" that becomes the processor's "residual waste."

For guidance in completing these forms, refer to the instructions that accompany the forms. Copies of manifests required by this appendix may be legible carbon copies, photocopies, or computer printouts that reproduce the data in the format of the uniform manifest.

Forms 540, 540A, 541, 541A, 542 and 542A, and the accompanying instructions, in hard copy, may be obtained from the Information and Records Management Branch, Office of Information Resources Management, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301)415-7232.

This appendix includes information requirements of the United States Department of Transportation, as codified in 49 CFR Part 172. Information on hazardous, medical, or other waste required to meet Environmental Protection Agency regulations, as codified in 40 CFR Parts 259, 261, or elsewhere, is not addressed in this section, and must be provided on the required EPA forms. However, the required EPA forms must accompany the Uniform Low-Level Radioactive Waste Manifest required by this chapter.

Information Requirements

A. General Information

The shipper of the radioactive waste shall provide the following information on the uniform manifest:

1. The name, facility's address, and telephone number of the licensee shipping the waste;

2. An explicit declaration indicating whether the shipper is acting as a waste generator, collector, processor, or a combination of these identifiers for purposes of the manifested shipment; and

3. The name, address, and telephone number, or the name and EPA identification number, for the carrier transporting the waste.

B. Shipment Information

The shipper of the radioactive waste shall provide the following information regarding the waste shipment on the uniform manifest:

1. The date of the waste shipment;

2. The total number of packages/disposal containers;

3. The total disposal volume and disposal weight in the shipment;

4. The total radionuclide activity in the shipment;

5. The activity of each of the radionuclides, H-3, C-14, Tc-99, and I-129 contained in the shipment; and

6. The total masses of U-233, U-235, and plutonium in special nuclear material, and the total mass of uranium and thorium in source material.

C. Disposal Container and Waste Information

The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding the waste and each disposal container of waste in the shipment:

1. An alphabetic or numeric identification that uniquely identifies each disposal container in the shipment;

2. A physical description of the disposal container, including the manufacturer and model of any high integrity container;

3. The volume displaced by the disposal container;

4. The gross weight of the disposal container, including the waste;

5. For waste consigned to a disposal facility, the maximum radiation level at the surface of each disposal container;

6. A physical and chemical description of the waste;

7. The total weight percentage of chelating agent for any waste containing more than 0.1 percent chelating agent by weight, plus the identity of the principal chelating agent;

8. The approximate volume of waste within a container;

9. The sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name;

10. The identities and activities of individual radionuclides contained in each container, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material. For discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides associated with or contained in these waste types within a disposal container shall be reported;

11. The total radioactivity within each container; and

12. For wastes consigned to a disposal facility, the classification of the waste pursuant to 10 CFR 61.55. Waste not meeting the structural stability requirements of 10 CFR 61.56(b) must be identified.

D. Uncontainerized Waste Information

The shipper of the radioactive waste shall provide the following information on the uniform manifest regarding a waste shipment delivered without a disposal container:

1. The approximate volume and weight of the waste;

2. A physical and chemical description of the waste;

3. The total weight percentage of chelating agent if the chelating agent exceeds 0.1 percent by weight, plus the identity of the principal chelating agent;

4. For waste consigned to a disposal facility, the classification of the waste pursuant to 10 CFR 61.55. Waste not meeting the structural stability requirements of 10 CFR 61.56(b) must be identified;

5. The identities and activities of individual radionuclides contained in the waste, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material; and

6. For wastes consigned to a disposal facility, the maximum radiation levels at the surface of the waste.

E. Multigenerator Disposal Container Information

This section applies to disposal containers enclosing mixtures of waste originating from different generators. (Note: The origin of the LLW resulting from a processor's activities may be attributable to one or more "generators" (including "waste generators") as defined in this appendix.) It also applies to mixtures of wastes shipped in an uncontainerized form, for which portions of the mixture within the shipment originate from different generators.

1. For homogeneous mixtures of waste, such as incinerator ash, provide the waste description applicable to the mixture and the volume of the waste attributed to each generator.

2. For heterogeneous mixtures of waste, such as the combined products from a large compactor, identify each

generator contributing waste to the disposal container and, for discrete waste types (i.e., activated materials, contaminated equipment, mechanical filters, sealed source/devices, and wastes in solidification/stabilization media), the identities and activities of individual radionuclides contained in these waste types within the disposal container. For each generator, provide the following:

(a) The volume of waste within the disposal container;

(b) A physical and chemical description of the waste, including the solidification agent, if any;

(c) The total weight percentage of chelating agents for any disposal container containing more than 0.1 percent chelating agent by weight, plus the identity of the principal chelating agent;

(d) The sorbing or solidification media, if any, and the identity of the solidification media vendor and brand name if the media is claimed to meet stability requirements in 10 CFR 61.56(b); and

(e) Radionuclide identities and activities contained in the waste, the masses of U-233, U-235, and plutonium in special nuclear material, and the masses of uranium and thorium in source material if contained in the waste.

II. Certification

An authorized representative of the waste generator, processor, or collector shall certify by signing and dating the shipment manifest that the transported materials are properly classified, described, packaged, marked, and labeled and are in proper condition for transportation according to the applicable regulations of the United States Department of Transportation and this agency. A collector in signing the certification is certifying that nothing has been done to the collected waste that would invalidate the waste generator's certification.

III. Control and Tracking

A. Any licensee who transfers radioactive waste to a land disposal facility or a licensed waste collector shall comply with the requirements in paragraphs A.1. through A.9. of this appendix. Any licensee who transfers waste to a licensed waste processor for waste treatment or repackaging shall comply with the requirements of paragraphs A.4. through A.9. of this appendix. A licensee shall:

1. Prepare all wastes so that the waste is classified according to 10 CFR 61.55 and meets the waste characteristics requirements in 10 CFR 61.56;

2. Label each disposal container (or transport package if potential radiation hazards preclude labeling of the individual disposal container) of waste to identify whether it is Class A waste, Class B waste, Class C waste, or greater than Class C waste, in accordance with 10 CFR 61.55;

3. Conduct a quality assurance program to ensure compliance with 10 CFR 61.55 and 61.56 (the program must include management evaluation of audits);

4. Prepare the Uniform Low-Level Radioactive Waste Manifest as required by this appendix;

5. Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either (1) receipt of the manifest precedes the LLW shipment or (2) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both (1) and (2) is also acceptable;

6. Include Form 540 (and Form 540A, if required) with the shipment regardless of the option chosen in paragraph A.5. of this section;

7. Receive acknowledgment of the receipt of the shipment in the form of a signed copy of Form 540;

8. Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 641—subrule 39.4(41); and

9. For any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this appendix, conduct an investigation in accordance with paragraph E of this appendix.

B. Any waste collector licensee who handles only prepackaged waste shall:

1. Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of Form 540;

2. Prepare a new manifest to reflect consolidated shipments that meet the requirements of this appendix. The waste collector shall ensure that, for each container of waste in the shipment, the manifest identifies the generator of that container of waste;

3. Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either: (1) receipt of the manifest precedes the LLW shipment or (2) the manifest is delivered to the consignee with the waste at the time the waste is transferred to the consignee. Using both (1) and (2) is also acceptable;

4. Include Form 540 (and Form 540A, if required) with the shipment regardless of the option chosen in paragraph B.3. of this section;

5. Receive acknowledgment of the receipt of the shipment in the form of a signed copy of Form 540;

6. Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 641—subrule 39.4(41);

7. For any shipments or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this appendix, conduct an investigation in accordance with paragraph E of this appendix; and

8. Notify the shipper and this agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

C. Any licensed waste processor who treats or repackages waste shall:

1. Acknowledge receipt of the waste from the shipper within one week of receipt by returning a signed copy of Form 540;

2. Prepare a new manifest that meets the requirements of this appendix. Preparation of the new manifest reflects that the processor is responsible for meeting these requirements. For each container of waste in the shipment, the manifest shall identify the waste generators, the preprocessed waste volume, and the other information as required in paragraph E.1. of this appendix;

3. Prepare all wastes so that the waste is classified according to 10 CFR 61.55 and meets the waste characteristics requirements in 10 CFR 61.56;

4. Label each package of waste to identify whether it is Class A waste, Class B waste, or Class C waste, in accordance with 10 CFR 61.55 and 61.57;

5. Conduct a quality assurance program to ensure compliance with 10 CFR 61.55 and 61.56 (the program shall include management evaluation of audits);

6. Forward a copy or electronically transfer the Uniform Low-Level Radioactive Waste Manifest to the intended consignee so that either (1) receipt of the manifest precedes the LLW shipment or (2) the manifest is delivered to the con-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

signee with the waste at the time the waste is transferred to the consignee. Using both (1) and (2) is also acceptable;

7. Include Form 540 (and Form 540A, if required) with the shipment regardless of the option chosen in paragraph C.6. of this section;

8. Receive acknowledgment of the receipt of the shipment in the form of a signed copy of Form 540;

9. Retain a copy of or electronically store the Uniform Low-Level Radioactive Waste Manifest and documentation of acknowledgment of receipt as the record of transfer of licensed material as required by 641—subrule 39.4(41);

10. For any shipment or any part of a shipment for which acknowledgment of receipt has not been received within the times set forth in this appendix, conduct an investigation in accordance with paragraph E of this appendix; and

11. Notify the shipper and this agency of any shipment, or part of a shipment, that has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

D. The land disposal facility operator shall:

1. Acknowledge receipt of the waste within one week of receipt by returning, as a minimum, a signed copy of Form 540 to the shipper. The shipper to be notified is the licensee who last possessed the waste and transferred the waste to the operator. If any discrepancy exists between materials listed on the Uniform Low-Level Radioactive Waste Manifest and materials received, copies or electronic transfer of the affected forms must be returned indicating the discrepancy;

2. Maintain copies of all completed manifests and electronically store the information required by 10 CFR 61.80(l) until the license is terminated; and

3. Notify the shipper and this agency when any shipment, or part of a shipment, has not arrived within 60 days after receipt of an advance manifest, unless notified by the shipper that the shipment has been canceled.

E. Any shipment or part of a shipment for which acknowledgment is not received within the times set forth in this section must:

1. Be investigated by the shipper if the shipper has not received notification or receipt within 20 days after transfer; and

2. Be traced and reported. The investigation shall include tracing the shipment and filing a report with this agency. Each licensee who conducts a trace investigation shall file a written report with this agency within two weeks of completion of the investigation.

ITEM 37. Amend subrule 41.1(1) as follows:

41.1(1) Scope. This rule establishes requirements, for which a registrant is responsible, for use of X-ray equipment by or under the supervision of an individual authorized by and licensed in accordance with state statutes to engage in the healing arts or veterinary medicine. The provisions of this rule are in addition to, and not in substitution for, any other applicable provisions of these rules. The provisions of Chapter 41 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 38 to 42. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~July 1, 1999~~ *May 10, 2000.*

ITEM 38. Amend subrule 41.1(2), introductory paragraph, as follows:

41.1(2) Definitions. For the purpose of this chapter, the definitions of 641—~~Chapter~~ *Chapters* 38 *and 40* may also apply. The following are specific to ~~rule 41.1(136C)~~ *641—Chapter 41.*

ITEM 39. Amend subrule **41.1(2)** as follows:

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

"Base density" means the optical density due to the supporting base of the film alone. The base density of a film is the optical density that would result if an unexposed film were processed through the fixer, wash, and dryer, without first passing through the developer.

"Base plus fog density" means the optical density of a film due to its base density plus any action of the developer on the unexposed silver halide crystals. The base plus fog density can be measured by processing an unexposed film through the entire processing cycle and measuring the resultant optical density.

"Cassette" means a light-tight case, usually made of thin, low X-ray absorption plastic, for holding X-ray film. One or two intensifying screens for the conversion of X-rays to visible light photons are mounted inside the cassette so that they are in close contact to the film.

"Control chart" means a chart used to record (and control) the results of quality control testing as a function of time.

"Control limit" means the range of variation on a control chart beyond which action must be taken to correct the results of quality control testing.

"Dedicated mammography equipment" means X-ray systems designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression and low dose exposure that can generate reproducible images of high quality.

"Densitometer" means an instrument which measures the degree of blackening (or radiographic density) of film due to radiation or light by measuring the ratio of the light intensity incident on the film to the light intensity transmitted by the film.

"Detents" means mechanical settings that limit or prevent the motion or rotation of an X-ray tube, cassette assembly, or image receptor system.

"Developer" means a chemical solution (alkaline) that changes the latent image (exposed silver halide crystals) on a film to a visible image composed of minute masses of black metallic silver.

"Developer replenishment" means the process, occurring as film travels past a certain point in the processor, triggering the activation of a pump, whereby fresh developer is added in small amounts to the solution in the developer tank of the processor. The purpose is to maintain the proper alkalinity, chemical activity, and level of solution in the developer tank.

"Diagnostic mammography" means mammography performed on an individual who, by virtue of symptoms or physical findings, is considered to have a substantial likelihood of having breast disease.

"Fixer" means a chemical solution (acidic) which removes the unexposed and undeveloped silver halide crystals from film so it will not discolor or darken with age or exposure to light. Fixer also hardens the gelatin containing the black metallic silver so film may be dried and resist damage from abrasions.

"Fixer retention" means the inadequate removal of fixer from the film by the water in the wash tank of the processor. Retained fixer causes eventual brown discoloration of the radiograph.

"Focal spot size" means the area of the target or anode that is bombarded by electrons from the cathode of the X-ray tube to produce X-rays. The smaller the focal spot, the better the limited spatial resolution of the X-ray system, especially in magnification mammography.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"Fog" means the density added to a radiograph due to unwanted action of the developer on the unexposed silver halide crystals or by light, radiation, chemical, or heat exposure during storage, handling, and processing.

"Image contrast" means the amount of radiographic density difference between adjacent areas resulting from a fixed amount of attenuation difference or light exposure difference.

"Image noise." See "Radiographic noise."

"Image quality" means the overall clarity and detail of a radiographic image. Limiting spatial resolution (or resolving power), image sharpness, and image contrast are three common measures of image quality.

"Image sharpness" means the overall impression of detail and clarity in a radiographic image.

"Processor" means an automated device which transports film in a controlled manner by a system of rollers through specialized sections where developing, fixing, washing, and drying of the film occur.

"Quality assurance" means the overall program of testing and maintaining the highest possible standards of quality in the acquisition and interpretation of radiographic images.

"Quality control" means the actual process of testing and maintaining the highest possible standards of quality in equipment performance and the acquisition and interpretation of radiographic images.

"Radiographic contrast" means the magnitude of optical density difference between structures of interest and their surroundings, or between areas of film receiving different amounts of X-ray or visible light exposure.

"Radiographic noise" means unwanted fluctuations in optical density on the screen-film image.

"Repeat (or reject) analysis" means a systematic approach to determine the causes for radiographs being discarded or repeated, or both.

"Replenishment rate" means the amount of chemicals added in order to maintain the proper chemical activity of developer and fixer solutions.

"Safelight" means a source of minimal visible light in a darkroom, produced at frequencies (colors) to which the film is insensitive, protecting the film from unwanted exposure (fog) while allowing personnel to function more efficiently and safely.

"Screen" means microscopic phosphor crystals on a plastic support used in conjunction with either single or double emulsion film; the screen emits visible light when exposed to X-radiation, creating a latent image on X-ray film.

"Screen-film combination" means a particular intensifying screen used with a particular type of film. Care must be taken to match the number of screens (one or two) to the number of emulsions coating the film and to match the light output spectrum of the screen to the light sensitivity of the film.

"Screen-film contact" means the close proximity of the intensifying screen to the emulsion of the film, necessary in order to achieve a sharp image on the film.

"Sensitometer" means a device used to reproducibly expose a piece of film to a number of different levels of light intensity.

"Sensitometric strip" means a sheet of film exposed by a sensitometer, resulting in a gray scale range. Such strips are used to measure the range of densities, from minimum to maximum, resulting from a reproducible set of exposures.

"Sensitometry" means a quantitative measurement of the response of film to exposure and development. Sensitometry is used to test the processor setup and stability.

"Viewbox" means a device by which a uniform field of white light is transmitted through an X-ray so that the image on the film may be seen.

Amend the following definition:

"X-ray *exposure* control" means a device, switch, button or similar means by which an operator initiates or terminates the radiation exposure. The X-ray exposure control may include such associated equipment as timers and backup timers.

ITEM 40. Amend subrule **41.1(2)** by rescinding the following definitions: "barrier," "beam-limiting device," "detector," "kV," "lead equivalent," "leakage radiation," "light field," "mA," "primary protective barrier," "protective barrier," "radiation detector," "secondary protective barrier," "shutter," "SSD," "stray radiation," "termination of irradiation," and "tube housing assembly."

ITEM 41. Amend subparagraph **41.1(3)"a"(6)** as follows:

(6) Gonad shielding of not less than ~~0.25~~ *0.50* millimeter lead equivalent shall be used for human patients, who have not passed the reproductive age, during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

ITEM 42. Amend **41.1(3)"f"(1)"2"** as follows:

2. ~~The temperature of solutions in the tanks shall be maintained within the range of 60_F to 80_F (16_C to 27_C).~~ Film shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer ~~or, in the absence of such recommendations, with the time-temperature chart available from the agency~~.

ITEM 43. Amend **41.1(3)"f"(2)"1"** as follows:

1. Films shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer~~; in the absence of such recommendations, the film shall be developed using the chart available from the agency~~.

ITEM 44. Amend paragraph **41.1(3)"f"** by adopting **new** subparagraph **(4)** as follows:

(4) Records shall be maintained to verify that the items in 41.1(3)"f" are performed according to the requirements. Records may be discarded only after an agency inspection has been completed and the facility determined to be in compliance.

ITEM 45. Amend paragraph **41.1(4)"i"** as follows:

i. ~~Locks.~~ All position locking, holding, and centering devices on X-ray system components and systems shall function as intended. *All X-ray systems shall be maintained in good mechanical repair and comply with all state and local electrical code requirements.*

ITEM 46. Amend subrule 41.1(6), catchwords, as follows:

41.1(6) Radiographic systems, other than fluoroscopic, dental intraoral, *veterinary,* or computed tomography X-ray systems.

ITEM 47. Rescind **41.1(6)"h"(1)"3."**

ITEM 48. Amend subparagraph **41.1(7)"c"(5)** as follows:

(5) Each X-ray exposure switch shall be located in such a way as to meet the following requirements:

1. ~~Stationary X-ray systems shall be required to have the X-ray exposure switch so that the operator is required to re-~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~main in the protected area during the entire exposure; and~~ *Stationary X-ray systems shall be required to have the X-ray exposure switch located in a protected area or have an exposure switch cord of sufficient length to permit the operator to activate the unit while in a protected area, e.g., corridor outside the operatory. The procedures required under 41.1(3)"a"(4) must instruct the operator to remain in the protected area during the entire exposure.*

2. Mobile and portable X-ray systems which are:

- Used for greater than one week in the same location, i.e., a room or suite, shall meet the requirements of 41.1(7)"c"(5)"1."
- Used for greater than one hour and less than one week at the same location, i.e., a room or suite, shall meet the requirements of the above paragraph or be provided with a 6.5 foot (1.98 m) high protective barrier or means to allow the operator to be at least 9 feet (2.7 meters) from the tube housing assembly while making exposure.

ITEM 49. Amend subrule **41.1(9)** by adopting the following **new** paragraphs:

e. Bone densitometry on human patients shall be conducted only under a prescription of a licensed physician, a licensed physician assistant as defined in Iowa Code section 148C.1, subsection 6, or a licensed registered nurse who is registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152.

f. During the operation of the bone densitometry system:

(1) The operator, ancillary personnel, and members of the general public shall be positioned at least one meter from the patient and bone densitometry system during the examination.

(2) The operator shall advise the patient that the bone densitometry examination is a type of X-ray procedure.

g. Equipment shall be maintained and operated in accordance with the manufacturer's specifications. Records of maintenance shall be kept for inspection by the agency.

ITEM 50. Amend subrule **41.1(11)**, paragraph **"a,"** introductory paragraph, as follows:

a. Definitions. In addition to the definitions provided in 641—38.2(136C), *641—40.2(136C),* and 41.1(2), the following definitions shall be applicable to 41.1(11):

ITEM 51. Amend subrule **41.2(14)**, paragraph **"c,"** as follows:

c. When a misadministration involves a diagnostic procedure, the radiation safety officer shall promptly investigate its cause, make a record for agency review, and retain the record as directed in 41.2(14)"d." The licensee shall also notify the referring physician and the agency in writing on IDPH Form #588-2608 *or equivalent* within 15 days if the misadministration involved the use of radioactive material not intended for medical use, administration of dosage five-fold different from the intended dosage, or administration of radioactive material such that the patient or human research subject is likely to receive ~~an organ dose greater than 2 rems (0.02 Sv) or a whole body dose greater than 500 millirems (5 mSv)~~ *a dose exceeding 5 rem (0.05 Sv) effective dose equivalent or 50 rem (0.5 Sv) dose equivalent to any individual organ.* Licensees may use dosimetry tables in package inserts, corrected only for amount of radioactivity administered, to determine whether a report is required.

ITEM 52. Amend subparagraph **41.2(60)"a"(2)**, numbered paragraphs **"1"** and **"2,"** as follows:

1. Radiation ~~levels~~ *dose rates* in restricted areas are not likely to cause ~~personnel exposures~~ *any occupationally exposed individual to receive a dose* in excess of the limits specified in 641—40.15(136C); and

2. Radiation ~~levels~~ *dose rates* in *controlled or* unrestricted areas ~~do not exceed~~ *are not likely to cause any individual member of the public to receive a dose in excess of* the limits specified in 641—40.26(136C).

ITEM 53. Amend subrule 41.2(62), introductory paragraph, as follows:

41.2(62) Modification of teletherapy unit or room before beginning a treatment program. If the survey required by 41.2(60) indicates that ~~an individual in an unrestricted area may be exposed to levels of radiation~~ *any individual member of the public is likely to receive a dose* greater than those permitted by 641—40.26(136C) before beginning the treatment program, the licensee shall:

ITEM 54. Amend subrule **41.3(1)**, paragraph **"b,"** as follows:

b. The use of therapeutic radiation machines shall be by, or under the supervision of, a physician who meets the training/experience criteria established by ~~41.3(4)"c."~~ *41.3(5).*

ITEM 55. Amend subrule 41.3(2), introductory paragraph, as follows:

41.3(2) Definitions. *In addition to the definitions provided in 641—38.2(136C) and 641—40.2(136C),* ~~The~~ *the* following definitions are specific to 641—41.3(136C).

ITEM 56. Amend subrule **41.3(2)** by rescinding the following definitions: "beam axis," "kilo electron volt (keV)," "radiation detector," and "target-to-skin distance (TSD)."

ITEM 57. Amend subrule **41.3(2)**, definition of "filter," as follows:

"Filter" means material placed in the useful beam to change beam quality *or its intensity profile* in therapeutic radiation machines ~~subject to subrule 41.3(6)~~.

ITEM 58. Amend subrule 41.3(12) as follows:

41.3(12) Records retention. All records required by 641—41.3(136C) shall be retained until disposal is authorized by the agency unless another retention period is specifically authorized in 41.3(136C). *All required records shall be retained in an active file from at least the time of generation until the next agency inspection. Any required record generated before the last agency inspection may be microfilmed or otherwise archived as long as a complete copy can be retrieved until such time the agency authorizes final disposal.*

ITEM 59. Rescind and reserve subrule **41.3(13)**.

ITEM 60. Amend subparagraph **41.3(17)"a"(1)** by adopting **new** numbered paragraph **"3"** as follows:

3. For each therapeutic machine, the registrant shall determine, or obtain from the manufacturer, the leakage radiation existing at positions specified in 41.3(17)"a"(1)"1" and 41.3(17)"a"(1)"2" for the specified operating conditions. Records on leakage radiation measurements shall be maintained at the facility for inspection by the agency.

ITEM 61. Amend subparagraph **41.3(18)"a"(15)** as follows:

(15) Selection of energy. Equipment capable of generating radiation beams of different energies shall meet the following requirements:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

1. Irradiation shall not be possible until a selection of energy has been made at the treatment control panel;

2. The nominal energy value selected shall be displayed at the treatment control panel ~~before and during irradiation;~~ *until reset manually for the next irradiation. After termination of irradiation, it shall be necessary to reset the nominal energy value selected before subsequent treatment can be initiated;* and

3. Irradiation shall not be possible until the appropriate flattening filter or scattering foil for the selected energy is in its proper location.

ITEM 62. Amend subrule **41.3(18)** as follows:

Amend paragraph **"e"** as follows:

e. Full calibration measurements.

(1) Full calibration of a therapeutic radiation machine subject to 41.3(18) shall be performed by, or under the direct supervision of, a radiation therapy physicist:

1. Before the first medical use following installation or reinstallation of the therapeutic radiation machine;

~~2. At intervals not to exceed 12 months; and~~

2. Full calibration shall include measurement of all parameters listed in Appendix D of 641—Chapter 41. Although it shall not be necessary to complete all elements of a full calibration at the same time, all parameters (for all energies) shall be completed at intervals not to exceed 12 calendar months, unless a more frequent interval is required by this agency.

3. Before medical use under the following conditions:

S Whenever quality assurance check measurements indicate that the radiation output differs by more than 5 percent from the value obtained at the last full calibration and the difference cannot be reconciled; and

S Following any component replacement, major repair, or modification of components that could significantly affect the characteristics of the radiation beam. *If the repair, replacement or modification does not affect all modes or energies, full calibration shall be performed on the effected mode/energy that is in most frequent clinical use at the facility. The remaining energies/modes may be validated with quality assurance check procedures against the criteria in 41.3(18)"e"(1)"3."*

~~4. Notwithstanding the requirements of 41.3(18)"e"(1)"3":~~

~~S Full calibration of therapeutic radiation machines with multienergy or multimode capabilities is required only for those modes or energies that are not within their acceptable range; and~~

~~S If the repair, replacement or modification does not affect all modes or energies, full calibration shall be performed on the effected mode/energy that is in most frequent clinical use at the facility. The remaining energies/modes may be validated with quality assurance check procedures against the criteria in 41.3(18)"e"(1)"3."~~

~~(2) To satisfy the requirement of 41.3(18)"e"(1), full calibration shall include all measurements required for annual calibration by Appendix D of 641—Chapter 41.~~

~~(3)~~ *(2)* The registrant shall use the dosimetry system described in 41.3(16)"c" to measure the radiation output for one set of exposure conditions. ~~The remaining radiation measurements required in 41.3(18)"e"(2) may then be made using a dosimetry system that indicates relative dose rates; and~~

~~(4)~~ *(3)* The registrant shall maintain a record of each calibration for the duration of the registration. The record shall include the date of the calibration, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the model numbers and serial numbers of the instruments used to calibrate the therapeutic radiation machine, and the signature of the radiation therapy physicist responsible for performing the calibration.

Amend paragraph **"f,"** subparagraphs **(1)** and **(3)**, as follows:

(1) Periodic quality assurance checks shall be performed on all therapeutic radiation machines subject to 41.3(18) at intervals ~~not to exceed one week;~~ *as specified in Appendix D of 641—Chapter 41;*

(3) The registrant shall use a dosimetry system which has been ~~compared~~ *intercompared* within the previous 12 months with the dosimetry system described in 41.3(16)"c"(1) to make the periodic quality assurance checks required in 41.3(18)"f"(2);

ITEM 63. Amend subrule 41.6(1), introductory paragraph, as follows:

41.6(1) Definitions. In addition to the definitions provided in *641—38.2(136C), 641—40.2(136C), and 641—*41.1(136C), the following definitions shall be applicable to this rule.

ITEM 64. Amend subrule **41.6(1)** by rescinding the following definitions: "base density," "base plus fog density," "cassette," "control chart," "control limit," "densitometer," "detents," "developer," "developer replenishment," "diagnostic mammography," "fixer," "fixer retention," "focal spot size," "fog," "half-value layer (HVL)," "image contrast," "image quality," "image sharpness," "kilovoltage, peak (kVp)," "milliampere (mA) setting," "milliampere seconds (mAs)," "physician consultant," "processor," "quality assurance," "quality control," "quality control technologist," "radiographic contrast," "radiographic noise," "radiographic sharpness," "repeat (or reject) analysis," "replenishment rate," "safelight," "screen," "screen-film combination," "screen-film contact," "sensitometer," "sensitometric strip," "sensitometry," "thermoluminescent dosimeter (TLD)," and "viewbox."

ITEM 65. Amend subrule **41.6(1)** as follows:

Amend the following definition:

"Phantom" means an artificial test object ~~which simulates the average composition of and various structures within the breast. A "good breast phantom" should have an established correlation with clinical image quality, allowing objective rather than subjective analysis, and should be sensitive to small changes in mammographic image quality.~~ *used to simulate radiographic characteristics of compressed breast tissue and containing components that radiographically model aspects of breast disease and cancer.*

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

"Accreditation body" means an entity that has been approved by FDA to accredit mammography facilities.

"Action limits" or "action levels" means the minimum and maximum values of a quality assurance measurement that can be interpreted as representing acceptable performance with respect to the parameter being tested. Values less than the minimum or greater than the maximum action limit or level indicate that corrective action must be taken by the facility. Action limits or levels are also sometimes called control limits or levels.

"Adverse event" means an undesirable experience associated with mammography activities. Adverse events include but are not limited to:

1. Poor image quality;

PUBLIC HEALTH DEPARTMENT[641](cont'd)

2. Failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and

3. Use of personnel who do not meet the applicable requirements of this chapter.

"Air kerma" means kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For X-rays with energies less than 300 kiloelectronvolts (keV), 1 Gray of absorbed dose is delivered by 114 roentgens (R) of exposure.

"Breast implant" means a prosthetic device implanted in the breast.

"Calendar quarter" means any one of the following time periods during a given year: January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

"Category 1" means medical education activities that have been designated as Category 1 by the Accreditation Council for Continuing Medical Education (ACCME), the American Osteopathic Association (AOA), a state medical society, or an equivalent organization.

"Certificate" means the certificate described in 41.6(2)"a"(2).

"Certification" means the process of approval of a facility by the FDA or this agency to provide mammography services.

"Clinical image" means a mammogram.

"Consumer" means an individual who chooses to comment or complain in reference to a mammography examination, including the patient or representative of the patient (e.g., family member or referring physician).

"Contact hour" means an hour of training received through direct instruction.

"Continuing education unit" or "continuing education credit" means one contact hour of training.

"Direct instruction" means:

1. Face-to-face interaction between instructor(s) and student(s), as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or

2. The administration and correction of student examinations by an instructor(s) with subsequent feedback to the student(s).

"Direct supervision" means that:

1. During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the diagnosis of the physician being supervised and signs the resulting report before it is entered into the patient's records; or

2. During the performance of a mammography examination or survey of the facility's equipment and quality assurance program, the supervisor is present to observe and correct, as needed, the performance of the individual being supervised who is performing the examination or conducting the survey.

"Facility" means a hospital, outpatient department, clinic, radiology practice, mobile unit, office of a physician, or other facility that conducts mammography activities, including the following: operation of equipment to produce a mammogram, initial interpretation of the mammogram, and maintaining viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

"FDA" means the Food and Drug Administration.

"First allowable time" means the earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body. The "first allowable time" may vary with the certifying body.

"Interpreting physician" means a licensed radiologist who interprets mammograms and who meets the requirements set forth in 41.6(3)"a."

"Kerma" means the sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

"Laterality" means the designation of either the right or left breast.

"Lead interpreting physician" means the interpreting physician assigned the general responsibility for ensuring that a facility's quality assurance program meets all of the requirements of this chapter. The administrative title and other supervisory responsibilities of the individual, if any, are left to the discretion of the facility.

"Mammogram" means a radiographic image produced through mammography.

"Mammographic modality" means a technology for radiography of the breast. Examples are screen-film mammography, xeromammography, and digital mammography.

"Mammography" means radiography of the breast but, for the purposes of 641—41.6(136C), does not include:

1. Radiography of the breast performed during invasive interventions for localization or biopsy procedures; or

2. Radiography of the breast performed with an investigational mammography device as part of a scientific study conducted in accordance with FDA investigational device exemption regulations.

"Mammography equipment evaluation" means an on-site assessment of the mammography unit or image processor performance by a medical physicist for the purpose of making a preliminary determination as to whether the equipment meets all of the applicable standards.

"Mammography medical outcomes audit" means a systematic collection of mammography results and the comparison of those results with outcomes data.

"Mammography unit(s)" means an assemblage of components for the production of X-rays for use during mammography including, at a minimum: an X-ray generator, an X-ray control, a tube housing assembly, a beam limiting device, and the supporting structures for these components.

"Mean optical density" means the average of the optical densities measured using phantom thicknesses of 2, 4, and 6 centimeters with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.

"Medical physicist" means a person trained in evaluating the performance of mammography equipment and facility quality assurance programs and who meets the qualifications for a medical physicist set forth in 41.6(3)"c."

"MQSA" means the Mammography Quality Standards Act of 1992.

"Multi-reading" means two or more physicians, at least one of whom is an interpreting physician, interpreting the same mammogram.

"Patient" means any individual who undergoes a mammography evaluation in a facility, regardless of whether the person is referred by a physician or is self-referred.

"Phantom image" means a radiographic image of a phantom.

"Physical science" means physics, chemistry, radiation science (including medical physics and health physics), and engineering.

"Positive mammogram" means a mammogram that has an overall assessment of findings that are either "suspicious" or "highly suggestive of malignancy."

PUBLIC HEALTH DEPARTMENT[641](cont'd)

"Qualified instructor" means individuals whose training and experience adequately prepare them to carry out specified training assignments. Interpreting physicians, radiologic technologists, or medical physicists who meet the requirements of 41.6(3) would be considered qualified instructors in their respective areas of mammography. Other examples of individuals who may be qualified instructors for the purpose of providing training to meet the regulations of this chapter include, but are not limited to, instructors in a post-high school training institution and manufacturers' representatives.

"Quality control technologist" means an individual meeting the requirements of 41.6(5)"a"(4) who is responsible for those quality assurance responsibilities not assigned to the lead interpreting physician or to the medical physicist.

"Radiographic equipment" means X-ray equipment used for the production of static X-ray images.

"Radiologic technologist" means an individual specifically trained in the use of radiographic equipment and in the positioning of patients for radiographic examinations and who meets the requirements set forth in 41.6(3)"b."

"Serious adverse event" means an adverse event that may significantly compromise clinical outcomes or an adverse event for which a facility fails to take appropriate corrective action in a timely manner.

"Serious complaint" means a report of a serious adverse event.

"Standard breast" means a 4.2 centimeter (cm) thick compressed breast consisting of 50 percent glandular and 50 percent adipose tissue.

"Survey" means an on-site physics consultation and evaluation of a facility quality assurance program performed by a medical physicist.

"Time cycle" means the film development time.

"Traceable to a national standard" means an instrument is calibrated at either the National Institute of Standards and Technology (NIST) or at a calibration laboratory that participates in a proficiency program with NIST at least once every two years and the results of the proficiency test conducted within 24 months of calibration show agreement within ± 3 percent of the national standard in the mammography energy range.

ITEM 66. Amend subrule **41.6(2)**, paragraphs **"a"** and **"b,"** as follows:

a. *Registration and certificates.*

(1) Each radiation machine used to perform mammography shall be registered according to 641—subrule 39.3(2).

(2) A certificate issued by the FDA or this agency is required for lawful operation of all mammography facilities subject to the provisions of this subrule. To obtain a certificate from the FDA or this agency, facilities are required to meet the quality standards in 641—41.6(136C) and to be accredited and approved by an approved accreditation body.

b. Each facility wishing to perform mammography shall apply for agency authorization by providing or verifying the following information for each mammography machine:

(1) to (5) No change.

(6) The entire mammography system is evaluated annually by a ~~radiation physicist~~ *medical physicist.*

(7) No change.

(8) Provisional authorization. A new facility beginning operation after September 30, 1994, is eligible to apply for a provisional authorization. This will enable the facility to perform mammography and to obtain the clinical images needed to complete the accreditation process. To apply for and receive a provisional authorization, a facility must meet the requirements of 641—41.6(136C). A provisional authorization shall be effective for up to six months from the date of issuance and cannot be renewed. The facility may apply for a 90-day extension.

ITEM 67. Amend subrule **41.6(2)**, paragraph **"c,"** as follows:

c. Withdrawal or denial of mammography authorization.

(1) Mammography authorization may be withdrawn with cause if any *facility or* machine does not meet one or more of the standards of these rules, *will not permit inspections or provide access to records or information in a timely fashion, or has been guilty of misrepresentation in obtaining the authorization.*

(2) The facility shall have opportunity for a hearing in connection with a denial or withdrawal of mammography authorization *in accordance with 641—Chapter 173.*

(3) An emergency order withdrawing authorization may be issued *in accordance with 641—173.31(17A)* if the agency finds the radiation unit or facility violates rules that seriously affect the health, safety, and welfare of the public. An opportunity for hearing shall be held within five working days after the issuance of the order. The order shall be effective during the proceedings.

(4) If authorization is withdrawn, the radiation machine shall not be used for mammography until reinstated.

(5) If a facility's authorization is revoked, no person who owned or operated that facility at the time the act occurred may own or operate a mammography facility in Iowa within two years of the date of revocation.

ITEM 68. Rescind subrule 41.6(3) and adopt the following **new** subrule in lieu thereof:

41.6(3) Mammography personnel. The following requirements apply to all personnel involved in any aspect of mammography, including the production, processing, and interpretation of mammograms and related quality assurance activities:

a. Interpreting physicians. All radiologists interpreting mammograms shall meet the following qualifications:

(1) Initial qualifications. Unless the exemption in 41.6(3)"a"(3)"1" applies, before beginning to interpret mammograms independently, the interpreting radiologist shall:

1. Be licensed to practice medicine in Iowa;

2. Be certified in an appropriate specialty area by a body determined by FDA to have procedures and requirements adequate to ensure that physicians certified by the body are competent to interpret radiological procedures, including mammography; or

S Have had at least three months of documented formal training in the interpretation of mammograms and in topics related to mammography. The training shall include instruction in radiation physics, including radiation physics specific to mammography, radiation effects, and radiation protection. The mammographic interpretation component shall be under the direct supervision of a radiologist who meets the requirements of 41.6(3)"a";

3. Have a minimum of 60 hours of documented medical education in mammography, which shall include: instruction in the interpretation of mammograms and education in basic breast anatomy, pathology, physiology, technical aspects of mammography, and quality assurance and quality control in mammography. All 60 of these hours shall be category I and at least 15 of the category I hours shall have been acquired within the three years immediately prior to the

PUBLIC HEALTH DEPARTMENT[641](cont'd)

date that the radiologist qualifies as an interpreting physician. Hours spent in residency specifically devoted to mammography will be considered as equivalent to category I continuing medical education credits and will be accepted if documented in writing by the appropriate representative of the training institution; and

4. Unless the exemption in 41.6(3)"a"(3)"2" applies, have interpreted or multi-read at least 240 mammographic examinations within the six-month period immediately prior to the date that the radiologist qualifies as an interpreting physician. This interpretation or multi-reading shall be under the direct supervision of an interpreting physician.

(2) Continuing experience and education. All interpreting physicians shall maintain their qualifications by meeting the following requirements:

1. Following the second anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"a"(1) were completed, the interpreting physician shall have interpreted or multi-read at least 960 mammographic examinations during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter immediately preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 24-month period;

2. Following the third anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"a"(1) were completed, the interpreting physician shall have taught or completed at least 15 category I continuing education units in mammography during the 36 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter immediately preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 36-month period. This training shall include at least six category I continuing medical education credits in each mammographic modality used by the interpreting physician in the interpreting physician's practice; and

3. Before an interpreting physician may begin independently interpreting mammograms produced by a new mammographic modality, that is, a mammographic modality in which the physician has not previously been trained, the interpreting physician shall have at least 8 hours of training in the new mammographic modality.

4. Units earned through teaching a specific course can be counted only once towards the 15 required by 41.6(3)"a"(2)"2" even if the course is taught multiple times during the previous 36 months.

(3) Exemptions.

1. Those physicians who qualified as interpreting physicians under 41.6(3)"a" or FDA interim regulations prior to April 28, 1999, are considered to have met the initial requirements of 41.6(3)"a." They may continue to interpret mammograms provided they continue to meet the licensure requirements of 41.6(3)"a"(1)"1" and the continuing experience and education requirements of this subrule.

2. Physicians who have interpreted or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician in any six-month period during the last two years of a diagnostic radiology residency and who become appropriately board certified at the first allowable time, as defined by an eligible certifying body, are otherwise exempt from 41.6(3)"a"(1)"4."

(4) Reestablishing qualifications. Interpreting physicians who fail to maintain the required continuing experience or continuing education requirements shall reestablish their qualifications before resuming the independent interpretation of mammograms, as follows:

1. Interpreting physicians who fail to meet the continuing experience requirements of 41.6(3)"a"(2)"1" shall:

S Interpret or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician, or

S Interpret or multi-read a sufficient number of mammographic examinations, under the direct supervision of an interpreting physician, to bring the physician's total up to 960 examinations for the prior 24 months, whichever is less.

The interpretations required under 41.6(3)"a"(4)"1" shall be done within the six months immediately prior to resuming independent interpretation.

2. Interpreting physicians who fail to meet the continuing education requirements of 41.6(3)"a"(2)"2" shall obtain a sufficient number of additional category I continuing medical education credits in mammography to bring their total up to the required 15 credits in the previous 36 months before resuming independent interpretation.

b. Radiologic technologists. All mammographic examinations shall be performed by general radiographers who meet the following general requirements, mammography requirements, and continuing education and experience requirements:

(1) General requirements. Be permitted to operate as a general radiographer in Iowa; and

(2) Mammography requirements. Prior to April 28, 1999, have qualified as a radiologic technologist under 41.6(3)"b" or have completed at least 40 contact hours of documented training specific to mammography under the supervision of a qualified instructor. The hours of documented training shall include, but not necessarily be limited to:

1. Training in breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, and imaging of patients with breast implants;

2. The performance of a minimum of 25 examinations under the direct supervision of an individual qualified under 41.6(3)"b"; and

3. At least 8 hours of training in each mammography modality to be used by the technologist in performing mammography examinations; and

(3) Continuing education requirements.

1. Following the third anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"b"(1) were completed, the radiologic technologist shall have taught or completed at least 15 continuing education units in mammography during the 36 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 36-month period.

2. Units earned through teaching a specific course can be counted only once towards the 15 required in 41.6(3)"b"(3)"1" even if the course is taught multiple times during the previous 36 months.

3. At least 6 of the continuing education units required in this subrule shall be related to each mammographic modality used by the technologist.

4. Requalification. Radiologic technologists who fail to meet the continuing education requirements of 41.6(3)"b"(3)"1" shall obtain a sufficient number of continuing education units in mammography to bring their total up to at least 15 in the previous three years, at least 6 of which shall be related to each modality used by the technologist in

PUBLIC HEALTH DEPARTMENT[641](cont'd)

mammography. The technologist may not resume performing unsupervised mammography examinations until the continuing education requirements are completed.

5. Before a radiologic technologist may begin independently performing mammographic examinations using a mammographic modality other than one of those for which the technologist received training under 41.6(3)"b"(2)"3," the technologist shall have at least 8 hours of continuing education units in the new modality.

(4) Continuing experience requirements.

1. Following the second anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"b"(1) and (2) were completed or October 28, 1999, whichever is later, the radiologic technologist shall have performed a minimum of 200 mammography examinations during the 24 months immediately preceding the date of the facility's annual inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 24-month period.

2. Requalification. Radiologic technologists who fail to meet the continuing experience requirements of this subrule shall perform a minimum of 25 mammography examinations under the direct supervision of a qualified radiologic technologist before resuming the performance of unsupervised mammography examinations.

c. Medical physicists. All medical physicists conducting surveys of mammography facilities and providing oversight of the facility quality assurance program under 41.6(3)"c"(2) shall meet the following:

(1) Initial qualifications.

1. Be Iowa approved; and

2. Have a master's degree or higher in a physical science from an accredited institution, with no less than 20 semester hours or 30 quarter hours of college undergraduate or graduate level physics;

3. Have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

4. Have experience conducting surveys in at least one mammography facility and have a total of at least 10 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. After April 28, 1999, experience conducting surveys must be acquired under the direct supervision of a medical physicist who meets all the requirements of this subrule; or

(2) Alternative initial qualifications.

1. Have qualified as a medical physicist under FDA interim regulations and have retained that qualification by maintenance of the active status of any licensure, approval, or certification required under the interim regulations; and

2. Prior to April 28, 1999, have:

S A bachelor's degree or higher in a physical science from an accredited institution with no less than 10 semester hours or equivalent of college undergraduate or graduate level physics,

S Forty contact hours of documented specialized training in conducting surveys of mammography facilities, and

S Have experience conducting surveys in at least one mammography facility and have a total of at least 20 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. The training and experience requirements must be met after fulfilling the degree requirement.

(3) Continuing qualifications.

1. Continuing education. Following the third anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"c"(1) or (2) were completed, the medical physicist shall have taught or completed at least 15 continuing education units in mammography during the 36 months immediately preceding the date of the facility's annual inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility shall choose one of these dates to determine the 36-month period. This continuing education shall include hours of training appropriate to each mammographic modality evaluated by the medical physicist during the physicist's surveys or oversight of quality assurance programs. Units earned through teaching a specific course can be counted only once towards the required 15 units in a 36-month period, even if the course is taught multiple times during the 36 months.

2. Continuing experience. Following the second anniversary date of the end of the calendar quarter in which the requirements of this subrule were completed or April 28, 1999, whichever is later, the medical physicist shall have surveyed at least two mammography facilities and a total of at least 6 mammography units during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter immediately preceding the inspection or any date between the two. The facility shall choose one of these dates to determine the 24-month period. No more than one survey of a specific facility within a 10-month period or a specific unit within a period of 60 days can be counted towards this requirement.

3. Before a medical physicist may begin independently performing mammographic surveys of a new mammographic modality, that is, a mammographic modality other than one for which the physicist received training to qualify under this subrule, the physicist must receive at least 8 hours of training in surveying units of the new mammographic modality.

(4) Reestablishing qualifications. Medical physicists who fail to maintain the required continuing qualifications of this subrule may not perform the MQSA surveys without the supervision of a qualified medical physicist. Before independently surveying another facility, medical physicists must reestablish their qualifications as follows:

1. Medical physicists who fail to meet the continuing education requirements of this subrule shall obtain a sufficient number of continuing education units to bring their total units up to the required 15 in the previous three years.

2. Medical physicists who fail to meet the continuing experience requirements of this subrule shall complete a sufficient number of surveys under the direct supervision of a medical physicist who meets the qualifications of this subrule to bring their total surveys up to the required two facilities and 6 units in the previous 24 months. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement.

d. Retention of personnel records. Facilities shall maintain records to document the qualifications of all personnel who worked at the facility as interpreting physicians, general radiographers, or medical physicists. These records must be available for review by the MQSA inspectors. Records of personnel no longer employed by the facility should not be discarded until the next annual inspection has been completed and the agency has determined that the facility is in compliance with the MQSA personnel requirements.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 69. Amend subrule 41.6(4) as follows:

41.6(4) Obtaining and preserving records.

a. The ~~supplier~~ *facility* of the current mammography examination must make all reasonable efforts to obtain the patient's recent mammography records, including original images or films, copies of written reports prepared by interpreting physicians, and other relevant information pertinent to previous mammograms that might be available from others, for comparison with the current mammography records.

b. The ~~supplier~~ *facility* must make, for each patient, ~~a record of the mammography services it provides, including:~~ *a written report of each mammography examination performed. This report shall include:*

(1) The date the mammography procedure was performed. ~~and~~

(2) ~~the~~ *The* date of the interpretation.

(3) The name of the interpreting physician.

~~(2)~~ *(4)* The name of the patient *and an additional patient identifier.*

~~(3) The name of the operator of the equipment and the interpreting physician.~~

~~(4)~~ *(5)* A description of the procedures performed.

~~(5)~~ *(6)* The name of the referring physician (if any) or other physician (if any) identified by the patient to receive the interpreting physician's written report.

~~(6)~~ *(7)* The date the interpreting physician's written report was sent to the appropriate physician or patient.

(8) A separate and distinct section entitled, "Overall Final Assessment" with findings classified in one of the following categories or an approved equivalent:

1. "Negative": Nothing to comment upon (if the interpreting physician is aware of clinical findings or symptoms, despite the negative assessment, these shall be explained).

2. "Benign": Also a negative assessment.

3. "Probably benign": Finding(s) has a high probability of being benign.

4. "Suspicious": Finding(s) without all the characteristic morphology of breast cancer but indicating a definite probability of being malignant.

5. "Highly suggestive of malignancy": Finding(s) has a high probability of being malignant.

6. In cases where no final assessment category can be assigned due to incomplete workup, "Incomplete: Need additional imaging evaluation" shall be assigned as an assessment, and reasons why no assessment can be made shall be stated by the interpreting physician.

(9) Recommendations made to the health care provider about what additional actions, if any, should be taken. All clinical questions raised by the referring health care provider shall be addressed in the report to the extent possible, even if the assessment is negative or benign.

c. Preservation of records.

(1) The ~~supplier~~ *facility* must provide satisfactory assurances (as documented in its medical records) that the images or films of the first and subsequent mammography procedures and the related written reports of the interpreting physician for each patient are either placed in the patient's medical record kept by the ~~supplier~~ *facility* or sent for placement in the patient's medical record as directed by the patient's physician or the patient.

(2) Records retained by the ~~supplier~~ *facility* must be retained for at least 60 calendar months following the date of service or not less than ten years, if no additional mammograms of the patient are performed.

(3) If the ~~supplier~~ *facility* should cease to exist before the end of the 60-month period, the records must be transferred to the patient or patient's physician *or other mammographic facility.*

(4) The facility shall upon request by, or on behalf of, the patient, permanently or temporarily, transfer the original mammograms and copies of the patient's reports to a medical institution, or to a physician or health care provider of the patient, or to the patient directly.

(5) Any fee charged to the patient for providing the services in subparagraph (4) above shall not exceed the documented costs associated with this service.

d. Communication of results to the patient. Each facility shall maintain a system to ensure that the results of each mammographic examination are communicated in lay terms to each patient in a time period not to exceed 30 days from the date of the mammography examination. If assessments are "Suspicious" or "Highly suggestive of malignancy" and the patient has not named a health care provider, the facility shall make reasonable attempts to ensure that the results are communicated to the patient as soon as possible.

(1) As soon as possible, but no later than 30 days from the date of the mammography examination, patients who do not name a health care provider to receive the mammography report shall be sent the report described in 41.6(4)"e"(1) in addition to a written notification of results in lay terms.

(2) Each facility that accepts patients who do not have a primary care provider shall maintain a system for referring such patients to a health care provider when clinically indicated.

e. Communication of results to health care providers. When the patient has a referring health care provider or the patient has named a health care provider, the facility shall:

(1) Provide a written report of the mammography examination, including all of the items listed in 41.6(4)"b," to the health care provider as soon as possible, but no later than 30 days from the date of the examination, and

(2) If the assessment is "Suspicious" or "Highly suggestive of malignancy," make reasonable attempts to communicate with the health care provider as soon as possible or, if the health care provider is unavailable, to a responsible designee of the health care provider.

f. Mammographic image identification. Each mammographic image shall have the following information indicated on it in a permanent, legible, and unambiguous manner and placed so as not to obscure anatomic structures:

(1) Name of patient and an additional patient identifier.

(2) Date of examination.

(3) View and laterality. This information shall be placed on the image in a position near the axilla. Standardized codes specified by the accreditation body and approved by the FDA shall be used to identify view and laterality.

(4) Facility name and location. At a minimum, the location shall include the city, state, and ZIP code of the facility.

(5) Technologist identification.

(6) Cassette/screen identification.

(7) Mammography unit identification, if there is more than one unit in the facility.

ITEM 70. Amend subrule **41.6(5)**, paragraphs **"a"** to **"c,"** as follows:

a. The ~~supplier~~ *facility* shall ensure that the facility has an equipment quality assurance program specific to mammography and covering all components of the system, to ensure consistently high-quality images with minimum patient exposure. *Responsibility for the quality assurance program and for each of its elements shall be assigned to individuals who are qualified for their assignments and who shall be allowed adequate time to perform these duties.*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(1) Lead interpreting physician. The facility shall identify a lead interpreting physician who shall have the general responsibility of ensuring that the quality assurance program meets all requirements of these rules. No other individual shall be assigned or shall retain responsibility for quality assurance tasks unless the lead interpreting physician has determined that the individual's qualifications for, and performance of, the assignment are adequate.

(2) Interpreting physicians. All interpreting physicians interpreting mammograms for the facility shall:

1. Follow the facility procedures for corrective action when the images they are asked to interpret are of poor quality, and

2. Participate in the facility's medical outcomes audit program.

(3) Medical physicist. Each facility shall have the services of a medical physicist available to survey mammography equipment and oversee the equipment-related quality assurance practices of the facility. At a minimum, the medical physicist(s) shall be responsible for performing the surveys and mammography equipment evaluations and providing the facility with the applicable reports.

(4) Quality control technologist. Responsibility for all individual tasks within the quality assurance program not assigned to the lead interpreting physician or the medical physicist shall be assigned to a quality control technologist(s). The tasks are to be performed by the quality control technologist or by other personnel qualified to perform the tasks. When other personnel are utilized for these tasks, the quality control technologist shall ensure that the tasks are completed in such a way as to meet the requirements of 41.6(5)"e" through "k."

b. The ~~supplier~~ *facility* shall ensure that a general review of the program is conducted at least annually and have available the services of a qualified ~~radiation~~ *medical* physicist who is capable of establishing and conducting the program.

c. Under the direction of the *lead interpreting* physician ~~consultant~~, the ~~radiation~~ *medical* physicist shall have responsibility for establishing and conducting the equipment quality assurance program. The program shall include:

(1) to (3) No change.

ITEM 71. Amend subrule **41.6(5)**, paragraph **"h,"** as follows:

h. Retake analysis program.

(1) A program shall be established as a further aid in detecting and correcting problems affecting image quality or exposure.

(2) All retakes shall be logged including date, technologist's name and reason for retake. A retake analysis shall be performed every 250 patients or quarterly, whichever comes first.

(3) If the total repeat or reject rate changes from the previously determined rate by more than 2.0 percent of the total films included in the analysis, the reason(s) for the change shall be determined. Any corrective actions shall be recorded and the results of these corrective actions shall be assessed.

ITEM 72. Amend subrule **41.6(5)** as follows:

Amend paragraph **"i"** as follows:

i. Medical outcomes audit. Each facility shall establish a system for reviewing outcome data from all mammography performed, including follow-up on the disposition of positive mammograms and correlation of surgical biopsy results with ~~mammogram reports.~~ *the interpreting physician's findings. This program shall be designed to ensure the reliability, clarity, and accuracy of the interpretation of mammograms.*

(1) Analysis of these outcome data shall be made individually and collectively for all interpreting physicians at the facility. In addition, any cases of breast cancer among women imaged at the facility that subsequently become known to the facility shall prompt the facility to initiate follow-up on surgical and pathology results, or both, and review of the mammograms taken prior to the diagnosis of a malignancy. Responsibility for each requirement for monitoring shall be assigned to qualified personnel and documented in the facility's records.

(2) Frequency of audit analysis. The facility's first audit analysis shall be initiated no later than 12 months after the date the facility becomes certified, or 12 months after April 28, 1999, whichever date is the latest. This audit analysis shall be completed within an additional 12 months to permit completion of diagnostic procedures and data collection. Subsequent audit analyses will be conducted at least once every 12 months.

(3) Reviewing interpreting physician. Each facility shall designate at least one interpreting physician to review the medical outcomes audit data at least once every 12 months. This individual shall record the dates of the audit period(s) and shall be responsible for analyzing results based on this audit. This individual shall also be responsible for documenting the results, notifying other interpreting physicians of the results and the facility aggregate results. If follow-up actions are taken, the reviewing interpreting physician shall also be responsible for documenting the nature of the follow-up.

Rescind paragraph **"j"** and adopt the following **new** paragraph in lieu thereof:

j. Quality assurance records. The lead interpreting physician, quality control technologist, and medical physicist shall ensure that records concerning employee qualifications to meet assigned quality assurance tasks, mammography technique and procedures, quality control (including monitoring data, problems detected by analysis of that data, corrective actions, and the effectiveness of the corrective actions), safety, and protection are properly maintained and updated. These quality control records shall be kept for each test specified in these rules until the next annual inspection has been completed and the facility is in compliance with the quality assurance requirements or until the test has been performed two additional times at the required frequency, whichever is longer.

Adopt **new** paragraphs **"k"** to **"o"** as follows:

k. Quality assurance—equipment.

(1) Daily quality control tests. Film processors used to develop mammograms shall be adjusted and maintained to meet the technical development specifications for the mammography film in use. A processor performance test shall be performed on each day that clinical films are processed before any clinical films are processed that day. The test shall include an assessment of base plus fog density, mid-density, and density difference, using the mammography film used clinically at the facility.

1. The base plus fog density shall be within plus 0.03 of the established operating level.

2. The mid-density shall be within plus or minus 0.15 of the established operating level.

3. The density difference shall be within plus or minus 0.15 of the established operating level.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

(2) Weekly quality control tests. Facilities with screen-film systems shall perform an image quality evaluation test, using an FDA-approved phantom, at least weekly.

1. The optical density of the film at the center of an image of a standard FDA-accepted phantom shall be at least 1.20 when exposed under a typical clinical condition.

2. The optical density of the film at the center of the phantom image shall not change by more than plus or minus 0.20 from the established operating level.

3. The phantom image shall achieve at least the minimum score established by the accreditation body and accepted by the FDA.

4. The density difference between the background of the phantom and an added test object used to assess image contrast shall be measured and shall not vary by more than plus or minus 0.05 from the established operating level.

(3) Quarterly quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least quarterly:

S Fixer retention in film. The residual fixer shall be no more than 5 micrograms per square centimeter.

(4) Semiannual quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least semiannually:

1. Darkroom fog. The optical density attributable to darkroom fog shall not exceed 0.05 when a mammography film of the type used in the facility, which has a mid-density of no less than 1.2 OD, is exposed to typical darkroom conditions for two minutes while such film is placed on the countertop emulsion side up. If the darkroom has a safelight used for mammography film, it shall be on during this test.

2. Screen-film contact. Testing for screen-film contact shall be conducted using 40 mesh copper screen. All cassettes used in the facility for mammography shall be tested.

3. Compression device performance. A compression force of at least 25 pounds (111 newtons) for 15 seconds shall be provided. Effective October 28, 2002, the maximum compression force for the initial power drive shall be between 25 pounds (111 newtons) and 45 pounds (200 newtons).

(5) Annual quality control tests. Facilities with screen-film systems shall perform the following quality control tests at least annually:

1. Automatic exposure control (AEC) performance.

S The AEC shall be capable of maintaining film optical density within plus or minus 0.30 of the mean optical density when thickness of a homogeneous material is varied over a range of 2 to 6 centimeters and the kVp is varied appropriately for such thicknesses over the kVp range used clinically in the facility. If this requirement cannot be met, a technique chart shall be developed showing appropriate techniques (kVp and density control settings) for different breast thicknesses and compositions that must be used so that optical densities within plus or minus 0.30 of the average under phototimed conditions can be produced.

S After October 28, 2002, the AEC shall be capable of maintaining film optical density (OD) within plus or minus 0.15 of the mean optical density when thickness of a homogenous material is varied over a range of 2 to 6 centimeters and the kVp is varied appropriately for such thicknesses over the kVp range used clinically in the facility.

S The optical density of the film in the center of the phantom image shall not be less than 1.20.

2. kVp accuracy and reproducibility.

S The kVp shall be accurate within plus or minus 5 percent of the indicated or selected kVp at the lowest clinical kVp that can be measured by a kVp test device, the most commonly used clinical kVp, and the highest available clinical kVp.

S At the most commonly used clinical settings of kVp, the coefficient of variation of reproducibility of the kVp shall be equal to or less than 0.02.

3. Focal spot condition. Until October 28, 2002, focal spot condition shall be evaluated either by determining system resolution or by measuring focal spot dimensions. On and after October 28, 2002, facilities shall evaluate focal spot condition only by determining the system resolution.

S Each X-ray system used for mammography, in combination with the mammography screen-film combination used in the facility, shall provide a minimum resolution of 11 cycles/millimeters (mm) (line-pairs/mm) when a high contrast resolution bar test pattern is oriented with the bars perpendicular to the anode-cathode axis, and a minimum resolution of 13 line-pairs/mm when the bars are parallel to that axis.

S The bar pattern shall be placed 4.5 centimeters above the breast support surface, centered with respect to the chest wall edge of the image receptor, and with the edge of the pattern within 1 centimeter of the chest wall edge of the image receptor.

S When more than one target material is provided, the measurement above shall be made using the appropriate focal spot for each target material.

S When more than one SID is provided, the test shall be performed at the SID most commonly used clinically.

S Test kVp shall be set at the value used clinically by the facility for a standard breast and shall be performed in the AEC mode, if available. If necessary, a suitable absorber may be placed in the beam to increase exposure times. The screen-film cassette combination used by the facility shall be used to test for this requirement and shall be placed in the normal location used for clinical procedures.

S Focal spot dimensions. Measured values of the focal spot length (dimension parallel to the anode-cathode axis) and width (dimension perpendicular to the anode-cathode axis) shall be within tolerance limits specified in Table 1.

Table 1

Focal Spot Tolerance Limit Nominal Focal Spot Size (mm)	Maximum Measured Dimensions Width (mm)	Length (mm)
0.10	0.15	0.15
0.15	0.23	0.23
0.20	0.30	0.30
0.30	0.45	0.65
0.40	0.60	0.85
0.60	0.90	1.30

4. Beam quality and half-value layer (HVL). The HVL shall meet the specification of 41.1(4) and 41.1(6) for the minimum HVL. These values, extrapolated to the mammographic range, are shown in Table 2. Values not shown in Table 2 may be determined by linear interpolation or extrapolation.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Table 2

X-ray Tube Voltage (kilovolt peak) and Minimum HVL Designed Operating Range (kV) Below 50	
Measured Operating Voltage (kV)	Minimum HVL (millimeters of aluminum)
20	0.20
25	0.25
30	0.30

5. Breast entrance air kerma and AEC reproducibility. The coefficient of variation for both air kerma and mAs shall not exceed 0.05.

6. Dosimetry. The average glandular dose delivered during a single cranio-caudal view of an FDA-accepted phantom simulating a standard breast shall not exceed 0.3 rad (3.0 milligray (mGy)) per exposure. The dose shall be determined with technique factors and conditions used clinically for a standard breast.

7. X-ray field/light field/image receptor/compression paddle alignment.

S All systems shall have beam-limiting devices that allow the entire chest wall edge of the X-ray field to extend to the chest wall edge of the image receptor and provide means to ensure that the X-ray field does not extend beyond any edge of the image receptor by more than 2 percent of the SID.

S The chest wall edge of the compression paddle shall not extend beyond the chest wall edge of the image receptor by more than 1 percent of the SID when tested with the compression paddle placed above the breast support surface at a distance equivalent to standard breast thickness. The shadow of the vertical edge of the compression paddle shall not be visible on the image.

8. Uniformity of screen speed. Uniformity of screen speed of all the cassettes in the facility shall be tested and the difference between the maximum and minimum optical densities shall not exceed 0.30. Screen artifacts shall also be evaluated during this test.

9. System artifacts. System artifacts shall be evaluated with a high-grade, defect-free sheet of homogeneous material large enough to cover the mammography cassette and shall be performed for all cassette sizes used in the facility using a grid appropriate for the cassette size being tested. System artifacts shall also be evaluated for all available focal spot sizes and target filter combinations used clinically.

10. Radiation output.

S The system shall be capable of producing a minimum output of 513 milliRoentgen (mR) per second (4.5 mGy air kerma per second) when operating at 28 kVp in the standard mammography (moly/moly) mode at any SID where the system is designed to operate and when measured by a detector with its center located 4.5 centimeters above the breast support surface with the compression paddle in place between the source and the detector. After October 28, 2002, the system, under the same measuring conditions, shall be capable of producing a minimum output of 800 mR per second (7.0 mGy air kerma per second) when operating at 28 kVp in the standard (moly/moly) mammography mode at any SID where the system is designed to operate.

S The system shall be capable of maintaining the required minimum radiation output averaged over a 3.0 second period.

11. Decompression. If the system is equipped with a provision for automatic decompression after completion of an exposure or interruption of power to the system, the system shall be tested to confirm that it provides:

S An override capability to allow maintenance of compression;

S A continuous display of the override status; and

S A manual emergency compression release that can be activated in the event of power or automatic release failure.

(6) Quality control tests—other modalities. For systems with image receptor modalities other than screen-film, the quality assurance program shall be substantially the same as the quality assurance program recommended by the image receptor manufacturer, except that the maximum allowable dose shall not exceed the maximum allowable dose for screen-film systems in 41.6(5)"k"(5)"6."

(7) Use of test results.

1. After completion of the tests specified in 41.6(5)"k," the facility shall compare the test results to the corresponding specified action limits; or, for non-screen-film modalities, to the manufacturer's recommended action limits; or, for post-move, preexamination testing of mobile units, to the limits established in the test method used by the facility.

2. If the test results fall outside of the action limits, the source of the problem shall be identified, and corrective actions shall be taken:

S Before any further examinations are performed or any films are processed using the component of the mammography system that failed the test, if the failed test was that described in 41.6(5)"k"(1), (2), (4)"1" to (4)"3," (5)"6," and (6);

S Within 30 days of the test date for all other tests described in 41.6(5)"k."

(8) Surveys.

1. At least once a year, each facility shall undergo a survey by a medical physicist or by an individual under the direct supervision of a medical physicist. At a minimum, this survey shall include the performance of tests to ensure that the facility meets the quality assurance requirements of the annual tests described in 41.6(5)"k"(5) and (6), the weekly phantom image quality test described in 41.6(5)"k"(2) and the quarterly retake analysis results described in 41.6(5)"h."

2. The results of all tests conducted by the facility in accordance with 41.6(5)"k"(1) through (7), as well as written documentation of any corrective actions taken and their results, shall be evaluated for adequacy by the medical physicist performing the survey.

3. The medical physicist shall prepare a survey report that includes a summary of this review and recommendations for necessary improvements.

4. The survey report shall be sent to the facility within 30 days of the date of the survey.

5. The survey report shall be dated and signed by the medical physicist performing or supervising the survey. If the survey was performed entirely or in part by another individual under the direct supervision of the medical physicist, that individual and the part of the survey that individual performed shall also be identified in the survey report.

(9) Mammography equipment evaluations. Additional evaluations of mammography units or image processors shall be conducted whenever a new unit or processor is installed, a unit or processor is disassembled and reassembled at the same or a new location, or major components of a mammography unit or processor equipment are changed or repaired. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in 41.6(5) and 41.6(6). All problems shall be corrected before the new or changed equipment is put into service for examinations or film processing. The mammography equipment evaluation shall be

PUBLIC HEALTH DEPARTMENT[641](cont'd)

performed by a medical physicist or by an individual under the direct supervision of an Iowa-approved medical physicist.

(10) Facility cleanliness.

1. The facility shall establish and implement adequate protocols for maintaining darkroom, screen, and viewbox cleanliness.

2. The facility shall document that all cleaning procedures are performed at the frequencies specified in the protocols.

(11) Calibration of air kerma measuring instruments. Instruments used by medical physicists in their annual survey to measure the air kerma or air kerma rate from a mammography unit shall be calibrated at least once every two years and each time the instrument is repaired. The instrument calibration must be traceable to a national standard and calibrated with an accuracy of plus or minus 6 percent (95 percent confidence level) in the mammography energy range.

(12) Infection control. Facilities shall establish and comply with a system specifying procedures to be followed by the facility for cleaning and disinfecting mammography equipment after contact with blood or other potentially infectious materials. This system shall specify the methods for documenting facility compliance with the infection control procedures established and shall:

1. Comply with all applicable federal, state, and local regulations pertaining to infection control; and

2. Comply with the manufacturer's recommended procedures for the cleaning and disinfecting of the mammography equipment used in the facility; or

3. If adequate manufacturer's recommendations are not available, comply with generally accepted guidance on infection control, until such recommendations become available.

l. Mammography procedures and techniques for mammography of patients with breast implants.

(1) Each facility shall have a procedure to inquire whether or not the patient has breast implants prior to the actual mammographic examination.

(2) Except where contraindicated, or unless modified by a physician's directions, patients with breast implants undergoing mammography shall have mammographic views to maximize the visualization of breast tissue.

m. Consumer complaint mechanism. Each facility shall:

(1) Establish a written and documented system for collecting and resolving consumer complaints;

(2) Maintain a record of each serious complaint received by the facility for at least three years from the date the complaint was received;

(3) Provide the consumer with adequate directions for filing serious complaints with the facility's accreditation body and any other appropriate regulatory entity if the facility is unable to resolve a serious complaint to the consumer's satisfaction.

(4) Report unresolved serious complaints to the accreditation body in a manner and time frame specified by the accreditation body.

n. Clinical image quality. Clinical images produced by any certified facility must continue to comply with the standards for clinical image quality established by that facility's accreditation body.

o. Additional mammography review and patient notification.

(1) If the agency believes that mammography quality at a facility has been compromised and may present a serious risk to human health, the facility shall provide clinical images and other relevant information, as specified by the agency, for review by the accreditation body or other entity designated by the agency. This additional mammography review will help the agency to determine whether the facility is in compliance with rule 641—41.6(136C) and, if not, whether there is a need to notify affected patients, their physicians, or the public that the reliability, clarity, and accuracy of interpretation of mammograms has been compromised.

(2) If the agency determines that any activity related to the provision of mammography at a facility may present a serious risk to human health such that patient notification is necessary, the facility shall notify patients or their designees, their physicians, or the public of action that may be taken to minimize the effects of the risk. Such notification shall occur within a time frame and a manner specified by the agency.

ITEM 73. Amend subrule 41.6(6) as follows:

41.6(6) Equipment standards. The equipment used to perform mammography shall meet the following standards:

a. *Design:* Be specifically designed for mammography. *This prohibits systems that have been modified or equipped with special attachments for mammography.*

b. *Performance standards:* Meet the Food and Drug Administration (FDA) performance standards for diagnostic X-ray systems and their major components found in 21 CFR 1020.30 and FDA standards for radiographic equipment in 21 CFR 1020.31.

c. *Image receptor systems:* Have image receptor systems and individual components which are appropriate for mammography and used according to the manufacturer's recommendations.

(1) Systems using screen-film image receptors shall provide, at a minimum, for operation for image receptors of 18 ≤ 24 centimeters and 24 ≤ 30 centimeters.

(2) Systems using screen-film image receptors shall be equipped with moving grids matched to all image receptor sizes provided.

(3) Systems used for magnification procedures shall be capable of operation with the grid removed from between the source and image receptor.

~~d. Have beam limitation which limits the useful beam so that the X-ray field at the plane of the image receptor does not extend beyond any edge of the image receptor at any designated source to image receptor distance (SID). However, the X-ray field may extend beyond the edge of the image receptor which is adjacent to the chest wall provided it does not extend beyond this edge by more than 2 percent of the SID.~~

d. Light fields: For any system with a light beam that passes through the X-ray beam-limiting device, the light shall provide an average illumination of not less than 160 lux (15 foot candles) at 100 centimeters or the maximum source-image receptor distance (SID), whichever is less.

e. Magnification:

(1) Systems used to perform noninterventional problem-solving procedures shall have radiographic magnification capability available for use by the operator.

(2) Systems used for magnification procedures shall provide, at a minimum, at least one magnification value within the range of 1.4 to 2.0.

f. Tube-image receptor assembly:

(1) The assembly shall be capable of being fixed in any position where it is designed to operate. Once fixed in any such position, it shall not undergo unintended motion.

(2) The mechanism ensuring compliance with this subrule shall not fail in the event of power interruption.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~e~~ *g.* ~~Check~~ *Film/screen contact: Shall check* film/screen contact when cassettes are first placed into use and semiannually thereafter.

~~f. Have limits to provide kV-target-filter combinations appropriate for the image receptors which have met the requirements of 41.6(6)"c."~~

~~g~~ *h. Focal spot:* The focal spot size, magnification factor and source to image receptor distance (SID) ~~a:e~~ *shall be* appropriate for mammography and in the ranges shown below:

SID	Nominal Focal Spot Size
>65 cm	< or = to 0.6 mm
50 to 65 cm	< or = to 0.5 mm
< ~~or = to~~ 50 cm	< or = to 0.4 mm

(1) When more than one focal spot is provided, the system shall indicate, prior to exposure, which focal spot is selected.

(2) When more than one target material is provided, the system shall indicate, prior to exposure, the preselected target material.

(3) When the target material or focal spot, or both, is selected by a system algorithm that is based on the exposure or on a test exposure, the system shall display, after the exposure, the target material or focal spot, or both, actually used during the exposure.

~~h~~ *i.* ~~Devices.~~ *Compression devices: Shall have compression devices* parallel to the imaging plane ~~shall be available~~ *and able* to immobilize and compress the breast with a force of at least 25 pounds per square inch and shall be capable of maintaining this compression for at least three seconds. *Effective October 28, 2002, each system shall provide:*

(1) An initial power-driven compression activated by hands-free controls operable from both sides of the patient; and

(2) Fine adjustment compression controls operable from both sides of the patient.

(3) Systems shall be equipped with different sized compression paddles that match the sizes of all full field image receptors provided for the system. Compression paddles for special purposes, including those smaller than the full size of the image receptor (for "spot compression"), may be provided. Such compression paddles for special purposes are not subject to 41.6(6)"i"(6) and (7).

(4) Except as provided in 41.6(6)"i"(5), the compression paddle shall be flat and parallel to the breast support table and shall not deflect from parallel by more than 1.0 cm at any point on the surface of the compression paddle when compression is applied.

(5) Equipment intended by the manufacturer's design not to be flat and parallel to the breast support table during compression shall meet the manufacturer's design specifications and maintenance requirements.

(6) The chest wall edge of the compression paddle shall be straight and parallel to the edge of the image receptor.

(7) The chest wall edge may be bent upward to allow for patient comfort but shall not appear on the image.

~~i~~ *j. Grids:* Shall have the capability for using antiscatter grids.

~~j. Shall have the capability of automatic exposure control.~~

k. AEC: Shall have automatic exposure control such that:

(1) Each screen-film system shall provide an AEC mode that is operable in all combinations of equipment configuration provided, e.g., grid, nongrid; magnification, nonmagnification; and various target-filter combinations.

(2) The positioning or selection of the detector shall permit flexibility in the placement of the detector under the target tissue.

S The size and available positions of the detector shall be clearly indicated at the X-ray input surface of the breast compression paddle.

S The selected position of the detector shall be clearly indicated.

(3) The system shall provide means for the operator to vary the selected optical density from the normal (zero) setting.

~~k~~ *l. Control panel:* Shall have a control panel that:

(1) Gives a positive indication when X-rays are being produced.

(2) Gives an audible signal indicating termination of exposure.

~~(3) Includes labeled control settings or appropriate indications that show the physical factors used for exposure such as kilovoltage potential (kVp), milliampere seconds (mAs), exposure time, and whether exposure termination is automatic.~~

(3) Has manual selection of milliampere seconds (mAs) or at least one of its component parts (milliampere (mA) or time, or both).

(4) Has the technique factors (peak tube potential in kilovolts (kV) and either tube current in mA and exposure time in seconds or the product of tube current and exposure time in mAs) to be used during an exposure indicated before the exposure begins, except when AEC is used, in which case the technique factors that are set prior to the exposure shall be indicated.

(5) Has a system that, following AEC mode use, shall indicate the actual kilovoltage peak (kVp) and mAs used during the exposure.

~~l~~ *m. mAs:* Shall indicate, or provide a means of determining, the mAs resulting from each exposure made with automatic exposure control.

~~m~~ *n.* ~~The viewbox shall be~~ *Viewboxes: Shall have a viewbox that is* checked periodically to ensure optimal conditions. When the mammogram is placed on the viewbox, the area surrounding the film must be masked to exclude extraneous light which may reduce image contrast.

~~n. Mobile units and vans.~~

~~(1) A phantom image shall be made and processed after each relocation.~~

~~(2) If processing is not available, a check of the radiation output shall be made.~~

~~Equipment shall be recalibrated as necessary to maintain quality of phantom image.~~

o. X-ray film: Shall use X-ray film that has been designated by the film manufacturer as appropriate for mammography and that is matched to the screen's spectral output as specified by the manufacturer.

p. Intensifying screens: Shall use intensifying screens that have been designated by the screen manufacturer as appropriate for mammography.

q. Chemicals: Shall use chemical solutions for processing mammography films that are capable of developing the films in a manner equivalent to the minimum requirements specified by the film manufacturer.

r. Hot-lights: Shall make special lights for film illumination, i.e., hot-lights, capable of producing light levels greater than that provided by the viewbox, available to the interpreting physicians.

s. Masking devices: Shall ensure that film masking devices that can limit the illuminated area to a region equal to

or smaller than the exposed portion of the film are available to all interpreting physicians interpreting for the facility.

t. Mobile units and vans.

(1) A phantom image shall be produced, processed, and evaluated after each relocation.

(2) If processing is not available, a check of the radiation output shall be made and compared to a preset standard for quality. Equipment shall be recalibrated as necessary to maintain quality of phantom image.

ITEM 74. Rescind **641—41.6(136C), Appendix I.**

ITEM 75. Amend subrule 41.7(1), introductory paragraph, as follows:

41.7(1) Definitions. In addition to the definitions provided in ~~rule~~ *rules 641—38.2(136C), 641—40.2(136C), and 641*—41.1(136C), the following definitions are applicable to this rule.

ITEM 76. Amend **641—Chapter 41, Appendix B,"3,"** as follows:

3. X-ray control placement:

The X-ray control for the system shall be fixed within the booth; and

(a) Shall be at least 40 inches (1.02 m) from any point subject to direct scatter, leakage or primary beam radiation.

(b) Shall allow the operator to use the majority of the available viewing windows *or mirrors.*

ITEM 77. Amend subrule **42.2(2)** by adopting **new** paragraph **"f"**:

f. Performing procedures not allowed under the individual's current certification.

ITEM 78. Amend subparagraph **42.3(1)"a"(7)** as follows:

(7) Clinical experience sufficient to demonstrate competency in the application of the above as specified in the ~~revised 1990 edition of the "Essentials and Guidelines of an Accredited Educational Program for the Radiographer" of the American Medical Association's Committee on Allied Health Education and Accreditation.~~ *"Standards for an Accredited Education Program in Radiologic Sciences" as adopted by the Joint Review Committee on Education on Radiologic Technology.*

ITEM 79. Amend subrule **45.1(2)** as follows:

Rescind the following definition:

~~"Permanent radiographic installation" means a shielded installation or structure designed or intended for performing enclosed radiography, not located at a temporary job site, and in which radiography is performed.~~

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

"Annual refresher safety training" means a review conducted or provided by the licensee for its employees on radiation safety aspects of industrial radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, new or revised regulations, accidents or errors that have been observed, and should also provide opportunities for employees to ask safety questions.

"Associated equipment" means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, e.g., guide tube, control tube, control (drive) cable, removable source stop, "J" tube and collimator when it is used as an exposure head.

"Certifying entity" means an independent certifying organization meeting the requirements in Appendix E of this chapter or Agreement State meeting the requirements of Appendix E or the requirements of Appendix A in 10 CFR Part 34.

"Control (drive) cable" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

"Control drive mechanism" means a device that enables the source assembly to be moved to and from the exposure device.

"Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

"Exposure head" means a device that locates the gamma radiography sealed source in the selected working position. (An exposure head is also known as a source stop.)

"Field station" means a facility where licensed material may be stored or used and from which equipment is dispatched.

"Guide tube (projection sheath)" means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

"Hands-on experience" means experience in all of those areas considered to be directly involved in the radiography process.

"Independent certifying organization" means an independent organization that meets all of the criteria of Appendix E to this chapter.

"Permanent radiographic installation" means an enclosed shielded room, cell, or vault, not located at a temporary job site, in which radiography is performed.

"Practical examination" means a demonstration through practical application of the safety rules and principles in industrial radiography including use of all appropriate equipment and procedures.

"Radiographer certification" means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.

"Radiographic operations" means all activities associated with the presence of radioactive sources in a radiographic exposure device during use of the device or transport (except when being transported by a common or contract transport), to include surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries.

"S-tube" means a tube through which the radioactive source travels when inside a radiographic exposure device.

Amend the following definitions:

"Shielded position" means the location within the radiographic exposure device or ~~storage container which, by manufacturer's design, is the proper location for the sealed source during storage~~ *source changer where the sealed source is secured and restricted from movement.*

"Source assembly" means ~~a component to which the sealed source is affixed or in which the sealed source is contained. The source assembly includes the sealed source (pigtail)~~ *an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.*

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 80. Amend subrule **45.1(5)**, paragraph **"c,"** as follows:

c. Records of these calibrations shall be maintained for ~~two~~ *three* years after the calibration date for inspection by the agency.

ITEM 81. Amend subrule 45.1(7) as follows:

45.1(7) Utilization logs.

a. Each licensee ~~or registrant~~ shall maintain current logs of the use of each *sealed* source ~~of radiation~~. The logs shall include:

(1) A unique identification, ~~such as~~ *which includes the make, model and* ~~a~~ serial number ~~of each radiation machine,~~ *of* each radiographic exposure device containing a sealed source, and each sealed source;

(2) The identity of the radiographer using the *sealed* source ~~of radiation~~;

(3) Locations where each *sealed* source ~~of radiation~~ is used; and

(4) The date(s) each *sealed* source ~~of radiation~~ is removed from storage and returned to storage. ~~For fixed installations, the date(s) each source of radiation is energized or used and the number of exposures made.~~

b. Each registrant shall maintain current logs of the use of each source of radiation. The logs shall include:

(1) A unique identification, which includes the make, model and serial number of each source of radiation;

(2) The identity of the radiographer using the source of radiation;

(3) The date(s) each source of radiation is energized or used and the number of exposures made.

~~b~~ *c.* Utilization logs may be kept on IDPH Form 588-2693, Utilization Log, or on clear, legible records containing all the information required by 45.1(7)"a," *or "b."* Copies of utilization logs shall be maintained for agency inspection for ~~two~~ *three* years from the date of the recorded event. The rec-ords shall be kept at the location specified by the license or certificate of registration.

ITEM 82. Amend subrule **45.1(9)**, paragraph **"b,"** as follows:

b. The control device or alarm system shall be tested for proper operation at the beginning of each day of equipment use. If a control device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired before industrial radiographic operations are resumed. Records of these tests shall be maintained for inspection by the agency for ~~two~~ *three* years from the date of the event.

ITEM 83. Rescind **45.1(10)"b"(1)"2"** and adopt the following **new** numbered paragraph **"2"** in lieu thereof:

2. Has completed on-the-job training as a radiographic trainee supervised by one or more radiographic trainers. The on-the-job training shall be documented on the appropriate agency form or equivalent and shall include a minimum of two months (320 hours) of active participation in the performance of industrial radiography utilizing radioactive material or one month (160 hours) of active participation in the performance of industrial radiography utilizing radiation machines, or both. Individuals performing industrial radiography utilizing radioactive materials and radiation machines must complete both segments of the on-the-job training (three months or 480 hours). Active participation does not include safety meetings or classroom training;

ITEM 84. Amend subrule **45.1(10)**, paragraph **"d,"** introductory paragraph, as follows:

d. Radiation safety officer. *The radiation safety officer shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program.*

ITEM 85. Amend **45.1(10)"g"(1)"1"** as follows:

1. An I.D. card shall be issued to each person who successfully completes the requirements of 45.1(10)"b" and the examination prescribed in 45.1(10)"f"(2) or *an* equivalent ~~exam~~ *examination. Certification by a certifying entity in accordance with 10 CFR 34.43(a)(1) meets the examination requirements of 45.1(10)"f"(2) but not the requirements of 45.1(10)"b"(1).*

ITEM 86. Rescind subrule 45.1(11) and adopt the following **new** subrule in lieu thereof:

45.1(11) Internal audits. Except as provided in 45.1(11)"c," the RSO or designee shall conduct an inspection program of the job performance of each radiographer and radiographer trainee to ensure that these rules, license requirements, and the licensee's or registrant's operating and emergency procedures are followed. The inspection program must:

a. Include observation of the performance of each radiographer and radiographer trainee during an actual industrial radiographic operation, at intervals not to exceed six months; and

b. Provide that, if a radiographer or radiographer trainee has not participated in an industrial radiographic operation for more than six months since the last audit, the radiographer or radiographer trainee must demonstrate understanding of the subjects contained in Appendix A of this chapter by a practical examination before the individual can next participate in a radiographic operation.

c. The agency may consider alternatives in those situations where the individual serves as both radiographer and RSO.

d. Records of audits shall be maintained by the licensee or registrant for agency inspection for three years from the date of the audit.

ITEM 87. Amend paragraph **45.1(12)"b"** as follows:

b. When performing industrial radiographic operations:

(1) No licensee or registrant shall permit an individual to act as a radiographer, radiographer trainee, or radiographer trainer unless *at all times during radiographic operations* ~~the~~ *each* individual wears, *on the trunk of the body, a combination of* ~~a~~ direct-reading pocket dosimeter, an *operating* alarm ratemeter, and ~~either~~ a film badge, *an optically stimulated device (OSD)* or a thermoluminescent dosimeter (TLD) ~~at all times during the radiographic operations~~. For permanent radiographic installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarm ratemeter is not required.

(2) Pocket dosimeters *or electronic personal dosimeters* shall meet the criteria in ANSI N322-1977 and shall have a range of zero to at least 200 milliroentgens.

(3) Pocket dosimeters *or electronic personal dosimeters* shall be recharged at the start of each work shift.

(4) Pocket dosimeters *or electronic personal dosimeters* shall be read and exposures recorded at least once daily, at the end of each work shift, and before each recharging.

(5) If an individual's pocket dosimeter is discharged beyond its range (i.e., goes "off scale"), *or if the electronic personal dosimeter reads greater than 200 millirem (2 millisievert), and the possibility of radiation exposure cannot be ruled out as the cause,* industrial radiographic operations by

that individual shall cease and the individual's film badge or TLD shall be within 24 hours sent for processing. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made. *This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in the exposure records maintained in accordance with 641—Chapter 40.*

(6) Each film badge, *OSD* or TLD shall be assigned to and worn by only one individual.

(7) Film badges, *OSDs* and TLDs must be replaced at least monthly. After replacement, each film badge, *OSD* or TLD must be returned to the supplier for processing within 14 calendar days of the exchange date specified by the personnel monitoring supplier.

(8) If a film badge, *OSD* or TLD is lost or damaged, the worker shall cease work immediately until a replacement film badge, *OSD* or TLD is provided and the exposure is calculated for the time period from issuance to loss or damage of the film badge, *OSD* or TLD.

ITEM 88. Amend subrule 45.1(13) as follows:

45.1(13) Supervision of radiographer trainee. Whenever a radiographer trainee uses radiographic exposure devices, sealed sources or related source handling tools or conducts radiation surveys required by 45.2(5) or 45.3(7) to determine that the sealed source has returned to the shielded position after an exposure, the radiographer trainee shall be under the personal supervision of a radiographer instructor. *The personal supervision must include:*

a. The radiographer's physical presence at the site where the source(s) of radiation is being used;

b. The availability of the radiographer to give immediate assistance if required; and

c. The radiographer's direct observation of the trainee's performance of the operations referred to in this subrule.

ITEM 89. Rescind subrule 45.3(1) and adopt the following **new** subrule in lieu thereof:

45.3(1) Limits on external radiation levels from storage containers and source changers. The maximum exposure rate limits for storage containers and source changers are 200 millirem (2 millisieverts) per hour at any exterior surface, and 10 millirem (0.1 millisievert) per hour at 1 meter from any exterior surface with the sealed source in the shielded position.

ITEM 90. Amend subrule **45.3(2)**, paragraph **"a,"** as follows:

a. Each source of radiation shall be provided with a lock or lockable outer container designed to prevent unauthorized or accidental removal or exposure of a sealed source and shall be kept locked *and, if applicable, the key removed,* at all times except when under the direct surveillance of a radiographer or radiographer trainee, or as may be otherwise authorized pursuant to 45.3(6). Each storage container and source changer likewise shall be provided with a lock and shall be kept locked when containing sealed sources except when the container is under the direct surveillance of a radiographer or radiographer trainee.

ITEM 91. Amend subparagraph **45.3(4)"c"(5)** as follows:

(5) The guide tube must ~~have passed the crushing tests for the control tube as specified in ANSI N432 and a kinking resistance test that closely approximates the kinking forces likely to be encountered during use~~ *be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use*;

ITEM 92. Amend subparagraph **45.3(4)"c"(8)** as follows:

(8) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432-*1980*;

ITEM 93. Amend subrule **45.3(4)** by adopting **new** paragraphs **"f"** and **"g"** as follows:

f. Notwithstanding the requirements of 45.3(4)"a," equipment used in industrial radiographic operations need not comply with § 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

g. Engineering analysis may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the agency may find this an acceptable alternative to actual testing of the component pursuant to the above-referenced standard.

ITEM 94. Rescind paragraph **45.3(5)"b"** and adopt the following **new** paragraph in lieu thereof:

b. Leak testing.

(1) Each sealed source shall be tested for leakage at intervals not to exceed 6 months. In the absence of a certificate from a transferor indicating that a test has been made within the 6-month period prior to the transfer, the sealed source shall not be put into use until tested.

(2) Each exposure device using depleted uranium (DU) shielding and an S-tube configuration must be tested for DU contamination at intervals not to exceed 12 months. Should the leak test reveal that the S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while in storage and not in use. Before using or transferring such a device, however, the device must be tested for DU contamination if the interval of storage exceeded 12 months.

ITEM 95. Amend paragraph **45.3(6)"a,"** subparagraphs **(9)** and **(10)**, and adopt **new** subparagraphs **(11)** and **(12)** as follows:

(9) Maintenance of records; ~~and~~

(10) The inspection and maintenance of radiographic exposure devices, source changers, storage containers, and radiation machines~~.~~*;*

(11) The procedure(s) for identifying and reporting defects and noncompliance in 10 CFR Part 21; and

(12) Source recovery procedure if the licensee will perform source recovery.

ITEM 96. Amend subrule **45.3(6)**, paragraph **"c,"** as follows:

c. ~~Each licensee shall provide, as a minimum, two radiographic personnel when sources of radiation are used for any industrial radiography conducted other than at a permanent radiographic installation (shielded room, bay, bunker).~~ *Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or a radiographer trainee.* If one of the personnel is a radiographer trainee, the other shall be a radiographer

PUBLIC HEALTH DEPARTMENT[641](cont'd)

trainer authorized by the license. *The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Except for the situation of a radiographer trainer with a trainee, radiography shall not be performed if only one qualified individual is present.*

ITEM 97. Amend subrule **45.3(7)**, paragraph **"b,"** as follows:

b. A survey with a calibrated and operable radiation survey instrument shall be made after each radiographic exposure to determine that the sealed source has been returned to its shielded position. The entire circumference of the radiographic exposure device shall be surveyed. If the radiographic exposure device has a source guide tube, the survey shall also include the entire length of the guide tube and collimator. *The survey required by this subrule must be done before exchanging films, repositioning the exposure head or dismantling the equipment.*

ITEM 98. Amend subrule **45.3(9)**, paragraph **"a,"** as follows:

a. Underwater, offshore platform, or lay-barge radiography shall not be performed unless specifically authorized in a license issued by the agency in accordance with ~~45.3(11).~~ *641—paragraph 39.4(27)"e."*

ITEM 99. Rescind and reserve subrule **45.3(11)**.

ITEM 100. Amend subrule 45.4(2), introductory paragraph, as follows:

45.4(2) Definitions. For purposes of this subrule, definitions in 641—~~Chapter~~ *Chapters* 38 *and 40 and subrule 45.1(2)* may also apply. As used in this rule, the following definitions apply:

ITEM 101. Amend subrule **45.4(2)** by adopting the following **new** definition in alphabetical order:

"Cold pasteurization" means the process of using radiation for destroying disease-causing microorganisms in commercial products.

ITEM 102. Amend subrule **45.4(11)**, paragraph **"c,"** as follows:

c. Accelerator facilities registered pursuant to 45.4(3)"a" shall survey for removable contamination at intervals not to exceed ~~three~~ *six* months to determine the degree of contamination.

ITEM 103. Amend rule **641—46.1(136D)**, first unnumbered paragraph, as follows:

All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~July 1, 1999~~ *May 10, 2000.*

ITEM 104. Amend subrule **46.5(1)**, paragraph **"c,"** introductory paragraph, as follows:

c. A tanning facility shall provide each consumer with a written warning statement prior to the consumer's initial exposure *and annually thereafter* which includes at least the following information:

[Filed 3/15/00, effective 5/10/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

ARC 9755A

TRANSPORTATION DEPARTMENT[761]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on March 7, 2000, adopted amendments to Chapter 452, "Flashing Lights and Warning Devices on Slow-Moving Vehicles," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the January 26, 2000, Iowa Administrative Bulletin as **ARC 9622A**.

These amendments delete two obsolete rules and adopt a new rule providing standards for an alternative reflective device for use on horse- or mule-drawn vehicles. 1999 Iowa Acts, chapter 102, section 2 [Iowa Code Supplement section 321.383(2)], provides that an alternative reflective device may be used if the individual operating the horse- or mule-drawn vehicle objects for religious reasons to using a reflective device that complies with the standards of the American Society of Agricultural Engineers. The alternative reflective device must be in compliance with rules adopted by the Department.

The new rule provides for an alternative reflective device of one-inch-wide reflective strips that outline the rear of the vehicle. This new rule does not provide a waiver. Rather, the rule implements a statutory waiver.

The Department received comments both for and against the alternative reflective device. Those in opposition did not believe that an alternative reflective device should be allowed. This is a legislative, not a rule-making, issue.

One person felt that the alternative reflective device proposed by the Department is not adequate. The Department disagrees.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code Supplement section 321.383(2).

These amendments will become effective May 10, 2000.

Rule-making actions:

ITEM 1. Amend the title of **761—Chapter 452** as follows:

~~FLASHING LIGHTS AND WARNING~~ *REFLECTIVE* DEVICES ON SLOW-MOVING VEHICLES

ITEM 2. Rescind and reserve rules **761—452.1(321)** and **761—452.2(321)**.

ITEM 3. Adopt the following **new** rule:

761—452.3(321) Alternative reflective device. If a person operating a vehicle drawn by a horse or mule objects for religious reasons to using a reflective device that complies with the standards of the American Society of Agricultural Engineers, the vehicle may be identified by an alternative reflective device that is in compliance with the following:

452.3(1) The alternative reflective device shall consist of one-inch-wide strips applied to the rear of the vehicle. The combined length of the strips shall be at least 72 inches. The strips, when applied, shall approximate the outline of the vehicle.

TRANSPORTATION DEPARTMENT[761](cont'd)

452.3(2) The reflective material may be black, gray, silver or white in color, but must reflect white when illuminated by other vehicles' headlamps.

452.3(3) The reflective material shall be visible from a distance of not less than 500 feet from the rear of the vehicle when illuminated by other vehicles' headlamps.

452.3(4) The reflective material shall be kept free of dirt and debris.

This rule is intended to implement Iowa Code Supplement section 321.383(2).

[Filed 3/9/00, effective 5/10/00]
[Published 4/5/00]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 4/5/00.

AGENCY	RULE	DELAY
Educational Examiners Board[282]	282—Ch 11 [IAB 2/9/00, **ARC 9669A**]	Effective date of March 15, 2000, delayed 45 days by the Administrative Rules Review Committee at its meeting held March 10, 2000. [Pursuant to §17A.4(5)]
Education Department[281]	281—63.18(4) [IAB 2/9/00, **ARC 9640A**]	Effective date of March 15, 2000, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000. [Pursuant to §17A.4(5)]
Racing and Gaming Commission[491]	491—1.8 [IAB 2/9/00, **ARC 9648A**]	Effective date of March 15, 2000, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000. [Pursuant to §17A.4(5)]
Workforce Development Board/Services Division[877]	877—2.4 [IAB 2/9/00, **ARC 9686A**]	Effective date of March 15, 2000, delayed 70 days by the Administrative Rules Review Committee at its meeting held March 10, 2000. [Pursuant to §17A.4(5)]

State of Iowa

Executive Department

IN THE NAME AND BY THE AUTHORITY OF THE STATE OF IOWA

*EXECUTIVE ORDER NUMBER FIFTEEN

WHEREAS, Iowans have traditionally recognized that strong families are essential to ensuring that our children will enjoy a secure future; and

WHEREAS, Iowans intuitively understand that children need to receive the support and guidance of both parents; and

WHEREAS, an emerging set of scientific data supports our belief that a healthy bond between a child and the child's parents has a direct impact on the future success of the child; and

WHEREAS, the absence of one parent from a child's life can place that child at greater risk of health, emotional, educational, and behavior problems associated with the child's development; and

WHEREAS, for most children, the absent parent is the father; and

WHEREAS, studies reveal that children with an absent parent are more likely to develop substance abuse problems, drop out of school, become teenage parents, and engage in criminal behavior than children who maintain healthy bonds with both parents; and

WHEREAS, children with two parents who actively and positively engage in their life by providing financial support, love, guidance, and discipline, have a greater chance for success than children who receive active involvement from only one parent.

NOW, THEREFORE, I, Thomas J. Vilsack, Governor of the State of Iowa, by the power vested in me by the laws of the constitution of the State of Iowa do hereby order the creation of the INTER-AGENCY WORK GROUP ON RESPONSIBLE PARENTHOOD.

*Reproduced as submitted

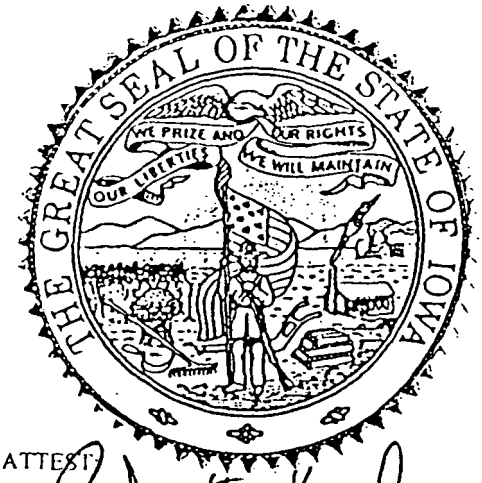
I. Purpose. The Inter-Agency Work Group on Responsible Parenthood is established to complete the following tasks:

1. Identify barriers within state policy and procedures that may act to impede the development of strong emotional and financial bonds of support between both parents and their children;
2. Identify opportunities that may exist among programs administered by departments to assist the absent parent in providing emotional and financial support for their children;
3. Propose adjustments to state policy and procedures to reduce barriers that discourage parents from developing a strong foundation of support for their children;
4. Identify promising practices that support and engage both parents in the emotional and financial support of their children;
    a. Identify services that have been successful in keeping young fathers actively involved in strong parenting role.
    b. Identify successful approaches for ensuring that fathers obtain and maintain full employment, learn how to be active parents, and develop skills for coping with difficult relationships
5. Attempt to quantify the benefits that can be gained by increasing the level of active support that children receive from both parents;
6. Make recommendations for additional steps that the State of Iowa should take to remove the barriers that prevent children from receiving the emotional and financial support of both parents.

The work-group shall submit a written report to the governor outlining its finding, conclusions, and recommendations by December 31, 2000.

II. Organization. The director for the Iowa Department of Human Services will chair the Inter-Agency Work Group on Responsible Parenthood. The work group will consist of representatives from the following state agencies:

A. Department of Public Health;
B. Department of Workforce Development;
C. Department of Education;
D. Department of Corrections.



ATTEST:

CHESTER J. CULVER
SECRETARY OF STATE

IN TESTIMONY WHEREOF, I have hereunto subscribed my name and caused the Great Seal of Iowa to be affixed. Done in Des Moines, Iowa this 14th day of March in the year of our Lord two thousand.

Thomas J. Vilsack
Governor

*SUMMARY OF DECISIONS
THE SUPREME COURT OF IOWA
FILED MARCH 22, 2000

Note: Copies of these opinions may be obtained from the Supreme Court Clerk, State Capitol Building, Des Moines, IA, 50319, for a fee of 40 cents per page.

No. 98-1201. CREDIT BUREAU ENTERPRISES, INC., v. PELO.

Appeal from the Iowa District Court for Cerro Gordo County, Carlynn D. Grupp and Jon Stuart Scoles, Judges. **AFFIRMED.** Considered en banc. Opinion by McGiverin, C.J. (15 pages $6.00)

Russell Pelo was hospitalized by the police following an incident after making suicidal threats and purchasing a shotgun. Pursuant to Iowa Code section 229.22 (1995), a magistrate concluded there was cause to believe Pelo was mentally ill and likely to harm himself. The magistrate entered an emergency hospitalization order requiring his detention for 48 hours. Upon admission, Pelo refused to sign a release form requesting either he or his insurance company be responsible for the hospital bill. He later signed the form after a nurse allegedly demanded it. Despite Pelo's wife's request for involuntary hospitalization, the judicial hospitalization referee concluded the necessary elements were lacking and ordered Pelo's release. The hospital billed Pelo $2775.79. Pelo refused to pay, and the account was ultimately sent to Credit Bureau Enterprises for collection. Following a small claims hearing, a district associate judge entered judgment in Credit Bureau's favor. The district court affirmed on Pelo's appeal. We granted Pelo's application for discretionary review. **OPINION HOLDS:** We reject Pelo's claim he was not liable to pay for hospital services because he did not request hospitalization or derive any benefits from it. We agree with the district court that Pelo was liable for services provided by a private hospital under an implied contract in law or quasi-contract theory. II. We reject Pelo's constitutional claim that requiring him to pay violated due process and his right to contract. Pelo did not challenge the constitutionality of the commitment proceeding and his involuntary hospitalization procedures complied with procedural due process safeguards. We affirm.

No. 98-1294. IN RE MARRIAGE OF DAVIS.

Appeal from the Iowa District Court for Polk County, Robert A. Hutchison, Judge. **DECISION OF DISTRICT COURT VACATED IN PART; AFFIRMED IN PART; AND CASE REMANDED WITH DIRECTIONS.** Considered en banc. Opinion by Lavorato, J. (14 pages $5.60)

The marriage of Richard and Marie Davis was dissolved by decree in 1996. Marie was awarded the family home and Richard a $15,000 judgment against Marie as his share of the equity. The decree awarded Richard his police retirement monthly benefit and Marie one-half this benefit. Marie appealed. The court of appeals, concerning Richard's pension, remanded to the district court to enter a Qualified Domestic Relations Order granting Marie one-half the retirement plan. The court of appeals also ruled Marie was entitled to an additional $20,000 in property, eliminating Richard's equity award and ordering

(continued)

*Reproduced as submitted by the Court

No. 98-1294. IN RE MARRIAGE OF DAVIS. (continued)

him to pay her $5000. On remand, the district court entered a marital property award giving Marie one-half of the retirement plan's surviving-spouse benefits in addition to the monthly benefits. The court further ruled Marie was entitled to interest on $15,000 of the additional $20,000 award. The court also ruled Richard was not required to pay Marie her benefit share on the first of each month. Marie has appealed, and Richard has cross-appealed. **OPINION HOLDS:** I. Taking into consideration the negotiations between the parties and the language of the district court and the court of appeals, we conclude the district court went beyond the court of appeals' mandate on remand in awarding Marie surviving-spouse benefits. We vacate that part of the district court ruling. II. We affirm the district court remand ruling on Richard's payment date because the ruling was implicit in the remand mandate. III. We conclude the district court exceeded its remand mandate in ordering Richard to pay interest on the $15,000 portion of the $20,000 award, and we vacate that portion of the award. IV. We deny Maria's request for attorney fees. V. We lack jurisdiction to consider Richard's cross-appeal because it was untimely. We remand for the district court to enter a marital property order not inconsistent with this opinion.

No. 98-1394. STATE v. MARTIN.

Appeal from the Iowa District Court for Clinton County, C.H. Pelton and David H. Sivright, Jr., Judges. **REVERSED AND REMANDED.** Considered en banc. Opinion by Lavorato, J. Dissent by Carter, J. (14 pages $5.60)

The defendant was charged with forgery, and John Wolfe was appointed to represent him. Prior to trial, the defendant moved for the appointment of new counsel, claiming a conflict of interest with Wolfe. The court found there was no conflict and denied the motion for substitute counsel. The court gave the defendant three choices: keep Wolfe as his attorney, hire new counsel, or represent himself. Although the court recommended on two occasions that the defendant keep Wolfe as his attorney, the defendant persisted in his opposition to Wolfe and declared that he did not even want Wolfe in the courtroom. The court ultimately switched Wolfe's role to standby counsel. The defendant represented himself for most of the trial, using Wolfe in only a very limited capacity. The jury returned a guilty verdict. The defendant appeals, contending the district court erred in allowing him to represent himself without determining that he made a knowing and intelligent waiver of his Sixth Amendment right to counsel. **OPINION HOLDS:** I. In denying the motion for substitute counsel the district court effectively required the defendant to choose between using present counsel or proceeding pro se. The district court permitted the defendant to proceed

(continued)

No. 98-1394. STATE v. MARTIN. (continued)

pro se without engaging him in any colloquy about the hazards of self-representation and that did not determine whether the defendant's choice of self-representation was made knowingly and intelligently. II. Wolfe's participation in the trial fell well short of curing the defective waiver. III. A harmless error analysis is not applicable to Sixth Amendment right to self-representation questions. **DISSENT ASSERTS:** The loss of the court-appointed attorney was the inevitable result of defendant's own tactical decision. He should not be given relief.

No. 98-842. ROBINSON v. BLACK.

Appeal from the Iowa District Court for Dickinson County, Joseph J. Straub, Judge. **DISTRICT COURT DECISION VACATED.** Considered en banc. Opinion by Lavorato, J. (7 pages $2.80)

The Robinsons sold a farm to Black under a real estate contract. The Robinsons later forfeited the contract and thereafter filed a forcible entry and detainer (FED) action in small claims court to recover possession of the farm. The small claims court granted the Robinsons possession. On appeal, the district court upheld the decision, even though the real estate contract was not admitted into evidence. We granted Black's request for discretionary review. Black contends the FED remedy is not available to the seller after forfeiture of a real estate contract. **OPINION HOLDS:** Under the circumstances of this case, the district court sitting in small claims only had jurisdiction for an FED action if the real estate contract per se created a landlord-tenant relationship. A vendor who has forfeited a real estate contract can bring a forcible entry and detainer action only if the contract expressly or impliedly creates a landlord-tenant relationship upon forfeiture. Because the real estate contract was not in evidence, we have no way of knowing whether the contract expressly or impliedly provided for a landlord-tenant tenant relationship upon forfeiture. Lacking such proof, we cannot say that the district court sitting as a small claims court had jurisdiction to hear this case. We therefore vacate the decision of the district court upholding its decision.

No. 99-37. GOODRICH v. STATE.

Appeal from the Iowa District Court for Monroe County, Annette J. Scieszinski, Judge. **JUDGMENT VACATED AND CASE REMANDED WITH DIRECTIONS.** Considered en banc. Opinion by Lavorato, J. (7 pages $2.80)

Appellant, Donald W. Goodrich, was convicted of second-degree theft. He was sentenced to prison and ordered to make restitution. When his subsequent postconviction relief application was denied, the district court ordered Goodrich to pay the court costs and attorney fees associated with the postconviction relief action. The court directed the department of corrections to withdraw monies

(continued)

No. 99-37. GOODRICH v. STATE. (continued)

from Goodrich's prison account at the rate of $25 per month until the obligations were fully paid. On appeal, Goodrich contends this order violates his constitutional due process rights because the district court did not provide him with a hearing to determine his ability to pay. **OPINION HOLDS:** I. We have subject matter jurisdiction to hear this appeal under Iowa Code section 822.9 (1997). II. The challenged order was not a criminal restitution order; rather, it was an assessment of court costs and attorney fees under Iowa Code section 610A.1(1)(a). Under that statutory provision, the district court was without authority to enter an order directing Goodrich to pay anything less than ten percent of all outstanding fees and costs associated with the action. III. There is no statutory authority for the district court to direct the department of corrections to make a withdrawal from an inmate's prison account. IV. The notice-and-opportunity-to-object language in section 904.702 gives the department of corrections authority to determine how a section 610A.1(1)(a) order for costs and attorney fees would be collected. This authority allows a section 610A.1(1)(a) order to pass constitutional muster. V. The department has the authority to structure a payment plan that will accomplish what the legislature intended and will at the same time leave the prisoner enough to pay for essential items that the penitentiary does not provide. VI. The district court's order was contrary to its statutory authority, and we vacate its order and remand so the district court can order Goodrich to make monthly payments of ten percent of the outstanding fees and costs associated with his postconviction action.

No. 99-143. STATE v. ANTENUCCI.

Appeal from the Iowa District Court for Polk County, Robert D. Wilson, Judge. **AFFIRMED.** Considered en banc. Opinion by Neuman, J.

(3 pages $1.20)

Antenucci was found guilty of two counts of forgery. His convictions stem from his use of a stolen credit card to make two sizeable retail purchases. He urged dismissal of the charges in district court, claiming the state should have charged him with credit card fraud. When the court denied the motion to dismiss, he withdrew his plea of not guilty, and entered an *Alford* plea to the original charges. Antenucci appeals, challenging the district court's dismissal ruling. **OPINION HOLDS:** Antenucci entered a knowing and voluntary guilty plea, and has failed to preserve the error he alleges. We therefore affirm the judgment of the district court.

98-1923. STRADT v. STATE.

Appeal from the Iowa District Court for Scott County, Bobbi Alpers, Judge. **AFFIRMED.** Considered en banc. Opinion by Carter, J. (4 pages $1.60)

Postconviction applicant, Solomon Stradt, was convicted of third-degree burglary and first-degree theft growing out of the same transaction. Because he had twice previously been convicted of a felony, the court imposed, as to each of the convictions, an enhanced fifteen-year indeterminate sentence. In addition, the court ordered that the sentences be served consecutively. His postconviction action challenging the legality of his sentences was denied, and he now appeals. **OPINION HOLDS:** I. Following a conviction of two felonies, a third and fourth felony offense may both be enhanced under the habitual-offender law even if they arise from the same transaction. Iowa Code section 902.9(2) (1999) mandates an indeterminate fifteen-year sentence for both of the applicant's convictions under the multicount indictment. II. A sentencing judge has the authority under Iowa Code section 901.8 to order that enhanced sentences run consecutively. The judgment of the district court should be affirmed.

No. 98-1978. STATE v. VARGASON.

Appeals from the Iowa District Court for Benton and Fayette Counties, Patrick R. Grady and James L. Beeghly, Judges. **JUDGMENT OF BENTON COUNTY DISTRICT COURT REVERSED AND REMANDED; JUDGMENT OF FAYETTE COUNTY DISTRICT COURT AFFIRMED.** Considered en banc. Opinion by Ternus, J. (16 pages $6.40)

Richard Vargason has been convicted of operating under the influence (OWI) on eight occasions in three different states over a nineteen-year time span. The most recent convictions happened in Iowa (March 1996 and July 1996). In February 1995, Florida permanently revoked Vargason's driving privileges. Vargason was arrested, charged, and convicted of an Iowa OWI violation in 1996. Vargason's driving privileges were revoked for 180 days. In July 1996 Vargason was arrested in Benton County and charged with second-offense OWI, as well as operating a motor vehicle while his driving privileges were revoked. Vargason pled guilty to second-offense OWI. The sentencing court ordered that Vargason's license be revoked for six years under Iowa Code section 321J.4(4). Subsequently, Vargason sought a driver's license. The Iowa Department of Transportation (DOT) refused to issue a license to him, citing the Florida revocation as a bar. Vargason sought judicial review in Fayette County district court, which affirmed the agency decision. During the course of the administrative proceedings Vargason filed an application in the Benton County OWI case, asking the court to order the DOT to issue a temporary restricted license under Iowa Code section 321J.4(9). The district court held that section 321J.4(9) did not apply because Vargason was subject to an out-of-state revocation. The court denied Vargason's application. Vargason appealed both rulings. **OPINION HOLDS:** The Interstate Drivers License Compact, Iowa Code chapter 321C, allows Iowa licensing authorities to issue a license to a person

(continued)

No. 98-1978. STATE v. VARGASON. (continued)

subject to an out-of-state revocation, provided that one year has passed since the imposition of the revocation, if permitted by Iowa law. Because one year had expired since his Iowa and Florida revocations, he was eligible under section 321J.4(9) to apply to the district court for a temporary restricted license. The Benton County district court erred in ruling that Vargason's driving privileges had been revoked pursuant to chapter 321C and that, as a consequence, he was not eligible for a temporary restricted license. Therefore, we reverse that decision and remand the Benton County case for further proceedings consistent with this opinion. II. In the agency action, the DOT incorrectly ruled that Vargason's Florida revocation prevented the DOT from issuing any license to him. It correctly concluded, however, that the DOT could not issue a license to Vargason. The DOT had no authority to issue Vargason a regular driver's license due to his Iowa revocation. It also had no authority to issue a temporary restricted permit to Vargason because that authority rested with the district court imposing the Iowa revocation. Accordingly, we affirm the Fayette County district court's decision on judicial review of the DOT's ruling.

No. 98-1305. KOEHLER ELECTRIC v. WILLS.

Appeal from the Iowa District Court for Polk County, Ray A. Fenton, Judge. **AFFIRMED**. Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Ternus, J. (8 pages $3.20)

While working for Koehler Electric, Carlton Wills fell from a ladder and sustained head and shoulder injuries. He filed a workers' compensation claim. Koehler opposed the claim because Wills' fall was the result of alcohol withdrawal. The deputy industrial commissioner awarded medical benefits and this award was affirmed on appeal to the industrial commissioner and on judicial review. Koehler appeals. **OPINION HOLDS**: We hold it is not necessary for a claimant injured in an idiopathic fall (a fall originating from a cause personal to the claimant) to prove his injuries were worse because he fell from a height. It is only required that he prove that a condition of his employment increased the risk of injury. In this case, expert testimony was not essential because the fact finder could conclude based on common experience that the risk of injury is greater when one falls from a height of four to five feet onto a concrete floor than when one falls on level ground. The lack of expert testimony in this case with respect to any enhanced injuries sustained by Wills is not fatal. Here there was substantial evidence to support the commissioner's conclusion that Wills' injuries arose out of his employment.

No. 98-976. STATE v. LONGO.

Appeal from the Iowa District Court for Polk County, Richard G. Blane II and Robert J. Blink, Judges. **AFFIRMED.** Considered en banc. Opinion by Carter, J. (8 pages $3.20)

A state trooper stopped a vehicle driven by Longo. As he approached the vehicle, he smelled burnt marijuana. Longo and his passenger gave conflicting stories as to where they had been. The passenger was acting suspiciously and appeared very nervous. The trooper searched the vehicle's passenger area and trunk. He found controlled substances in the trunk and, in a later search, under the front seat. A jury found Longo guilty of lesser included offenses on two charges of possession of controlled substances with intent to deliver. The sentencing court commented it would have found him guilty of the greater offenses. Longo appeals. **OPINION HOLDS:** I. We need not determine whether the smell of burnt marijuana alone is sufficient to justify a search of the entire vehicle. The suspects' inconsistent stories and the passenger's suspicious demeanor constitute probable cause for a search of the entire vehicle, including the trunk. The district court did not err in failing to suppress the challenged evidence. II. We are convinced that a sentencing judge is not required to deviate from the judge's own characterization of the nature of a crime committed because the jury has characterized the offense differently. We conclude Longo was not sentenced based upon the consideration of improper matters. The judgment of the district court is affirmed.

No. 98-1166. TOP OF IOWA COOPERATIVE v. SIME FARMS, INC.

Appeal from the Iowa District Court for Winnebago County, Jon S. Scoles, Judge. **AFFIRMED.** Considered en banc. Opinion by Ternus, J. (29 pages $11.60)

Sime Farms entered into three hedge-to-arrive (HTA) contracts with the Top of Iowa Cooperative (Coop) that called for the delivery of corn in December 1995. Sime Farms later contracted to sell additional corn for delivery in May 1996. The Coop hedged each contract by selling futures for corresponding delivery dates. Sime Farms eventually rolled all contracts to July 1996. Because Sime Farms had no corn to deliver in July it was faced with the prospect of rolling into December 1996 at a significant loss, or breaching its contracts. By May 1996, the Coop became concerned about Sime Farms' ability and willingness to perform on the outstanding HTA contracts. The Coop sent a letter to Sime Farms asking Sime Farms to confirm it was capable of and intended to perform and stating that a failure to provide the requested assurances would constitute a repudiation. Sime Farms argued the Coop's demand for assurances was an attempt to change the terms of the HTA contracts and that the contracts were illegal. When Sime Farms failed to provide adequate assurance, the Coop terminated the futures positions it held in reliance on the Sime Farms contracts. This lawsuit followed. The district court ruled the HTA contracts were legal and the jury awarded damages of $118,125 on the Coop's breach of contract claim.

(continued)

No. 98-1166. TOP OF IOWA COOPERATIVE v. SIME FARMS, INC. (continued)

OPINION HOLDS: I. The HTA contracts fall within the Commodity Exchange Act's exception for "any sale of any cash commodity for deferred shipment or delivery" because the parties contemplated actual delivery of grain by Sime Farms to the Coop. Therefore, the contracts are legal and enforceable. II. The trial court record generated a jury question on whether the Coop had reasonable grounds for insecurity and whether its demand for assurances was reasonable. The Coop's demand for assurances, requiring acts beyond what was required by the contract, did not render the demand unreasonable as a matter of law. Therefore, the trial court did not err in overruling Sime Farms' motion for directed verdict. III. Sime Farms failed to preserve error on its parol evidence objection to testimony of the Coop's local manager modifying the assurances sought by the Coop. The Coop's failure to raise the error preservation issue when it had the opportunity to do so in the district court does not prevent this court from considering the error preservation issue on appeal.

98-1971. STATE v. HARRINGTON.

Appeal from the Iowa District Court for Polk County, Jack D. Levin, Judge. **CONVICTION AFFIRMED; SENTENCE VACATED AND CASE REMANDED FOR RESENTENCING.** Considered en banc. Opinion by Carter, J. Concurrence in part and dissent in part by Neuman, J. (5 pages $2.00)

A jury convicted Charles Glenn Harrington of false imprisonment, and, in answer to a special interrogatory, it found that Harrington had committed the crime with intent to commit sexual abuse. At sentencing, it was stipulated that Harrington had previously been convicted of a sexually predatory offense. The sentencing judge concluded that, based on the jury's answer to the interrogatory, the present offense was also a sexually predatory offense and thus was subject to an enhanced sentence under Iowa Code section 901A.2(1). The district court indicated that it believed the conviction for false imprisonment met the statutory definition of a sexually predatory offense because it had been an attempt to commit kidnapping as defined in section 701.1. Harrington appeals. **OPINION HOLDS:** I. In *State v. Tornquist*, 600 N.W.2d 301 (Iowa 1999), this court held that the statute under which this defendant was sentenced did not apply retroactively so as to allow enhanced punishment based on convictions occurring before the act became effective on July 1, 1996. Therefore, we vacate the sentence and remand the case to the district court for resentencing. II. We do not agree that the false-imprisonment conviction qualified as an attempt to commit kidnapping. However, we do conclude that the defendant's false-imprisonment conviction was a sexually predatory offense under subpart *e* of Iowa Code section 901A.1, the definitional statute, as an attempt to commit sexual abuse, contained in subpart *a* of the statute. **CONCURRENCE, IN PART, AND DISSENT, IN PART, ASSERTS:** I concur in the result because I agree our decision in *Tornquist* compels that we vacate Harrington's sentence and (continued)

98-1971. STATE v. HARRINGTON. (continued)

remand for resentencing. The enhanced sentencing provisions of Iowa Code section 901A.2, however, require a *conviction* of an offense defined in section 901A.1 as sexually predatory before the enhancement applies. While this crime may have been sexually motivated, it was not transformed into a sex abuse conviction.

98-2136. STATE v. PHILLIPS.

Appeal from the Iowa District Court for Linn County, Thomas M. Horan, Judge. **AFFIRMED**. Considered en banc. Opinion by Larson, J. (7 pages $2.80)

Phillips pled guilty to three counts of second-degree robbery. She was sentenced under Iowa Code section 902.12 (Supp. 1996), which required her to serve 100% of her prison term, subject to good time. She filed an application for postconviction relief and an application for correction of her sentence, claiming section 902.12 was unconstitutional. The district court dismissed the application for postconviction relief, and denied the application for correction of sentence. Phillips appeals. **OPINION HOLDS:** I. Because matters of parole and work-release eligibility are part of the legislature's constitutional authority, the parole and work-release restrictions of section 902.12 do not impinge on any constitutional authority of the executive branch. We reject Phillips' separation-of-powers argument. II. Section 902.12 does not impose punishment based on a defendant's status or without trial, and is not a bill of attainder. III. We reject Phillips' cruel-and-unusual punishment argument based on our holding in *State v. Hoskins,* 586 N.W.2d 707 (Iowa 1998). IV. We decline to elevate our equal protection analysis to a strict scrutiny level, and based on our holding in *State v. Ceaser,* 585 N.W.2d 192 (Iowa 1998), we reject Phillips' equal protection argument. V. We need not address Phillips' claim of ineffective assistance of counsel. We affirm the judgment of the district court.

No. 98-408. CITY OF WATERLOO v. BLACK HAWK MUT. INS. ASS'N.

Appeal from the Iowa District Court for Black Hawk County, K.D. Briner, Judge. **AFFIRMED**. Considered en banc. Opinion by Larson, J.
(6 pages $2.40)

Black Hawk Mutual Insurance Association insured a rental house in Waterloo that was damaged by fire. After Black Hawk settled with the owners, the City of Waterloo requested Black Hawk provide a demolition reserve on the loss as required by Iowa Code section 515.150 (1993). Black Hawk declined, claiming as a chapter 518 mutual association, it was not subject to section 515.150 demolition-reserve requirements. The city brought this declaratory judgment action to resolve the issue. The parties agreed to limit the record to certain stipulated facts. The city submitted a trial brief with an attached letter that had not been included in the stipulation. The district court stated orally that
(continued)

No. 98-408. CITY OF WATERLOO v. BLACK HAWK MUT. INS. ASS'N. (continued)

it would not consider the letter because it was outside the stipulation. The court held in Black Hawk's favor. The court denied the city's motion for clarification under Iowa Rule of Civil Procedure 179(b), and the city appeals. **OPINION HOLDS**: I. Jurisdiction. Black Hawk moved to dismiss the appeal on the ground that it was not timely because the rule 179(b) motion did not extend the time for filing an appeal, as it was not based on fact-findings by the court. We find that the motion at least minimally complied with rule 179(b). It attempted to alert the court to the facts set out in the city's brief that might not have been considered by the court if, as the city suspected, the court had disregarded all evidence "premised upon or address[ing] the content" of the letter. Thus, the appeal was timely. II. Statutory Interpretation. We hold that Iowa Code section 515.150 does not apply outside of chapter 515. The legislature could have added the demolition-reserve requirement to county mutuals under chapter 518 but it did not. Further, section 518.11 states that county mutual insurance contracts "shall be subject only to such provisions as are contained in this chapter." We affirm.

No. 98-1214. STATE v. WEAVER.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Cherokee County, Robert C. Clem, Judge. **DECISION OF COURT OF APPEALS VACATED; JUDGMENT OF DISTRICT COURT AFFIRMED.** Considered en banc. Opinion by Larson, J. (14 pages $5.60)

Ricky Lee Weaver is charged with second-degree sexual abuse. The alleged victim, Kendra, was the daughter of Weaver's wife. The case was tried to the court, which found Weaver guilty. Weaver appealed, and the court of appeals reversed the conviction. We granted the State further review. **OPINION HOLDS**: I. The trial court did not err in denying Weaver's request to depose Kendra. A. Iowa Rule of Criminal Procedure 12(1) did not authorize the deposition because Kendra was not listed as a witness in the minutes of testimony. B. Rule 12(2) was inapplicable because it is to be used to perpetuate testimony, not for discovery. Weaver did not claim Kendra was unavailable to testify, and his general statement in his application for discovery that "the interest of justice" required a deposition order was insufficient. C. We reject Weaver's Sixth Amendment Confrontation Clause argument for the deposition for the reasons discussed in *State v. Froning*, 328 N.W.2d 333 (Iowa 1982). D. We reject his due-process argument that he was denied "the right to present his own witnesses to establish a defense." Weaver made no attempt to call Kendra as a witness at trial. II. We find the physical evidence, including blood stains on Weaver's clothing with Kendra's DNA, and testimony from Weaver's wife, which the court found credible, was sufficient to support Weaver's conviction. III. The court had discretion to allow testimony from Weaver's wife that she believed he had committed the assault. IV. Testimony from Kendra's aunt concerning a (continued)

No. 98-1214. STATE v. WEAVER. (continued)

statement Weaver made to her about the event was properly allowed as an admission. V. The court properly allowed testimony from a witness at the hospital that Kendra appeared to be happy to find out her mother was there, that she wondered where her younger sister was, and that she was upset Weaver might be at the hospital. Kendra's "statements" either were not hearsay because they were not assertions, or were admissible as an excited utterance. VI. The court properly allowed evidence from an officer explaining why he did not take fingernail scrapings from Weaver. The testimony was offered to rebut Weaver's implication through cross-examination that the State had failed to preserve important evidence, and was therefore clearly relevant. VII. We reject Weaver's argument the DNA testimony was erroneously received. At trial, counsel stated he had no objection to the DNA testimony, thereby waiving any objection raised in pretrial motions.

No. 98-294 STATE EX REL. MILLER v. DeCOSTER.

Appeal from the Iowa District Court for Wright County, Allan L. Goode, Judge. **AFFIRMED**. Considered by McGiverin, C.J., and Carter, Neuman, and Cady, J.J., and Harris, S.J. Opinion by Neuman, J. (14 pages $5.60)

The State of Iowa brought an environmental action against Austin DeCoster concerning two hog manure spills at DeCoster confinement facilities. The case was originally referred to the attorney general by the Environmental Protection Commission (EPC) pursuant to Iowa Code section 455B.191(4) (1997). The district court ultimately found the violations occurred, justifying a $10,000 penalty. DeCoster appeals, raising various issues concerning the referral method by which the matters came before the district court. **OPINION HOLDS:** I. By not raising the issue with the EPC, DeCoster waived his claim that he was entitled to contested case proceedings before the EPC could refer the violations to the attorney general for enforcement. II. We reject DeCoster's claim that the EPC has no established criteria by which to gauge the need for referral to the attorney general. The record amply supports the district court's finding that certain Iowa Administrative Code regulations are used as the measuring stick for referrals. III. The district court acted within its discretion in prohibiting DeCoster from examining the EPC commissioners concerning their mental processes in reaching their referral decisions. IV. The court properly dismissed DeCoster's counterclaim for a declaratory ruling that the pollution violations should not be considered "strikes" for purposes of establishing habitual violator status under Iowa Code section 455B.191(7)(a)-(e). The doctrine of primary jurisdiction bars the claim. By statute, the Department of Natural Resources has the duty to classify individuals as habitual violators. Until this litigation is concluded, it cannot do so. Upon such a determination, DeCoster could then seek judicial review. V. The court correctly ruled that newly appointed, but unconfirmed, members of the EPC were authorized to participate and vote in the referral hearings. VI. Although the EPC's action on the referral

(continued)

No. 98-294. STATE EX REL. MILLER v. DeCOSTER. (continued)

vote was contrary to its rules of parliamentary procedure, the procedural misstep was harmless since the vote was unanimous in favor of referral. Parliamentary rules governing internal procedures may be waived by the EPC members. VII. The district court correctly held DeCoster strictly liable for the discharges at both sites.

No. 99-1449. IN RE STIGLER.

On application of the Iowa Commission on Judicial Qualifications. **JUDICIAL OFFICER REPRIMANDED.** Considered en banc. Opinion by Carter, J. (19 pages $7.60)

The Commission on Judicial Qualifications has filed an application requesting that the court discipline Judge George L. Stigler. The commission's inquiry began with a complaint from attorney Douglas Coonrad that Judge Stigler held a hearing on a request to rescind another judge's ex parte temporary injunction order involving Coonrad's client without Coonrad being present, even though Judge Stigler knew Coonrad was involved in another trial at that time. Judge Stigler made Coonrad's client, acting pro se, take the stand and interrogated him, resulting in the client making admissions of domestic abuse. The Judge then not only vacated the injunction, but also entered rulings on child custody, visitation, and child support. Judge Stigler subsequently entered an attorney fees' ruling in the same case even though he had earlier told Coonrad he would not handle any matters in which Coonrad was involved due to Coonrad's complaint to the commission. The commission's formal charges against Judge Stigler included allegations that he had violated canons of judicial conduct in (1) proceeding with the injunction hearing, (2) questioning Coonrad's client in a manner calculated to incriminate him, and (3) ruling on the attorney-fee application after being advised of Coonrad's complaint. The commission denied Judge Stigler's request for a public hearing. Prior to the hearing, Judge Stigler requested that the commission allow him to inspect Coonrad's letters of complaint and supporting documents. Before the commission's ruling, however, Judge Stigler caused the district court clerk to issue a subpoena requiring Coonrad to produce copies of the same documents. The commission denied Judge Stigler's request and amended its charges to allege Judge Stigler acted improperly in causing the subpoena to be issued while his request for production was pending before the commission. Judge Stigler filed, then withdrew, and then reinstated a motion to recuse the commission chairman. The commission denied that request. The commission found Judge Stigler committed ethical violations in (1) conducting the injunction hearing without Coonrad being present and eliciting admissions of domestic abuse by Coonrad's client, (2) ruling on the attorney-fees application after announcing he would not hear matters in which Coonrad was involved, (3) using the subpoena to obtain documents which were the basis of a motion to produce before the commission, and (4) acting disrespectfully toward the commission during the hearing. The commission recommended that Judge

(continued)

No. 99-1449. IN RE STIGLER. (continued)

Stigler be reprimanded. **OPINION HOLDS:** I. We review the commission's application as we do in equity cases and require that ethical violations be established by a convincing preponderance of the evidence. II. We conclude the commission correctly denied Judge Stigler's request for a public hearing. III. We believe that after the commission files specific charges, the judicial officer should have the same right of discovery as that enjoyed by members of other professions who face misconduct charges before duly constituted boards or agencies. In this instance, Coonrad's complaints and supporting documents should have been made available, but the assistant attorney general's recommendations to the commission were privileged. However, any failure to allow discovery here did not prejudice Judge Stigler in light of the detailed charges and his personal involvement in those events. IV. The judge waived his initial request for recusal and his attempt to reinstate that request was untimely. V. We cannot conclude Judge Stigler was faced with an exigency that compelled him to deny Coonrad's client's right to have his counsel present for an important hearing. Judge Stigler's actions were aggravated in that he went beyond rescinding a prior temporary injunction to instead rule on issues of custody, visitation and child support even though there was no request on file that he do so. He also acted in callous disregard of the client's rights by calling him to the stand and obtaining admissions to domestic abuse through leading questions. VI. We agree Judge Stigler violated Canon 3(D) by not disqualifying himself from ruling on the attorney fee application after announcing a bias toward attorney Coonrad. Even if Judge Stigler believed he could be impartial, an impartial observer could nonetheless reasonably question this impartiality. VII. Judge Stigler's subpoena subverted the commission's authority by requiring the delivery to his chambers of the very documents being sought from the commission in a discovery motion. We agree this was misconduct. VIII. Although we think a judge acting as his own attorney in an adversary proceeding is not required to exhibit the same demeanor as a presiding judge, Judge Stigler's remarks toward the committee chairman at the hearing were inexcusably insulting. IX. We are convinced Judge Stigler's misconduct was not undertaken to foster his personal well-being nor was it the result of a malicious attitude toward anyone. It was an unfortunate deviation from a long career in which he has earned the reputation as a conscientious and diligent judge. Nevertheless, we agree that the ethical violations were sufficiently serious to warrant discipline. Consequently, we reprimand Judge Stigler.

No. 98-1905. STATE v. CLARK.

Appeal from the Iowa District Court for Pottawattamie County, Gary K. Anderson, District Associate Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Snell, J. (7 pages $2.80)

Jerrot Heath Clark was adjudicated an habitual offender by the Iowa Department of Transportation (DOT). In accordance with Iowa Code section

(continued)

No. 98-1905. STATE v. CLARK. (continued)

321.560 (1997), Clark was thereafter barred from driving for a period of two years. Clark's adjudication was preceded by notice from the DOT in which he was informed of the pending agency action, and apprised of his right to challenge the determination by requesting a hearing. Clark failed to respond and the decision of the DOT was executed. Thereafter, Clark was charged with two counts of driving while barred and for possession of a controlled substance. After a trial, the district court held the DOT procedure for adjudicating habitual offenders did not comply with the notice requirements of Iowa Code section 321.556 by shifting the burden of initiating a hearing to Clark. The district court thus dismissed the two counts of driving while barred on the ground that the State failed to meet its burden of proof. The State appealed. **OPINION HOLDS:** The district court was without authority to review agency procedure in this criminal case because defendant failed to exhaust the administrative remedies for relief at his disposal, and because he did not file a petition with the court in accordance with the judicial review provisions of Iowa Code section 17A.19. We reverse the district court's ruling and remand for further proceedings not inconsistent with this decision.

No. 98-802. STATE v. COOLEY.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Linn County, L. Vern Robinson, Judge. **DECISION OF COURT OF APPEALS VACATED; DISTRICT COURT JUDGMENT REVERSED; CASE REMANDED FOR NEW TRIAL.** Considered en banc. Opinion by Snell, J. Dissent by Carter, J. (15 pages $6.00)

The defendant was charged with third-degree burglary and with being an habitual offender. He moved to proceed pro se claiming he was fully advised of the pitfalls associated with representing himself. Standby counsel was appointed and the defendant was allowed to proceed pro se. The defendant was found guilty and appealed claiming the trial court violated his Sixth Amendment rights by failing to conduct an inquiry into his understanding of pro se representation and into his competency to make the decision to act as his own attorney. The court of appeals found the competency issue had been waived. It held the exchanges between the defendant and the trial court did not establish a knowing and intelligent waiver, but, under the circumstances, a lengthy admonishment by the trial court was unnecessary. We granted further review. **OPINION HOLDS:** I. Defendant has waived the issue of his competency. II. We reject the State's argument that it was the defendant's duty to recreate "off the record" conversations the defendant allegedly had with the court regarding the issue of self-representation. The defendant denies they ever took place. If the State has reason to believe an off-the-record colloquy took place, it is free to rebut the defendant's assertions to the contrary, and to produce evidence to that end. III. A court must engage in a searching or formal inquiry before an accused's waiver of counsel may be accepted. The inquiry afforded the defendant was limited. He

(continued)

No. 98-802. STATE v. COOLEY. (continued)

was informed of his right to counsel and told an attorney would be provided at no cost. He was not, however, warned of the dangers he would encounter as his own attorney. The trial court's failure to inquire and advise the defendant of the dangers in proceeding pro se leaves the record deficient to permit a reviewing court to properly determine whether the defendant's waiver of his right to counsel was made knowingly and intelligently. IV. A harmless error analysis is not applicable to Sixth Amendment right to self-representation questions. **DISSENT ASSERTS:** I believe that, under the circumstances in which defendant elected to place his counsel in a standby position, a judicial inquiry into the voluntariness of that decision was not required.

No. 98-650. CROSKEY v. PHILLIPS.

Appeal from the Iowa District Court for Black Hawk County, George L. Stigler, Judge. **AFFIRMED.** Considered en banc. Opinion by Snell, J. (7 pages $2.80)

Stateman's Bank held a mortgage on real estate against which appellant, Morris Eckhart, was a junior judgment lien holder. Eckhart did not receive notice of an execution sale scheduled after Statesman's had foreclosed its mortgage and obtained a judgment. At auction in 1990, Statesman's purchased the property and shortly thereafter, resold it to appellee, Chris G. Kuehl, the party now in possession. In January 1998 Eckhart requested a general execution issue against the real estate in satisfaction of his lien. Kuehl moved to quash, and the district court ruled in his favor, vacating the general execution order, and limiting Eckhart's right of enforcement to equitable redemption. Eckhart now appeals contending he is a valid lien holder in a priority position and is entitled to an execution sale. He argues that in limiting his remedy to equitable redemption the trial court impermissibly infringed upon his interests in the property, and violated his due process rights as guaranteed by the Fourteenth Amendment to the United States Constitution. **OPINION HOLDS:** We reject Eckhart's contention that he can only be cured by reforeclosure rather than redemption. An omitted junior lien holder in Iowa has the right to redeem under the statute, or if the statutory period of redemption has expired, to equitable redemption. Our approach permits omitted junior lien holders the opportunity to redeem and to seek relief through recourse to the statutes. Eckhart is in nearly as good a position now as he would have been had he been made a party to the original foreclosure. The judgment of the district court is affirmed.

No. 98-1783. STATE v. HINTON.

Appeal from the Iowa District Court for Linn County, Patrick R. Grady, Judge. **REVERSED AND REMANDED.** Considered en banc. Opinion by Snell, J. (7 pages $2.80)

Roger Hinton appealed from his sentence for second-degree theft. The court of appeals affirmed, and he filed an application for further review. Twynette Cain, doing business as Superbondsman, posted his bail. Hinton's application was unsuccessful, and procedendo was issued Friday, June 6, 1997. Hinton was arrested the next day on new charges. He was arraigned on Sunday morning, June 8. Superbondsman employee Bill Benefield saw the arraignment proceedings, but did not know Superbondsman posted Hinton's appeal bond. Cain was told Hinton was in custody, and she instructed Benefield to revoke Hinton's bond first thing Monday morning. She testified she would have effectuated the revocation that Sunday, but jail policy required she have a certified copy of the bond instrument from the clerk of court's office, which was not open on weekends. Benefield called the jail Sunday afternoon to confirm Hinton was still in custody and to inform the jailer of his intent. When he called again Monday morning, Hinton had been released. On July 3, the district court ordered Hinton to surrender, or his surety to surrender him. Hinton failed to surrender, and the court ordered forfeiture of his appeal bond. Hinton was captured on October 4. The court rejected Superbondsman's arguments against forfeiture, and entered judgment on the bond. Superbondsman appeals. **OPINION HOLDS:** I. In construing the statute, facts, and circumstances attendant to this case liberally toward those opposing forfeiture, we conclude Hinton would have been recommitted on Sunday June 8 had the jail acted in accordance with Iowa Code section 811.8. The judgment of the district court is reversed. This case is remanded for further proceedings consistent with this opinion.

No. 98-1638. STATE v. JACOBS.

Appeal from the Iowa District Court for Dubuque County, Thomas N. Bower, Judge. **CONVICTIONS AFFIRMED, SENTENCES VACATED, AND CASE REMANDED FOR RESENTENCING.** Considered by Larson, P.J., and Lavorato, Snell, Ternus, and Cady, JJ. Opinion by Snell, J. (18 pages $7.20)

Attorney Charles Jacobs stipulated he was seriously mentally impaired and a commitment order was filed after a friend and former law associate filed an application for involuntarily hospitalization under Iowa Code section 229.6(1997). The State charged Jacobs with thirty criminal counts arising from his handling of several estates and a conservatorship. Jacobs asserted the defenses of insanity and diminished responsibility. Following a trial to the court, he was found guilty of eight counts of first-degree theft, six counts of second-degree theft, one count of third-degree theft, six counts of money laundering, one count of perjury, four counts of first-degree fraudulent practice, one count of second-degree fraudulent practice, one count of falsifying a public document, and two counts of

(continued)

No. 98-1638. STATE v. JACOBS. (continued)

forgery. Jacobs appeals. **OPINION HOLDS:** I. Based on the medical evidence, opinions of psychiatric experts, and observations of those who encountered Jacobs on a regular basis, there was sufficient evidence to support the trial court's rejection of the insanity and diminished responsibility defenses. II. Evidence of Jacobs' good character was relevant, but it was not dispositive. III. The principle of judicial estoppel is inapplicable because the State did not assert any position at Jacobs' commitment proceedings, let alone one contrary to that which it asserted in the later criminal proceeding. Even if its agreement to the stipulation at the commitment proceedings is construed as an assertion of a position, the determination of whether one is seriously mentally impaired, Iowa Code section 229.1(14), involves the application of a different legal standard and a different standard of proof than in determining if a criminal defendant was insane or suffered from diminished capacity. IV. Since the sentences imposed are based on separate and distinct acts and the continuing offense doctrine does not apply, we conclude there is no double jeopardy violation. V. Jacobs has failed to demonstrate there was any prosecutorial misconduct, and even if there was misconduct, he has failed to establish that he was so prejudiced as to warrant a new trial. We believe any risk of prejudice resulting from alleged misconduct was mitigated by trial to the court. VI. The district court did not provide reasons for its decision to impose consecutive sentences. The judgment of the district court is affirmed, the sentences vacated, and the case remanded for resentencing.

No. 98-114. STATE v. STEPHENSON.

On review from the Iowa Court of Appeals. Appeal from the Iowa District Court for Kossuth County, Cameron B. Arnold, District Associate Judge. **DECISION OF COURT OF APPEALS AFFIRMED; DISTRICT COURT JUDGMENT REVERSED AND REMANDED FOR NEW TRIAL.** Considered en banc. Opinion by Snell, J. Larson, J., dissents without opinion.

(10 pages $4.00)

The defendant was charged with first-degree harassment. Two attorneys were appointed to represent him but each withdrew. The defendant opted to proceed pro se with the aid of stand-by counsel. No formal inquiry into the defendant's decision was ever made for the record. The defendant was found guilty as charged and appealed. The court of appeals reversed, holding the State failed to prove the defendant's waiver of counsel was valid and we granted further review. **OPINION HOLDS:** I. Before a trial court honors an accused's request to waive the right to counsel, it must satisfy itself the defendant's election is voluntary, knowing, and intelligent. In making this determination courts are required to engage the accused in a colloquy sufficient to apprise a defendant of the dangers and disadvantages inherent in self-representation. II. The trial court did not satisfy its duty to adequately inquire into the defendant's decision to proceed pro se. A failure to abide by this procedure cannot be overcome by harmless error analysis. We remand the case for retrial. III. We reject the State's

(continued)

No. 98-114. STATE v. STEPHENSON. (continued)

argument that the defendant waived this issue by failing to obtain transcripts of trial court discussions in which the matter was allegedly raised. We held in another opinion filed today, *State v. Cooley*, No. 98-802 (March 22, 2000), that the burden of proving a valid waiver of counsel lies with the State. It is the State's responsibility to prepare the record for appeal, including any statements pursuant to Iowa Rule of Appellate Procedure 10(c). IV. Iowa Code section 708.7 does not require proof that the accused initiated a harassing telephone conversation. V. For purposes of retrial, we observe the district court was not authorized to impose an eighteen-month sentence for an aggravated misdemeanor. Moreover, probation cannot be ordered in the absence of a suspension of sentence, a deferral of sentence, or a deferral of judgment.

IOWA ADMINISTRATIVE BULLETIN
Customer Service Center
Department of General Services
Hoover State Office Building, Level A
Des Moines, Iowa 50319

Bulk Rate
U.S. Postage
PAID
Des Moines, Iowa
Permit No. 1195