# IOWA ADMINISTRATIVE BULLETIN

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January 15, 2020 Pages 1685 to 1914

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Pages 1693 to 1913 include **ARC 4852C** to **ARC 4881C**

# PREFACE

The Iowa Administrative Bulletin is published biweekly pursuant to Iowa Code chapters 2B and 17A and contains Notices of Intended Action and rules adopted by state agencies.

It also contains Proclamations and Executive Orders of the Governor which are general and permanent in nature; Regulatory Analyses; effective date delays and objections filed by the Administrative Rules Review Committee; Agenda for monthly Administrative Rules Review Committee meetings; and other materials deemed fitting and proper by the Administrative Rules Review Committee.

The Bulletin may also contain public funds interest rates [12C.6]; usury rates [535.2(3)"a"]; agricultural credit corporation maximum loan rates [535.12]; and other items required by statute to be published in the Bulletin.

**PLEASE NOTE:** Underscore indicates new material added to existing rules; ~~strike through~~ indicates deleted material.


| | | | |
|---|---|---|---|
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**CITATION of Administrative Rules**

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

This citation format applies only to external citations to the Iowa Administrative Code or Iowa Administrative Bulletin and does not apply to citations within the Iowa Administrative Code or Iowa Administrative Bulletin.

| | |
|---|---|
| 441 IAC 79 | (Chapter) |
| 441 IAC 79.1 | (Rule) |
| 441 IAC 79.1(1) | (Subrule) |
| 441 IAC 79.1(1)"a" | (Paragraph) |
| 441 IAC 79.1(1)"a"(1) | (Subparagraph) |
| 441 IAC 79.1(1)"a"(1)"1" | (Numbered paragraph) |

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

NOTE: In accordance with Iowa Code section 2B.5A, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

# Schedule for Rule Making
# 2020

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

## PRINTING SCHEDULE FOR IAB

| ISSUE NUMBER | SUBMISSION DEADLINE | ISSUE DATE |
|---|---|---|
| **17** | **Friday, January 24, 2020** | **February 12, 2020** |
| **18** | **Friday, February 7, 2020** | **February 26, 2020** |
| **19** | **Friday, February 21, 2020** | **March 11, 2020** |

**PLEASE NOTE:**

Rules will not be accepted by the Publications Editing Office after **12 o'clock noon** on the filing deadline unless prior approval has been received from the Administrative Rules Coordinator and the Administrative Code Editor.

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

†To allow time for review by the Administrative Rules Coordinator prior to the Notice submission deadline, Notices should generally be submitted in RMS four or more working days in advance of the deadline.

****Note change of filing deadline****

**AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]**

| | | |
|---|---|---|
| Hemp, 40.1, ch 96<br>IAB 1/1/20 **ARC 4841C** | Second Floor Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | January 22, 2020<br>11 a.m. to 12 noon |
| Dairy—adoption by reference of public health service regulations, 68.1, 68.13<br>IAB 1/1/20 **ARC 4838C** | Second Floor Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | January 22, 2020<br>9 to 10 a.m. |
| National Institute of Standards and Technology (NIST) Handbook 130—adoption by reference of section relating to gasoline-ethanol blends, 85.39<br>IAB 1/1/20 **ARC 4844C** | Second Floor Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | January 22, 2020<br>1 to 2 p.m. |

**EDUCATIONAL EXAMINERS BOARD[282]**

| | | |
|---|---|---|
| Teaching endorsements, 13.28<br>IAB 1/15/20 **ARC 4870C** | Board Room, Suite A<br>701 E. Court Ave.<br>Des Moines, Iowa | February 5, 2020<br>1 p.m. |

**INSURANCE DIVISION[191]**

| | | |
|---|---|---|
| Notice to suppliers of information, 2.10<br>IAB 1/1/20 **ARC 4840C** | Division Offices, Fourth Floor<br>Two Ruan Center<br>601 Locust St.<br>Des Moines, Iowa | January 27, 2020<br>10:30 to 11:30 a.m.<br>(If requested) |

**LABOR SERVICES DIVISION[875]**

| | | |
|---|---|---|
| Boiler and pressure vessel codes—adoption by reference, 90.6(1), 91.1<br>IAB 1/15/20 **ARC 4863C** | 150 Des Moines St.<br>Des Moines, Iowa | February 5, 2020<br>9 a.m.<br>(If requested) |

**NATURAL RESOURCE COMMISSION[571]**

| | | |
|---|---|---|
| Safety zone on Beaver Creek for watercraft and vehicles, 40.61<br>IAB 1/15/20 **ARC 4855C** | Conference Room 4E<br>Wallace State Office Bldg.<br>Des Moines, Iowa | February 4, 2020<br>2:30 to 3:30 p.m. |

**NATURAL RESOURCES DEPARTMENT[561]**

| | | |
|---|---|---|
| Process and timeline for appeals of administrative orders issued by the department, 7.4(1), 7.17(5)“a”(2)<br>IAB 1/15/20 **ARC 4861C** | Conference Room 4E<br>Wallace State Office Bldg<br>Des Moines, Iowa | February 5, 2020<br>1 to 2 p.m. |

**PROFESSIONAL LICENSURE DIVISION[645]**

| | | |
|---|---|---|
| Barbers—licensure examination allowed for persons completing apprenticeship training while in custody of department of corrections, 21.1, 21.2(1)<br>IAB 1/15/20 **ARC 4860C** | Fifth Floor Conference Room 526<br>Lucas State Office Bldg.<br>Des Moines, Iowa | February 4, 2020<br>8 to 8:30 a.m. |
| Optometrists—child abuse and dependent adult abuse mandatory reporter training, 180.5(4), 181.3(2)<br>IAB 1/15/20 **ARC 4854C** | Fifth Floor Conference Room 526<br>Lucas State Office Bldg.<br>Des Moines, Iowa | February 4, 2020<br>10 to 10:30 a.m. |

**SOIL CONSERVATION AND WATER QUALITY DIVISION[27]**

| | | |
|---|---|---|
| State soil conservation and water quality committee—quorum, 2.6(1)<br>IAB 1/1/20 **ARC 4839C** | Second Floor Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | January 22, 2020<br>10 to 11 a.m. |

**TRANSPORTATION DEPARTMENT[761]**

| | | |
|---|---|---|
| Outdoor advertising, amendments to ch 117<br>IAB 1/15/20 **ARC 4868C** | DOT Administration Bldg.<br>First Floor, South Conference Room<br>800 Lincoln Way<br>Ames, Iowa | February 6, 2020<br>2 p.m.<br>(If requested) |
| Annual raw forest products permit, amendments to ch 511<br>IAB 1/15/20 **ARC 4869C** | Department of Transportation<br>Motor Vehicle Division<br>6310 SE Convenience Blvd.<br>Ankeny, Iowa | February 6, 2020<br>10 a.m.<br>(If requested) |
| Commercial driver licensing, amendments to ch 607<br>IAB 1/1/20 **ARC 4836C** | Department of Transportation<br>Motor Vehicle Division<br>6310 SE Convenience Blvd.<br>Ankeny, Iowa | January 23, 2020<br>10 a.m.<br>(If requested) |

**UTILITIES DIVISION[199]**

| | | |
|---|---|---|
| Ratemaking principles proceeding, ch 41<br>IAB 1/15/20 **ARC 4865C** | Board Hearing Room<br>1375 E. Court Ave.<br>Des Moines, Iowa | March 12, 2020<br>9 to 11 a.m. |

The following list will be updated as changes occur.

"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 are included alphabetically in SMALL CAPITALS at the left-hand margin.

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**ARC 4862C**

# ATTORNEY GENERAL[61]

**Notice of Intended Action**

**Proposing rule making related to annual notification fees and providing an opportunity for public comment**

The Attorney General hereby proposes to amend Chapter 22, "Notification and Fees," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 537.6117.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 537.6203.

*Purpose and Summary*

The proposed amendment reflects a change in the notification fee that creditors engaged in consumer credit transactions are required to pay annually. The proposed amendment is in response to 2017 Iowa Acts, chapter 138, section 23, which amended Iowa Code section 537.6203 by increasing the annual notification fee from $10 to $50. This proposed amendment would conform subrule 22.5(1) with Iowa Code section 537.6203.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. The Attorney General has been collecting a $50 annual fee since 2018 as required by Iowa Code section 537.6203. The proposed amendment simply seeks to bring subrule 22.5(1) in line with the requirements of Iowa Code section 537.6203.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Attorney General for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Attorney General no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Jessica Whitney
Office of the Attorney General of Iowa
Hoover State Office Building
1305 East Walnut Street
Des Moines, Iowa 50319
Email: jessica.whitney@ag.iowa.gov

ATTORNEY GENERAL[61](cont'd)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 22.5(1) as follows:

**22.5(1)** *Annual fees.* All creditors and debt collectors, including assignees, who are required to file notification statements shall pay to the administrator an annual fee of ~~$10~~ $50. This fee shall be paid with the filing of the first notification and on or before January 31 of each succeeding year.

## ARC 4852C

# BANKING DIVISION[187]

**Notice of Intended Action**

**Proposing rule making related to regulated loan interest rates and providing an opportunity for public comment**

The Iowa Division of Banking hereby proposes to amend Chapter 15, "Regulated Loans," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 17A.3, 536.13 and 536.21.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 536.13.

*Purpose and Summary*

The proposed amendment revises the maximum interest rate brackets for lenders licensed under Iowa Code chapter 536. Currently, the maximum interest rates such lenders may charge are 36 percent APR on any part of an unpaid balance not exceeding $3,000, 24 percent APR on any part of an unpaid balance that exceeds $3,000 but does not exceed $8,400, and 18 percent APR on any part of an unpaid balance that exceeds $8,400 but does not exceed $10,000.

In 2019, the Legislature enacted 2019 Iowa Acts, House File 260, which amended the authority of the Superintendent of Banking to establish maximum interest rates by rule for lenders licensed under Iowa Code chapter 536. Pursuant to Iowa Code section 536.13(7)"a" as amended by 2019 Iowa Acts, House File 260, the Superintendent is now authorized to establish maximum rates for loans with an unpaid balance of $30,000 or less, rather than an unpaid balance of $10,000 or less. The proposed amendment extends the range of the 18 percent bracket and authorizes lenders licensed under Iowa Code chapter 536 to charge an interest rate of 18 percent APR on any part of an unpaid balance exceeding $8,400 but not exceeding $30,000.

BANKING DIVISION[187](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Division for a waiver of the discretionary provisions, if any, pursuant to 187—Chapter 12.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Division no later than 4:30 p.m. on February 7, 2020. Comments should be directed to:

Zak Hingst
Iowa Division of Banking
200 East Grand Avenue, Suite 300
Des Moines, Iowa 50309-1827
Email: zak.hingst@idob.state.ia.us

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 15.13(3) as follows:

**15.13(3)** *Interest rate.* Pursuant to the power granted to the superintendent under Iowa Code sections 536.13(1)*"b"* and 536.13(2), the maximum rate of interest that may be charged beginning ~~July 1, 2017~~ April 15, 2020, and until such time as a different rate is fixed by the superintendent, is 36 percent per annum on any part of the unpaid balance not exceeding $3,000 and 24 percent per annum on any part of the unpaid balance in excess of $3,000, but not exceeding $8,400 and 18 percent per annum on any part of the unpaid balance in excess of $8,400, but not exceeding ~~$10,000~~ $30,000.

**ARC 4870C**

# EDUCATIONAL EXAMINERS BOARD[282]

**Notice of Intended Action**

**Proposing rule making related to endorsement requirements and providing an opportunity for public comment**

The Educational Examiners Board hereby proposes to amend Chapter 13, "Issuance of Teacher Licenses and Endorsements," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 272.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 272.2.

*Purpose and Summary*

The proposed amendments include reductions to the credit-hour requirements for select endorsements in response to stakeholder input, as well as some cleanup language related to Board endorsements.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 282—Chapter 6.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 7, 2020. Comments should be directed to:

Kimberly Cunningham
Board of Educational Examiners
701 East Court Avenue, Suite A
Des Moines, Iowa 50319
Fax: 515.281.7669
Email: kim.cunningham@iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 5, 2020<br>1 p.m. | Board Room<br>701 East Court Avenue, Suite A<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 13.28(3) as follows:

**13.28(3)** *Business—all.* 5-12. Completion of ~~30~~ 24 semester hours in business to include ~~6~~ 3 semester hours in accounting, 3 semester hours in business law to include contract law, 3 semester hours in computer and technical applications in business, ~~6~~ 3 semester hours in marketing to include consumer studies, 3 semester hours in management, 6 semester hours in economics, and 3 semester hours in business communications to include formatting, language usage, and oral presentation. Coursework in entrepreneurship and in financial literacy may be a part of, or in addition to, the coursework listed above.

ITEM 2. Amend subrule 13.28(6) as follows:

**13.28(6)** ~~*Language arts*~~ *English/language arts—all.* 5-12. Completion of ~~40~~ 24 semester hours in language arts to include coursework in the following areas:

*a.* to *d.* No change.

*e. Creative voice and theater.*

(1) Understands the art of oral interpretation and how to provide opportunities for students to develop and apply oral interpretation skills in individual and group performances for a variety of audiences, purposes and occasions.

(2) Understands the basic skills of theatre production including acting, stage movement, and basic stage design.

~~*f. Argumentation/debate.*~~

~~(1) Understands concepts and principles of classical and contemporary rhetoric and is able to plan, prepare, organize, deliver and evaluate speeches and presentations.~~

~~(2) Understands argumentation and debate and how to provide students with opportunities to apply skills and strategies for argumentation and debate in a variety of formats and contexts.~~

~~*g.*~~ *f. Journalism.*

(1) Understands ethical standards and major legal issues including First Amendment rights and responsibilities relevant to varied communication content. Utilizes strategies to teach students about the importance of freedom of speech in a democratic society and the rights and responsibilities of communicators.

(2) Understands the writing process as it relates to journalism (e.g., brainstorming, questioning, reporting, gathering and synthesizing information, writing, editing, and evaluating the final media product).

(3) Understands a variety of forms of journalistic writing (e.g., news, sports, features, opinion, Web-based) and the appropriate styles (e.g., Associated Press, multiple sources with attribution, punctuation) and additional forms unique to journalism (e.g., headlines, cutlines, and/or visual presentations).

~~*h. Mass media production.*~~

~~(1) Understands the role of the media in a democracy and the importance of preserving that role.~~

~~(2) Understands how to interpret and analyze various types of mass media messages in order for students to become critical consumers.~~

~~(3) Develops the technological skills needed to package media products effectively using various forms of journalistic design with a range of visual and auditory methods.~~

~~*i.*~~ *g. Reading strategies (if not completed as part of the professional education core requirements).*

(1) Uses a variety of skills and strategies to comprehend and interpret complex fiction, nonfiction and informational text.

(2) Reads for a variety of purposes and across content areas.

ITEM 3. Amend subrule 13.28(7) as follows:

**13.28(7)** ~~*Foreign*~~ *World language.* K-8 and 5-12. Completion of 24 semester hours in each ~~foreign~~ world language for which endorsement is sought.

ITEM 4. Amend subrule 13.28(17) as follows:

**13.28(17)** *Science.*

*a.* to *d.* No change.

~~*e. Basic science.* 5-12. Completion of 24 semester hours of credit in science to include the following:~~

~~(1) Six semester hours of credit in earth and space science to include the following essential concepts and skills:~~

~~1. Understand and apply knowledge of energy in the earth system.~~

~~2. Understand and apply knowledge of geochemical cycles.~~

~~(2) Six semester hours of credit in life science/biological science to include the following essential concepts and skills:~~

~~1. Understand and apply knowledge of the cell.~~

~~2. Understand and apply knowledge of the molecular basis of heredity.~~

~~3. Understand and apply knowledge of the interdependence of organisms.~~

~~4. Understand and apply knowledge of matter, energy, and organization in living systems.~~

~~5. Understand and apply knowledge of the behavior of organisms.~~

~~(3) Six semester hours of credit in physics/physical science to include the following essential concepts and skills:~~

~~1. Understand and apply knowledge of the structure of atoms.~~

~~2. Understand and apply knowledge of the structure and properties of matter.~~

~~3. Understand and apply knowledge of motions and forces.~~

~~4. Understand and apply knowledge of interactions of energy and matter.~~

~~(4) Six semester hours of credit in chemistry to include the following essential concepts and skills:~~

~~1. Understand and apply knowledge of chemical reactions.~~

~~2. Be able to design and conduct scientific investigations.~~

~~*f. Physical science.* Rescinded IAB 11/14/12, effective 12/19/12.~~

~~*g.*~~ *e. Physics.*

(1) 5-12. Completion of 24 semester hours in physics or 30 semester hours in the broad area of science to include 15 semester hours in physics.

(2) For holders of the mathematics 5-12 endorsement, completion of:

1. 12 credits of physics to include coursework in mechanics, electricity, and magnetism; and

2. A methods class that includes inquiry-based instruction, resource management, and laboratory safety.

(3) For holders of the chemistry 5-12 endorsement, completion of 12 credits of physics to include coursework in mechanics, electricity, and magnetism.

~~*h. All science I.* Rescinded IAB 11/14/12, effective 12/19/12.~~

~~*i.*~~ *f. All science.* 5-12.

(1) Completion of ~~36~~ 24 semester hours of credit in science to include the following:

1. ~~Nine~~ Six semester hours of credit in earth and space science to include the following essential concepts and skills:

- Understand and apply knowledge of energy in the earth system.
- Understand and apply knowledge of geochemical cycles.

- Understand and apply knowledge of the origin and evolution of the earth system.
- Understand and apply knowledge of the origin and evolution of the universe.

2. ~~Nine~~ Six semester hours of credit in life science/biological science to include the following essential concepts and skills:

- Understand and apply knowledge of the cell.
- Understand and apply knowledge of the molecular basis of heredity.
- Understand and apply knowledge of the interdependence of organisms.
- Understand and apply knowledge of matter, energy, and organization in living systems.
- Understand and apply knowledge of the behavior of organisms.
- Understand and apply knowledge of biological evolution.

3. ~~Nine~~ Six semester hours of credit in ~~physics/physical science~~ physics to include the following essential concepts and skills:

- Understand and apply knowledge of the structure of atoms.
- Understand and apply knowledge of the structure and properties of matter.
- Understand and apply knowledge of motions and forces.
- Understand and apply knowledge of interactions of energy and matter.
- Understand and apply knowledge of conservation of energy and increase in disorder.

4. ~~Nine~~ Six semester hours of credit in chemistry to include the following essential concepts and skills:

- Understand and apply knowledge of chemical reactions.
- Be able to design and conduct scientific investigations.

(2) Pedagogy competencies.

1. Understand the nature of scientific inquiry, its central role in science, and how to use the skills and processes of scientific inquiry.

2. Understand the fundamental facts and concepts in major science disciplines.

3. Be able to make conceptual connections within and across science disciplines, as well as to mathematics, technology, and other school subjects.

4. Be able to use scientific understanding when dealing with personal and societal issues.

ITEM 5. Amend paragraph **13.28(18)"k"** as follows:

*k. All social sciences.* 5-12. Completion of ~~51~~ 24 semester hours in the social sciences to include ~~9~~ 6 semester hours in ~~each of~~ American ~~and world~~ history~~, 9 semester hours in~~ and 3 semester hours in each of world history, American government, ~~6 semester hours in~~ sociology, ~~6 semester hours in~~ psychology other than educational psychology, ~~6 semester hours in~~ geography, and ~~6 semester hours in~~ economics to include financial literacy.

ITEM 6. Amend subrules 13.28(21) and 13.28(22) as follows:

**13.28(21)** *Elementary school teacher librarian.*

*a. Authorization.* The holder of this endorsement is authorized to serve as a teacher librarian in prekindergarten through grade eight.

*b. Content.* Completion of 24 semester hours in school library coursework to include the following:

(1) Literacy and reading. This requirement includes the following competencies:

1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy in children.

2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading among children, based on familiarity with selection tools and current trends in literature for children.

(2) Information and knowledge. This requirement includes the following competencies:

1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.

2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.

3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.

4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.

5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.

6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.

7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.

(3) Program administration and leadership. This requirement includes the following competencies:

1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.

2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.

3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users.

4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

(4) Practicum. This requirement includes the following competencies:

1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the elementary level.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the elementary level.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the elementary level.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula at the elementary level.

*c. K-8 reading endorsement.* Holders of the K-8 reading endorsement must complete 12 semester hours to include the requirements in subparagraphs 13.28(21)*"b"*(2) and (3) above.

**13.28(22)** *Secondary school teacher librarian.*

*a. Authorization.* The holder of this endorsement is authorized to serve as a teacher librarian in grades five through twelve.

*b. Content.* Completion of 24 semester hours in school library coursework to include the following:

(1) Literacy and reading. This requirement includes the following competencies:

1. Practitioners collaborate with other teachers to integrate developmentally appropriate literature in multiple formats to support literacy in young adults.

2. Practitioners demonstrate knowledge of resources and strategies to foster leisure reading and model personal enjoyment of reading among young adults, based on familiarity with selection tools and current trends in literature for young adults.

(2) Information and knowledge. This requirement includes the following competencies:

1. Practitioners teach multiple strategies to locate, analyze, evaluate, and ethically use information in the context of inquiry-based learning.

2. Practitioners advocate for flexible and open access to library resources, both physical and virtual.

3. Practitioners uphold and promote the legal and ethical codes of their profession, including privacy, confidentiality, freedom and equity of access to information.

4. Practitioners use skills and knowledge to assess reference sources, services, and tools in order to mediate between information needs and resources to assist learners in determining what they need.

5. Practitioners model and facilitate authentic learning with current and emerging digital tools for locating, analyzing, evaluating and ethically using information resources to support research, learning, creating, and communicating in a digital society.

6. Practitioners demonstrate knowledge of creative and innovative uses of technologies to engage students and facilitate higher-level thinking.

7. Practitioners develop an articulated information literacy curriculum grounded in research related to the information search process.

(3) Program administration and leadership. This requirement includes the following competencies:

1. Practitioners evaluate and select print, nonprint, and digital resources using professional selection tools and evaluation criteria to develop and manage a quality collection designed to meet the diverse curricular, personal, and professional needs of the educational community.

2. Practitioners demonstrate knowledge necessary to organize the library collections according to current standard library cataloging and classification principles.

3. Practitioners develop policies and procedures to support ethical use of information, intellectual freedom, selection and reconsideration of library materials, and the privacy of users.

4. Practitioners develop strategies for working with regular classroom teachers, support services personnel, paraprofessionals, and other individuals involved in the educational program.

(4) Practicum. This requirement includes the following competencies:

1. Practitioners apply knowledge of learning styles, stages of human growth and development, and cultural influences of learning at the secondary level.

2. Practitioners implement the principles of effective teaching and learning that contribute to an active, inquiry-based approach to learning in a digital environment at the secondary level.

3. Practitioners understand the teacher librarian role in curriculum development and the school improvement process at the secondary level.

4. Practitioners collaborate to integrate information literacy and emerging technologies into content area curricula at the secondary level.

*c. 5-12 reading endorsement.* Holders of the 5-12 reading endorsement must complete 12 semester hours to include the requirements in subparagraphs 13.28(22)*"b"*(2) and (3) above.

ITEM 7. Amend subrule 13.28(25) as follows:

**13.28(25)** *American Sign Language endorsement.*

*a. Authorization.* The holder of this endorsement is authorized to teach American Sign Language in kindergarten and grades one through twelve.

*b. Content.* Completion of 18 semester hours of coursework in American Sign Language to include the following:

(1) Second language acquisition.

(2) Sociology of the deaf community.

(3) Linguistic structure of American Sign Language.

(4) Language teaching methodology specific to American Sign Language.

(5) Teaching the culture of deaf people.

(6) Assessment of students in an American Sign Language program.

~~*c. Other.* Be the holder of or be eligible for one other teaching endorsement.~~

ITEM 8. Rescind and reserve subrule **13.28(30)**.

**ARC 4867C**

# INSPECTIONS AND APPEALS DEPARTMENT[481]

**Notice of Intended Action**

**Proposing rule making related to regulation of elder group homes, assisted living programs, and adult day services and providing an opportunity for public comment**

The Inspections and Appeals Department hereby proposes to amend Chapter 67, "General Provisions for Elder Group Homes, Assisted Living Programs, and Adult Day Services," Chapter 68, "Elder Group Homes," Chapter 69, "Assisted Living Programs," and Chapter 70, "Adult Day Services," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 10A.104, 231B.2, 231C.3 and 231D.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 231B, 231C and 231D.

*Purpose and Summary*

The Department completed a review of Chapters 67 and 69 in conjunction with input received from industry stakeholders. The proposed amendments to Chapter 67 expressly direct programs that handle, store, or administer controlled substances to be registered with the Iowa Board of Pharmacy pursuant to 657—Chapter 10, "Controlled Substances," in accordance with the Board's standing interpretation of its rules; revise the types of personnel permitted to administer medications from any certified or noncertified staff in accordance with nurse delegation procedures to certified medication aides or medication managers; modify the time frames for investigation of complaints or program-reported incidents depending on the severity of the potential regulatory insufficiency; clarify the contents of the plan of correction with respect to detailing how regulatory insufficiencies will be corrected; and remove citations to previously rescinded rules.

The proposed amendments to Chapter 69 clarify the policies and procedures that programs shall have in place, including requiring that programs have a policy and procedure for extraordinary lifesaving measures; clarify that annual updates to service plans shall include a process of reviewing, updating if necessary, and signing and dating the service plan; require that perishable or potentially hazardous foods be cooked to and held at recommended and safe temperatures; update managed risk policy and consensus agreements so that they may be used when tenant decision making could result in poor tenant outcomes; and also make nonsubstantive changes to make rules easier to read.

The proposed amendments to Chapters 68 and 70 update internal citations to Chapter 67 resulting from the proposed amendments noted above.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 481—Chapter 6.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Ashleigh Hackel
Iowa Department of Inspections and Appeals
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0083
Email: ashleigh.hackel@dia.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule 481—67.2(231B,231C,231D) as follows:

**481—67.2(231B,231C,231D) Program policies and procedures, including those for incident reports.** A program's policies and procedures must meet the minimum standards set by applicable requirements. ~~The program shall follow the policies and procedures established by a program.~~ All programs shall have policies and procedures related to the reporting of incidents including allegations of dependent adult abuse.

**67.2(1)** and **67.2(2)** No change.

**67.2(3)** The program shall follow the policies and procedures established by the program.

ITEM 2. Amend rule 481—67.5(231B,231C,231D) as follows:

**481—67.5(231B,231C,231D) Medications.**

**67.5(1)** If a program handles, stores, or administers controlled substances, the program shall be registered with the Iowa board of pharmacy as a care facility in accordance with 657—Chapter 10.

**67.5(2)** Each program shall follow its own written medication policy, which shall include the following:

~~**67.5(1)**~~ *a.* The program shall not prohibit a tenant from self-administering medications.

~~**67.5(2)**~~ *b.* A tenant shall self-administer medications unless:

~~*a.*~~ (1) The tenant or the tenant's legal representative delegates in the occupancy agreement or signed service plan any portion of medication setup to the program.

~~*b.*~~ (2) The tenant delegates medication setup to someone other than the program.

~~*c.*~~ (3) The program assumes partial control of medication setup at the direction of the tenant. The medication plan shall not be implemented by the program unless the program's registered nurse deems it appropriate under applicable requirements, including those in Iowa Code section 231C.16A and subrule 67.9(4). The program's registered nurse must agree to the medication plan.

~~**67.5(3)**~~ *c.* A tenant shall keep medications in the tenant's possession unless the tenant or the tenant's legal representative, if applicable, delegates in the occupancy agreement or signed service plan partial or complete control of medications to the program. The service plan shall include the tenant's choice related to storage.

~~**67.5(4)**~~ *d.* When a tenant has delegated medication administration to the program, the program shall maintain a list of the tenant's medications. If the tenant self-administers medications, the tenant may choose to maintain a list of medications in the tenant's apartment or to disclose a current list of medications to the program for the purpose of emergency response. If the tenant discloses a medication list to the program in case of an emergency, the tenant remains responsible for the accuracy of the list.

~~**67.5(5)**~~ *e.* When medication setup is delegated to the program by the tenant, staff via nurse delegation may transfer medications from the original prescription containers or unit dosing into medication reminder boxes or medication cups.

~~**67.5(6)**~~ *f.* When medications are administered traditionally by the program:

~~*a.*~~ (1) The administration of medications shall be provided by a registered nurse, licensed practical nurse or advanced registered nurse practitioner registered in Iowa, ~~or~~ by ~~certified and noncertified staff in accordance with subrule 67.9(4)~~ an individual who has successfully completed a department-approved medication aide or medication manager course and passed the respective department-approved medication aide or manager examination, or by a physician assistant (PA) in accordance with 645—Chapter 327. Injectable medications shall be administered as permitted by Iowa law by a registered nurse, licensed practical nurse, advanced registered nurse practitioner, physician, pharmacist, or physician assistant (PA).

~~*b.*~~ (2) Medications shall be kept in a locked place or container that is not accessible to persons other than employees responsible for the administration or storage of such medications.

~~*c.*~~ (3) The program shall maintain a list of each tenant's medications and document the medications administered.

~~*d.*~~ (4) Medications and treatments shall be administered as prescribed by the tenant's physician, advanced registered nurse practitioner or physician assistant.

~~**67.5(7)**~~ *g.* Narcotics protocol, including destruction and reconciliation, shall be determined by the program's registered nurse.

ITEM 3. Amend subrule 67.11(3) as follows:

**67.11(3)** *Time frames for investigation of complaints or program-reported incident reports.* Upon receipt of a complaint or program-reported incident report made in accordance with this rule, the department shall conduct a preliminary review of the complaint or report to determine if a potential regulatory insufficiency has occurred. If a potential regulatory insufficiency exists, the department shall institute a monitoring of the program within ~~20 working days unless there is the possibility of immediate danger, in which case the department shall institute a monitoring of the program within~~ the following time frames: within 2 working days of receipt of the complaint or incident report if there is the possibility of immediate danger, including that the potential regulatory insufficiency has caused or is likely to cause serious injury, harm, impairment, or death to a resident; or within 20 working days of receipt of the complaint or incident report if the potential regulatory insufficiency has caused or may cause harm that negatively impacts a tenant's mental, physical, or psychosocial status or function and is of such consequence to the tenant's well-being that a rapid response is warranted; or within 45 working days of receipt of the complaint or incident report for any other complaint or incident investigation, including a potential regulatory insufficiency that may have caused harm of limited consequence and does not significantly impair the tenant's mental, physical, or psychosocial status or function.

ITEM 4. Amend subparagraph **67.13(3)"a"(1)** as follows:

(1) Elements detailing how the program will correct each regulatory insufficiency at the system level;

ITEM 5. Amend subrules 67.17(4) and 67.17(5) as follows:

**67.17(4)** *Civil penalties due.* The civil penalty shall be paid to the department within 30 days following the program's receipt of the final report and demand letter. The program may appeal in

accordance with rule ~~481—67.12(17A,231B,231D) or~~ 481—67.14(17A,231C,85GA,SF394). If the program appeals, the civil penalty shall be deemed suspended until the appeal is resolved.

**67.17(5)** *Reduction of civil penalty amount by 35 percent.* If an assisted living program has been assessed a civil penalty, the civil penalty shall be reduced by 35 percent if both of the following requirements are met:

*a.* The program does not request a formal hearing pursuant to rule ~~481—67.12(17A,231B,231D) or~~ 481—67.14(17A,231C,85GA,SF394), or withdraws its request for formal hearing within 30 calendar days of the date that the civil penalty was assessed; and

*b.* The civil penalty is paid and payment is received by the department within 30 calendar days of receipt of the final report.

ITEM 6. Amend subparagraph **67.22(1)"b"(6)** as follows:

(6) Findings of fact, conclusions of law, decisions and orders issued pursuant to rules 481—67.10(17A,231B,231C,231D)~~, 481—67.12(17A,231B,231C,231D),~~ and 481—67.13(17A,231B, 231C,231D);

ITEM 7. Amend paragraph **68.16(1)"j"** as follows:

*j.* Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~ 481—paragraph 67.5(2)*"d"*;

ITEM 8. Amend subrule 69.2(2) as follows:

**69.2(2)** *Dementia-specific programs and door alarms.* If a program meets the definition of a dementia-specific assisted living program during two sequential certification monitorings, the program shall meet all requirements for a dementia-specific program, including the requirements set forth in rule 481—69.30(231C), subrules 69.29(2) and 69.29(4), paragraph 69.35(1)*"d,"* and subrules 69.32(2) and 69.32(3), which include the requirements relating to door alarms and specialized locking systems, within 90 days of receiving the final report from the second sequential certification monitoring.

ITEM 9. Amend rule 481—69.4(231C) as follows:

**481—69.4(231C) Nonaccredited program—application content.** An application for certification or recertification of a nonaccredited program shall include the following:

**69.4(1)** to **69.4(19)** No change.

**69.4(20)** The policy and procedure for addressing sexual relationships between tenants and staff ~~or~~, and between tenants with dementia greater than Stage 5 on the Global Deterioration Scale.

**69.4(21)** The policy and procedure for extraordinary lifesaving measures, such as cardiopulmonary resuscitation (CPR).

**69.4(22)** The program shall follow the policies and procedures established.

ITEM 10. Amend rule 481—69.22(231C) as follows:

**481—69.22(231C) Evaluation of tenant.**

**69.22(1)** *Evaluation prior to occupancy.* A program shall evaluate each prospective tenant's functional, cognitive and health status prior to the tenant's signing the occupancy agreement and taking occupancy of a dwelling unit in order to determine the tenant's eligibility for the program, including whether the services needed are available. The cognitive evaluation shall utilize a scored, objective tool. When the score from the cognitive evaluation indicates moderate cognitive decline and risk, the Global Deterioration Scale shall be used at all subsequent intervals, if applicable. If the tenant subsequently returns to the tenant's mildly cognitively impaired state, the program may discontinue the GDS and revert to a scored cognitive screening tool. The evaluation shall be conducted by a health care professional ~~or~~, a human service professional, or a licensed practical nurse via nurse delegation.

**69.22(2)** *Evaluation within 30 days of occupancy ~~and with significant change~~.* A program shall evaluate each tenant's functional, cognitive and health status within 30 days of occupancy. The evaluation shall be conducted by a health care professional, a human service professional, or a licensed practical nurse via nurse delegation when the tenant has not exhibited a significant change.

**69.22(3)** *Evaluation annually and with significant change.* A program shall ~~also~~ evaluate each tenant's functional, cognitive and health status as needed with significant change, but not less than annually, to determine the tenant's continued eligibility for the program and to determine any changes to services needed. The evaluation shall be conducted by a health care professional ~~or~~, a human service professional, or a licensed practical nurse via nurse delegation when the tenant has not exhibited a significant change. A licensed practical nurse ~~may~~ shall not complete the evaluation ~~via nurse delegation~~ when the tenant has ~~not~~ exhibited a significant change.

ITEM 11. Amend paragraph **69.25(1)"j"** as follows:

*j.* Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~ 481—paragraph 67.5(2)*"d"*;

ITEM 12. Adopt the following **new** paragraph **69.26(3)"e"**:

*e.* The service plan shall be reviewed, updated if necessary, and signed and dated by all parties at least annually.

ITEM 13. Adopt the following **new** subrule 69.28(8):

**69.28(8)** All perishable or potentially hazardous food shall be cooked to recommended temperatures and held at safe temperatures of 41°F (5°C) or below, or 135°F (57°C) or above.

ITEM 14. Amend subrule 69.31(1) as follows:

**69.31(1)** An acknowledgment of the shared responsibility for identifying and meeting the needs of the tenant and the process for managing risk and for upholding tenant autonomy when tenant decision making ~~results~~ could result in poor outcomes for the tenant or others; and

ITEM 15. Amend paragraph **70.25(1)"j"** as follows:

*j.* Medication lists, which shall be maintained in conformance with ~~481—subrule 67.5(4)~~ 481—paragraph 67.5(2)*"d"*;

## ARC 4863C

# LABOR SERVICES DIVISION[875]

### Notice of Intended Action

### Proposing rule making related to boiler and pressure vessel codes and providing an opportunity for public comment

The Boiler and Pressure Vessel Board hereby proposes to amend Chapter 90, "Administration of the Boiler and Pressure Vessel Program," and Chapter 91, "General Requirements for All Objects," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 89.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 89.

*Purpose and Summary*

These proposed amendments adopt by reference the most recent versions of national consensus codes pertaining to boilers and pressure vessels. The proposed adoption of new codes is due to significant changes regarding the design, manufacture, installation, and inspection requirements. Due to the quantity and wide range of the revisions, please contact the Division of Labor Services with any specific questions about the revisions.

LABOR SERVICES DIVISION[875](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to 875—Chapter 81.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 5, 2020. Comments should be directed to:

Kathleen Uehling
Division of Labor Services
150 Des Moines Street
Des Moines, Iowa 50309-0209
Email: kathleen.uehling@iwd.iowa.gov

*Public Hearing*

If requested, a public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 5, 2020 | 150 Des Moines Street |
| 9 a.m. | Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 90.6(1) as follows:

**90.6(1)** *General.* All boilers and unfired steam pressure vessels covered by Iowa Code chapter 89 shall be inspected according to the requirements of the National Board Inspection Code ~~(2015)~~ (2019), which is hereby adopted by reference. A division inspector or special inspector must perform the inspections.

ITEM 2. Amend subrule 91.1(1) as follows:

**91.1(1)** *ASME boiler and pressure vessel codes adopted by reference.* The ASME Boiler and Pressure Vessel Code ~~(2017)~~ (2019) is adopted by reference. Regulated objects shall be designed and

constructed in accordance with the ASME Boiler and Pressure Vessel Code ~~(2017)~~ (2019) except for objects that meet one of the following criteria:

*a.* An object with an ASME stamp and National Board Registration that establish compliance with an earlier version of the ASME Boiler and Pressure Vessel Code;

*b.* A miniature boiler installed before March 31, 1967;

*c.* A power boiler or unfired steam pressure vessel installed before July 4, 1951; or

*d.* A steam heating boiler, hot water heating boiler, or hot water supply boiler installed before July 1, 1960.

ITEM 3. Amend subrules 91.1(3) to 91.1(6) as follows:

**91.1(3)** *Inspection code adopted by reference.* The National Board Inspection Code ~~(2017)~~ (2019) is adopted by reference, and reinstallations, installations, alterations, and repairs after ~~September 1, 2018~~ April 15, 2020, shall comply with it.

**91.1(4)** *Electric code adopted by reference.* The National Electrical Code ~~(2017)~~ (2020) is adopted by reference, and reinstallations and installations after ~~September 1, 2018~~ April 15, 2020, shall comply with it.

**91.1(5)** *Piping codes adopted by reference.* The Power Piping Code, ASME B31.1 ~~(2016)~~ (2018), and the Building Services Piping Code, ASME B31.9 (2017), are adopted by reference, and reinstallations and installations after ~~September 1, 2018~~ April 15, 2020, shall comply with them up to and including the first valve.

**91.1(6)** *Control and safety device code adopted by reference.* Controls and Safety Devices for Automatically Fired Boilers (CSD-1) ~~(2015)~~ (2018) is adopted by reference, and reinstallations and installations after ~~September 1, 2018~~ April 15, 2020, shall comply with it. Reporting requirements concerning CSD-1 are set forth at rule 875—90.11(89).

ITEM 4. Amend subrules 91.1(10) and 91.1(11) as follows:

**91.1(10)** *Liquefied petroleum gas code adopted by reference.* National Fire Protection Association Liquefied Petroleum Gas Code, NFPA 58 ~~(2017)~~ (2020), is adopted by reference, and installations and reinstallations after ~~September 1, 2018~~ April 15, 2020, shall comply with it.

**91.1(11)** *Boiler and combustion systems hazards code adopted by reference.* National Fire Protection Association Boiler and Combustion Systems Hazards Code, NFPA 85 ~~(2015)~~ (2019), is adopted by reference, and installations and reinstallations after ~~April 1, 2016~~ April 15, 2020, shall comply with it.

## ARC 4866C

# LAW ENFORCEMENT ACADEMY[501]

**Notice of Intended Action**

**Proposing rule making related to five-year review of rules and providing an opportunity for public comment**

The Law Enforcement Academy hereby proposes to amend Chapter 1, "Organization and Administration," Chapter 2, "Minimum Standards for Iowa Law Enforcement Officers," Chapter 3, "Certification of Law Enforcement Officers"; to rescind Chapter 6, "Decertification," and Chapter 7, "Public Records and Fair Information Practices," Iowa Administrative Code, and to adopt new Chapters 6 and 7 with the same titles; and to amend Chapter 8, "Mandatory In-Service Requirements," and Chapter 10, "Reserve Peace Officers."

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 80B.11 and 80D.4A.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 22.11, 80B.11 and 80D.4A.

LAW ENFORCEMENT ACADEMY[501](cont'd)

*Purpose and Summary*

The Iowa Law Enforcement Academy has completed a five-year review of its administrative rules. The rules in Chapter 1 are proposed to be amended to comply with changes made to the rules in Chapter 6. The rules in Chapter 2 are proposed to be amended to provide clarity to law enforcement agencies and the public regarding qualifications necessary to become a certified officer in the State of Iowa. The rules in Chapter 3 are proposed to be updated to reflect the current curriculum of the Law Enforcement Academy. The rules in Chapter 6 are proposed to be updated to reflect the current decertification procedures employed by the Law Enforcement Academy. The rules in Chapter 7 are proposed to be updated to assist the public in making records requests of the Law Enforcement Academy. The rules in Chapter 8 are proposed to be updated to reflect changes made in the requirements for mandatory reporter training. The rules in Chapter 10 are proposed to be amended to make the rules governing reserve peace officers consistent with the rules governing regular peace officers.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Council for a waiver of the discretionary provisions, if any, pursuant to 501—Chapter 16.

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Council no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Russell Rigdon
Iowa Law Enforcement Academy
Building 4640
P.O. Box 130
Johnston, Iowa 50131
Phone: 515.725.9600
Email: russell.rigdon@iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

LAW ENFORCEMENT ACADEMY[501](cont'd)

The following rule-making actions are proposed:

ITEM 1. Amend rule **501—1.1(80B)**, definitions of "Law enforcement officer" and "Presiding officer," as follows:

*"Law enforcement officer"* means an officer appointed by the director of the department of natural resources; an officer appointed by the director of the Iowa law enforcement academy and sworn in for the purposes of training; a member of a police force or other agency or department of the state, county, or city regularly employed as such and who is responsible for the prevention and detection of crime and the enforcement of the criminal laws of this state; and all individuals, as determined by the council, who by the nature of their duties may be required to perform the duties of a peace officer.

*"Presiding officer"* means ~~the person or group presiding over a contested case~~ an administrative law judge employed by the Iowa department of inspections and appeals or the full council or a three-member panel of the council.

ITEM 2. Adopt the following **new** definitions of "Convicted" and "Proposed decision" in rule **501—1.1(80B)**:

*"Convicted"* or *"conviction"* means a finding of guilt, a plea of guilty, a deferred judgment, a deferred or suspended sentence, and an adjudication of delinquency as a juvenile.

*"Proposed decision"* means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the full council did not preside.

ITEM 3. Amend subrule 1.6(4) as follows:

**1.6(4)** *Quorum and majority vote.* A quorum shall consist of two-thirds of the currently appointed voting members of the council. Action of the council must be approved by a simple majority of the voting members present.

ITEM 4. Rescind subrule 2.1(5) and adopt the following **new** subrule in lieu thereof:

**2.1(5)** Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted on local, state and national fingerprint files and has not been convicted of a felony or a crime involving moral turpitude. "Moral turpitude" is defined as an act of baseness, vileness, or depravity in the private and social duties which a person owes to another person or to society in general, contrary to the accepted and customary rule of right and duty between person and person. Moral turpitude is conduct that is contrary to justice, honesty or good morals.

*a.* The following nonexclusive list of acts has been found by the Iowa law enforcement academy council to involve moral turpitude:

(1) Any felony. As used in this section, the word "felony" means any offense punishable in the jurisdiction where it occurred by imprisonment for a term exceeding one year, but does not include any offense, other than an offense involving a firearm or explosive, classified as a misdemeanor under the laws of the state and punishable by a term of imprisonment of two years or less.

(2) A misdemeanor crime of domestic violence as defined by Iowa Code section 724.26(2)*"c,"* or other offenses of domestic violence.

(3) An adjudication of delinquency as a juvenile based on conduct that would constitute a felony if committed by an adult.

(4) Assault or harassment.

(5) Stalking.

(6) Any offense in which a weapon was used in the commission.

(7) Income tax evasion.

(8) Perjury or its subornation.

(9) Theft, aggravated theft, fraudulent practices, robbery or burglary.

(10) Any sex crime or crime listed in Iowa Code chapter 709.

(11) Conspiracy or solicitation to commit a crime listed in this rule.

(12) Defrauding the government.

(13) Delivering, manufacturing or possessing with the intent to deliver or manufacture a controlled substance.

(14) Convictions by any other state or by the federal government under statutes substantially corresponding to the crimes listed in this rule.

(15) Any crime as an adult that resulted in the requirement of being listed on a sex offender registry.

(16) An adjudication of delinquency as a juvenile based on conduct that would constitute a crime as an adult that resulted in the requirement of being listed on a sex offender registry.

*b.* In determining whether to grant a waiver of subrule 2.1(5) under rule 501—16.3(17A,80B), the council shall consider in its analysis of numbered paragraph "4" of rule 501—16.3(17A,80B):

(1) The nature and seriousness of the crime;

(2) The time elapsed since the crime was committed;

(3) The degree of rehabilitation which has taken place since the crime was committed;

(4) The likelihood that the person will commit the same crime again;

(5) The number of criminal convictions; and

(6) Such additional factors as may in a particular case demonstrate mitigating circumstances or heightened risk to public safety.

ITEM 5. Amend paragraph **2.2(2)"a"** as follows:

*a.* The Minnesota Multiphasic Personality Inventory ~~(MMPI)~~ 2 (MMPI-2) test shall be taken by all applicants in the final selection process for a law enforcement position.

ITEM 6. Adopt the following **new** paragraph **2.2(3)"c"**:

*c.* The administration of the Stanard & Associates' National Police Officer Selection Test (POST) and the Minnesota Multiphasic Personality Inventory 2 (MMPI-2) shall be in accordance with directions of the Iowa law enforcement academy.

ITEM 7. Rescind and reserve subrule **2.2(4)**.

ITEM 8. Amend subrule 2.2(5) as follows:

**2.2(5)** *Personality tests.*

*a.* Those law enforcement agencies which choose to administer, score, or interpret the ~~MMPI~~ MMPI-2 without using the academy's testing services shall forward to the academy psychological testing information on any individual hired within 14 days of the date hired. Such information shall include, but not be limited to, all scores from ~~MMPI~~ MMPI-2 scales used in the evaluation, the ~~MMPI~~ MMPI-2 answer sheet, and any resulting reports.

*b.* The Minnesota Multiphasic Personality Inventory ~~(MMPI)~~ 2 (MMPI-2) test may be administered to applicants who are not in the final selection process.

ITEM 9. Amend paragraph **2.2(7)"b"** as follows:

*b.* Forwarding of Minnesota Multiphasic Personality Inventory ~~(MMPI)~~ 2 (MMPI-2) test results. The evaluation by the Iowa law enforcement academy of Minnesota Multiphasic Personality Inventory 2 tests will be available to any prospective employing agency upon request and proper waiver by the applicant for a minimal handling fee.

ITEM 10. Amend paragraph **2.2(8)"a"** as follows:

*a.* The Iowa law enforcement academy evaluations of the Minnesota Multiphasic Personality Inventory 2 may only be used for 12 months to comply with these testing rules. Any applicant who has not been hired or placed upon a civil service certified list within 12 months of taking the Minnesota Multiphasic Personality Inventory 2 test must retake the examination and, before the applicant is hired, the results of the examination must be considered by the hiring authority.

ITEM 11. Amend rule 501—3.3(80B) as follows:

**501—3.3(80B) Standard certifying courses for approved law enforcement facilities.** The standard certifying courses of study at an approved law enforcement training facility are:

1. The long course, consisting of ~~417~~ 620 hours to be completed within a ~~20-week~~ 25-week period; and

2. The short course, consisting of ~~326~~ 400 hours to be completed within a ~~16-week~~ 20-week period.

LAW ENFORCEMENT ACADEMY[501](cont'd)

ITEM 12. Amend subrule 3.4(1) as follows:

**3.4(1)** Have satisfactorily completed a two-year or four-year police science or criminal justice program of which at least 20 credit hours were dedicated to police science or criminal justice coursework at an accredited educational institution and documentation furnished to the academy.

ITEM 13. Rescind rule 501—3.5(80B) and adopt the following **new** rule in lieu thereof:

**501—3.5(80B) Curriculum for long course.**

**3.5(1)** *Program administration* . . . . . 24 hours
- *a.* Duty assignments.
- *b.* Examinations.
- *c.* Family day.
- *d.* Graduation.
- *e.* Registration/orientation.
- *f.* Student advisor meeting.

**3.5(2)** *Patrol procedures* . . . . . 55 hours
- *a.* Active shooter response training.
- *b.* Alcohol licensee compliance.
- *c.* Animal control procedures.
- *d.* Basic incident command (IS-100 and IS-700).
- *e.* Felony calls in progress (includes building searches).
- *f.* Fire calls.
- *g.* Gangs.
- *h.* Hazardous materials.
- *i.* Iowa system communication including NCIC (National Crime Information Center).
- *j.* Meth lab safety.
- *k.* Observation and perception.
- *l.* Patrol techniques and beat assignments.
- *m.* Radar enforcement.
- *n.* Radio communications.
- *o.* Terrorism awareness.
- *p.* Traffic direction.
- *q.* Traffic law enforcement.
- *r.* Weather preparedness.

**3.5(3)** *Tactical skills* . . . . . 188 hours
- *a.* Chemical spray.
- *b.* Defensive tactics.
- *c.* Expandable baton training.
- *d.* Firearms (including 6 hours of night fire).
- *e.* Firearms training simulator.
- *f.* Risk management.
- *g.* Vehicle operations.
- *h.* Vehicle stops (including 2 hours of night vehicle stops).

**3.5(4)** *Life skills* . . . . . 123 hours
- *a.* Below 100.
- *b.* Bloodborne pathogens.
- *c.* Blue courage.
- *d.* Crisis intervention training.
- *e.* Critical incident stress management.
- *f.* Federal color of law (aspects of use of force).
- *g.* Iowa law enforcement emergency care provider (minimum of 32 hours of classroom).
- *h.* Mental health emergencies.
- *i.* Physical training.

LAW ENFORCEMENT ACADEMY[501](cont'd)

*j.* Special needs population.
*k.* Stress management.
*l.* Survival awareness.

**3.5(5)** *Investigation.* . . . . . 112 hours
*a.* Bombing and arson.
*b.* Burglary.
*c.* Card fraud.
*d.* Collision investigation.
*e.* Crime scene search and recording.
*f.* Death investigation.
*g.* Document fraud.
*h.* Domestic abuse investigation (including 4 hours of practical).
*i.* Financial crimes.
*j.* Fingerprinting.
*k.* Forensic science and the DCI laboratory.
*l.* Hate crimes.
*m.* Human trafficking.
*n.* Insurance fraud.
*o.* Iowa lottery security.
*p.* Iowa missing persons.
*q.* Mandatory reporting of child and dependent adult abuse.
*r.* Narcotics investigation.
*s.* OWI enforcement (includes chemical testing, evidentiary breath testing device training and drug recognition for street officers).
*t.* Photography.
*u.* Sexual abuse investigation.
*v.* Stalking.
*w.* Standardized field sobriety testing.
*x.* Street intoxication.
*y.* Vehicle theft.

**3.5(6)** *Legal topics* . . . . . 67 hours
*a.* Civil liability.
*b.* Confessions and admissions.
*c.* Criminal law.
*d.* Juvenile law.
*e.* Law of arrest.
*f.* Motor vehicle law.
*g.* Narcotics law.
*h.* OWI legal.
*i.* Peace officer and management rights.
*j.* Procedural due process.
*k.* Rules of evidence.
*l.* Search and seizure.
*m.* Use of force.

**3.5(7)** *Communication skills* . . . . . 36 hours
*a.* Deaf culture.
*b.* Death notification.
*c.* Interviews and interrogations.
*d.* Moot court.
*e.* Report writing and investigative note-taking.
*f.* Social media.
*g.* Testifying in court.

LAW ENFORCEMENT ACADEMY[501](cont'd)

*h.* Verbal defense and influence.

**3.5(8)** *Foundations of American policing* . . . . . 15 hours

*a.* Community relations.
*b.* Court organization.
*c.* Cultural competency.
*d.* Discretion.
*e.* Ethics and professionalism.
*f.* Jail operations/corrections/civil process.
*g.* Race relations.
*h.* Unbiased policing

TOTAL HOURS: 620

This rule is intended to implement Iowa Code section 80B.11.

ITEM 14. Rescind rule 501—3.6(80B) and adopt the following **new** rule in lieu thereof:

**501—3.6(80B) Curriculum for short course.**

**3.6(1)** *Program administration* . . . . . 16 hours

*a.* Examinations.
*b.* Graduation.
*c.* Registration/orientation.

**3.6(2)** *Patrol procedures* . . . . . 35 hours

*a.* Active shooter response training.
*b.* Basic incident command.
*c.* Felony calls in progress (includes building searches).
*d.* Gangs.
*e.* Hazardous materials.
*f.* Iowa system communication including NCIC.
*g.* Meth labs.
*h.* Radar enforcement.
*i.* Radio communications.
*j.* Traffic direction.

**3.6(3)** *Tactical skills* . . . . . 128 hours

*a.* Chemical spray.
*b.* Defensive tactics.
*c.* Expandable baton training.
*d.* Firearms (including 6 hours of night fire).
*e.* Vehicle operations.
*f.* Vehicle stops (including 2 hours of night vehicle stops).

**3.6(4)** *Life skills* . . . . . 73 hours

*a.* Below 100.
*b.* Bloodborne pathogens.
*c.* Blue courage.
*d.* Crisis intervention training.
*e.* Iowa law enforcement emergency care provider (minimum of 32 hours of classroom).
*f.* Mental health.
*g.* Physical training.

**3.6(5)** *Investigation* . . . . . 56 hours

*a.* Collision investigation.
*b.* Crime scene search and recording.
*c.* Card fraud.
*d.* Death investigation.
*e.* Domestic abuse investigation (including 2 hours of practical).
*f.* Fingerprinting.

*g.* Human trafficking.
*h.* Iowa lottery security.
*i.* Mandatory reporting.
*j.* Narcotics investigation.
*k.* OWI enforcement (includes chemical testing, evidentiary breath testing device training and drug recognition for street officers).
*l.* Photography.
*m.* Sexual abuse investigation.

**3.6(6)** *Legal topics* . . . . . 57 hours
*a.* Confessions and admissions.
*b.* Criminal law.
*c.* Juvenile law.
*d.* Law of arrest.
*e.* Motor vehicle law.
*f.* Narcotics law.
*g.* OWI legal.
*h.* Rules of evidence.
*i.* Search and seizure.
*j.* Use of force.

**3.6(7)** *Communication skills* . . . . . 29 hours
*a.* Interviews and interrogations.
*b.* Report writing and investigative note-taking.
*c.* Testifying in court.
*d.* Verbal defense and influence.

**3.6(8)** *Foundations of American policing* . . . . . 6 hours
*a.* Cultural competency.
*b.* Ethics and professionalism.
*c.* Unbiased policing.

TOTAL HOURS: 400

This rule is intended to implement Iowa Code section 80B.11.

ITEM 15. Rescind 501—Chapter 6 and adopt the following **new** chapter in lieu thereof:

CHAPTER 6
DECERTIFICATION

**501—6.1(80B) Scope of rules.** The rules contained in this chapter pertaining to practices and procedures are designed to implement the requirements of Iowa Code chapters 80B and 17A. These rules shall govern the practice, procedures, and conduct of contested case proceedings held in the revocation of a law enforcement officer's certification.

**501—6.2(80B,80D) Grounds for revocation.**

**6.2(1)** *Mandatory revocation.* The council shall revoke a law enforcement officer's certification or a reserve peace officer's certification if:

*a.* The law enforcement officer or reserve peace officer pleads guilty to or is convicted of a felony;

*b.* The law enforcement officer or reserve peace officer manufactures, sells, or conspires to manufacture or sell an illegal drug other than an authorized act in connection with official duties;

*c.* The law enforcement officer or reserve peace officer pleads guilty to or is convicted of a crime constituting a misdemeanor crime of domestic violence or other domestic abuse including other offenses or lesser included offenses stemming from domestic abuse;

*d.* The law enforcement officer or reserve peace officer pleads guilty to or is convicted of any offense classified as a tier I, tier II, or tier III sex offense in Iowa Code chapter 692A.

**6.2(2)** *Discretionary revocation.* The director or the director's designee shall have the authority to conduct a preliminary inquiry and shall have the authority to determine which matters shall be referred to the council for consideration. The council, at its discretion, may revoke or suspend a law enforcement officer's or a reserve peace officer's certification under any of the following circumstances:

*a.* The law enforcement officer or reserve peace officer has been discharged for "good cause" from employment as a law enforcement officer or from appointment as a reserve peace officer.

*b.* The law enforcement officer or reserve peace officer leaves, voluntarily quits, or the officer's position is eliminated when disciplinary action was imminent or pending which could have resulted in the law enforcement officer being discharged or the reserve peace officer being removed for "good cause."

*c.* The law enforcement officer or reserve peace officer:

(1) Makes, tenders, or certifies to a material false statement in a document prescribed by the academy or otherwise provided for or authorized by these rules, or in any other document intended to induce the academy or the council to take or withhold action.

(2) Falsifies or makes misrepresentations on an employment application submitted to any Iowa law enforcement agency or any other public document required to be completed by the officer.

(3) Testifies falsely in any court of law or administrative hearing.

(4) Commits any act of moral turpitude as defined in 501—subrule 2.1(5). A copy of the record of conviction of or plea of guilty to a crime of moral turpitude shall be conclusive evidence; however, a conviction or plea of guilty is not required.

(5) Uses or possesses an illegal substance other than in connection with official duties.

(6) Fails to comply with the requirements of 501—Chapters 8 and 10 relative to in-service training.

(7) Is decertified in any other state where the law enforcement officer or reserve peace officer may be certified.

*d.* The law enforcement officer has failed to reimburse the employing agency for costs incurred by that agency, including fees paid to the academy, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy if the officer leaves that agency and is employed by another law enforcement agency within a period of four years following completion of the certification training, under the following conditions:

(1) A written agreement or contract of employment must be entered into by the officer and the employing agency contemporaneously with the date of employment. The agreement shall specifically provide for the reimbursement to the employing agency by the officer of the costs of training incurred by the employing agency, including fees paid to the Iowa law enforcement academy, clothing vendor costs, meal costs, uniform/equipment costs, and the officer's salary paid during the academy. The agreement must:

1. Specify the amount of reimbursement that the officer agrees to pay;

2. Set forth the time period within which this reimbursement will be made, which shall be on a declining scale similar to the provisions of Iowa Code section 384.15(7);

3. Contain a statement that if reimbursement is not made in accordance with the agreement, the officer understands that the employing agency may at its option seek the officer's decertification as an Iowa law enforcement officer; and

4. Contain a provision to the effect that the agreement or contract of employment is for bona fide employment of the officer and not for the purpose of achieving certification for the officer by way of "sponsorship" through the academy.

(2) A recommendation for decertification must be verified under oath by the administrator of the employing agency with which the officer contracted under this rule. The recommendation for decertification must contain the following information:

1. Have attached a copy of the agreement referred to in subparagraph 6.2(2)*"d"*(1) above;

2. Include an order of judgment from a small claims or civil court;

3. State that the officer has not made reimbursement to the employing agency as provided in the agreement, and clearly describe the nature of the default;

4. List an accounting of all payments made by the officer to the employing agency under the agreement, and specify the balance due;

5. State that written notice of the default or judgment has been given to the officer, that the officer has been provided opportunity to correct the default, and that there remains no reasonable alternative to decertification;

6. Specifically recommend that the council commence proceedings to decertify the officer, and state that the employing agency will do all things necessary to cooperate in this effort; and

7. Set out the last-known address of the officer, the officer's telephone number, and the officer's last-known place of employment.

(3) The recommendation for decertification must be submitted to the academy not more than one year after the date of the officer's default, unless the council, upon written application and for good cause shown, grants further time in which to submit the recommendation.

**501—6.3(80B,17A) Service and filing of pleadings and other papers.**

**6.3(1)** *Computation of time and filing of documents.* The computation of time and filing of documents shall be in compliance with Iowa Code section 4.1(34).

**6.3(2)** *Service—when required.* Except where otherwise provided by law, every document filed in a contested case proceeding shall be served upon each of the parties of record to the proceeding, simultaneously with its filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code section 17A.16(2), the party filing a document is responsible for service on all parties.

**6.3(3)** *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule, or order.

**6.3(4)** *Filing—when required.* After the notice of hearing, all documents in a contested case proceeding shall be filed with the council at Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa 50131. All documents that are required to be served upon a party shall be filed simultaneously with the council and, if the presiding officer is not the council, at a location designated by the presiding officer.

**6.3(5)** *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the council, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

**6.3(6)** *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

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

**501—6.4(80B,17A) Prehearing procedures.**

**6.4(1)** *Council subpoenas.* Prior to the commencement of a contested case, the council may exercise the authority to subpoena books, papers, and records and shall have all other subpoena powers conferred upon it by law.

**6.4(2)** *Commencement of contested case proceedings.* Contested case proceedings shall be commenced by the delivery of a notice by the council or its designee requiring the affected law enforcement officer to appear and show cause why certification to be a law enforcement officer in the state of Iowa should not be revoked or suspended. Notice may be given in the same manner as the service of original notice as provided in the Iowa Rules of Civil Procedure; by certified restricted mail, return receipt requested; by signed acknowledgment accepting service; or, when service cannot be accomplished using the aforementioned methods, notice of hearing shall be published once each week

for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the affected law enforcement officer. The first notice of hearing shall be published at least 30 days prior to the scheduled hearing.

The notice shall include:

*a.* A statement of the time, place and nature of the hearing;

*b.* A statement of the legal authority and jurisdiction under which the hearing is held;

*c.* A reference to the particular sections of the statutes and rules involved;

*d.* A short and plain statement of the grounds for revocation or suspension and relevant facts;

*e.* Reference to the procedural rules governing conduct of the contested case proceeding; and

*f.* Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer.

Notice may also be sent in the manner aforementioned or by ordinary mail to any other interested party. After the delivery of the notice commencing the contested case proceedings, the presiding officer may allow further response of pleadings by the party as, in the presiding officer's discretion, is deemed necessary and appropriate.

**6.4(3)** *Discovery.* The following discovery procedures available in the Iowa Rules of Civil Procedure are available to the parties: depositions upon oral examination or written questions; written interrogatories; production of documents, electronically stored information, and things; and requests for admission. Unless lengthened or shortened by the presiding officer, the time frames for discovery in the specific Iowa Rules of Civil Procedure govern those specific procedures.

*a.* Iowa Rules of Civil Procedure 1.701 through 1.717 regarding depositions shall apply to any depositions taken in a contested case proceeding. Any party taking a deposition in a contested case shall be responsible for any deposition costs, unless otherwise specified or allocated in an order. Deposition costs include, but are not limited to, reimbursement for mileage of the deponent, costs of a certified shorthand reporter, and expert witness fees, as applicable.

*b.* Iowa Rule of Civil Procedure 1.509 shall apply to any interrogatories propounded in a contested case proceeding.

*c.* Iowa Rule of Civil Procedure 1.512 shall apply to any requests for production of documents, electronically stored information, and things in a contested case proceeding.

*d.* Iowa Rule of Civil Procedure 1.510 shall apply to any requests for admission in a contested case proceeding. Iowa Rule of Civil Procedure 1.511 regarding the effect of an admission shall apply in contested case proceedings.

*e.* The mandatory disclosure and discovery conference requirements in Iowa Rules of Civil Procedure 1.500 and 1.507 do not apply to contested case proceedings. However, upon application by a party, the presiding officer may order the parties to comply with these procedures unless doing so would unreasonably complicate the proceedings or impose an undue hardship.

*f.* Iowa Rule of Civil Procedure 1.508 shall apply to discovery of any experts identified by a party to a contested case proceeding.

*g.* A party may file a motion to compel or other motion related to discovery in accordance with this subrule. Any motion filed with the presiding officer relating to discovery shall allege that the moving party has previously made a good-faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is lengthened or shortened by the presiding officer. The presiding officer may rule on the basis of the written motion and any response or may order argument on the motion.

*h.* Evidence obtained in such discovery may be used in contested case proceedings if the evidence would otherwise be admissible in the contested case proceedings.

**6.4(4)** *Presiding officer subpoenas.* The presiding officer may issue subpoenas to a party on request, as permitted by law, compelling the attendance of witnesses and the production of books, papers, records or other real evidence.

**6.4(5)** *Motions.* No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

*a.* Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the agency or the presiding officer.

*b.* The presiding officer may schedule oral arguments on any motion.

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

**6.4(6)** *Prehearing conference.* The presiding officer, upon its own motion or upon the written request of one of the parties, may, in the presiding officer's discretion and upon written notice, direct the parties to appear at a specified time and place before the presiding officer for a prehearing conference to consider:

*a.* The possibility or desirability of waiving any provision of these rules relating to contested case proceedings by written stipulation representing an informed mutual consent.

*b.* A necessity or desirability of setting a new date for hearing.

*c.* The simplification of issues.

*d.* The necessity or desirability of amending the pleadings for purposes of clarification, amplification or limitation.

*e.* The possibility of agreeing to the admission of facts, documents or records not substantially controverted, to avoid unnecessary introduction of proof.

*f.* The procedure at the hearing.

*g.* Limiting the number of witnesses.

*h.* The names and identification of witnesses and the facts each party will attempt to prove at the hearing.

*i.* Other matters as may aid in, expedite or simplify the disposition of the proceeding.

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

**501—6.5(80B,17A) Presiding officer.**

**6.5(1)** The presiding officer assigned to render a proposed decision will be an administrative law judge employed by the Iowa department of inspections and appeals. However, the council in its discretion may elect to preside over a case in lieu of an administrative law judge.

**6.5(2)** Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the Iowa department of inspections and appeals must file a written request within 20 days after service of a notice of hearing which identifies or describes the presiding officer as the council.

**6.5(3)** The council may deny the request only upon a finding that one or more of the following apply:

*a.* Neither the council nor any officer of the council under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

*b.* There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

*c.* An administrative law judge is unavailable to hear the case within a reasonable time.

*d.* The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

*e.* The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

*f.* Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

*g.* The request was not timely filed.

*h.* The request is not consistent with a specified statute.

**6.5(4)** The council shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least ten days prior to hearing if a qualified administrative law judge will not be available.

**6.5(5)** Unless otherwise provided by law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the council. A party must seek any available intra-agency appeal in order to exhaust adequate administrative remedies.

**6.5(6)** Unless otherwise provided by law, the council, when reviewing a proposed decision upon intra-agency appeal, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

**501—6.6(80B,17A) Disqualification.**

**6.6(1)** A presiding officer or council member shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

*a.* Has a personal bias or prejudice concerning a party or a representative of a party;

*b.* Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

*c.* Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

*d.* Has acted as counsel to any person who is a private party to that proceeding within the past two years;

*e.* Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

*f.* Has a spouse or relative within the third degree of relationship that:

(1) Is a party to the case, or an officer, director or trustee of a party;

(2) Is a lawyer in the case;

(3) Is known to have an interest that could be substantially affected by the outcome of the case; or

(4) Is likely to be a material witness in the case; or

*g.* Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

**6.6(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 and subrules 6.6(3) and 6.11(9).

**6.6(3)** In a situation where a presiding officer or council member knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

**6.6(4)** If a party asserts disqualification on any appropriate ground, including those listed in subrule 6.6(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code section 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party. If the presiding officer determines that disqualification is appropriate, the presiding officer or council member shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 501—6.12(80B,17A) and seek a stay under rule 501—6.16(80B,17A).

**501—6.7(80B,17A) Continuances.** A party has no automatic right to a continuance or delay of the council's hearing procedure or schedule. However, a party may request a continuance of the presiding officer prior to the date set for hearing. The presiding officer shall have the power to grant continuances.

Within seven days of the date set for hearing, no continuances shall be granted except for extraordinary, extenuating or emergency circumstances.

**501—6.8(80B,17A) Hearing procedures.**

**6.8(1)** Contested case proceeding. Unless the parties to a contested case proceeding have by written stipulation representing an informed mutual consent waived the provisions of the Act relating to the proceedings, contested case proceedings shall be initiated and culminate in an evidentiary hearing open to the public. Parties shall have been notified of the date and place of the hearing at least 30 days prior thereto.

*a.* Evidentiary hearings before the council shall be held at the council's principal office, Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa, except that a case may be assigned for hearing elsewhere when deemed necessary to afford a party an opportunity to appear at the hearing with as little inconvenience and expense as practicable.

*b.* Evidentiary hearings before an administrative law judge shall be held at an appropriate location designated by the department of inspections and appeals.

**6.8(2)** Conduct of the proceedings.

*a.* The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings. If the presiding officer is the council or a panel thereof, an administrative law judge from the Iowa department of inspections and appeals may be designated to assist the council in conducting proceedings under this chapter. An administrative law judge so designated may rule upon motions and other procedural matters and assist the council in conducting the hearings.

*b.* Evidentiary proceedings shall be oral and open to the public and shall be recorded either by mechanical means or by certified shorthand reporters. Parties requesting that the hearing be recorded by certified shorthand reporters shall bear the appropriate costs. The record of the oral proceedings or the transcription thereof shall be filed with and maintained by the council for at least five years from the date of the decision.

**6.8(3)** All objections shall be timely made and stated on the record.

**6.8(4)** Legal representation.

*a.* The law enforcement officer has a right to participate in all hearings or prehearing conferences and may be represented by an attorney or another person authorized by law. If the law enforcement officer is not represented by anyone qualified by these rules to make an appearance, the presiding officer shall explain to the law enforcement officer the rules of practice and procedure and generally conduct a hearing in a less formal manner than that used when a law enforcement officer has a representative qualified to appear. It should be the purpose of the presiding officer to assist any law enforcement officer who appears without a representative to the extent necessary to allow a fair presentation of evidence, testimony and arguments on the issues.

*b.* The office of the attorney general or an attorney designated by the director shall be responsible for prosecuting contested case proceedings under this chapter. The assistant attorney general or other designated attorney assigned to prosecute the contested case shall not represent the council in that case but shall represent the public interest.

**6.8(5)** Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in argument.

**6.8(6)** Witnesses may be sequestered during the hearing.

**6.8(7)** The presiding officer shall conduct the hearing in the following manner:

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

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

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

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

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

**501—6.9(80B,17A) Evidence.**

**6.9(1)** The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

**6.9(2)** Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

**6.9(3)** Evidence in the proceeding shall be confined to the issues concerning allegations raised on the face of petition for decertification as to which the parties received notice prior to the hearing.

**6.9(4)** The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties. All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

**6.9(5)** Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

**6.9(6)** Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

**501—6.10(80B,17A) Default.**

**6.10(1)** If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

**6.10(2)** Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

**6.10(3)** Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 501—6.14(80B,17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

**6.10(4)** The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

**6.10(5)** Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

**6.10(6)** "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

**6.10(7)** A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 501—6.12(80B,17A).

**6.10(8)** If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

**6.10(9)** A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues (but, unless the defaulting party has appeared, it cannot exceed the relief demanded).

**6.10(10)** A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 501—6.16(80B,17A).

**501—6.11(80B,17A) Ex parte communication.**

**6.11(1)** Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communication, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the council or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating, prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

**6.11(2)** Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

**6.11(3)** Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

**6.11(4)** To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 501—6.3(80B,17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

**6.11(5)** Council members acting as presiding officers may communicate with each other without notice or opportunity for parties to participate.

**6.11(6)** The director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 6.11(1).

**6.11(7)** Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 501—6.7(80B,17A).

**6.11(8)** Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each

person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order (or disclosed). If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

**6.11(9)** Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

**6.11(10)** The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the department. Violation of ex parte communication prohibitions by department personnel shall be reported to (agency to designate person to whom violations should be reported) for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

**501—6.12(80B,17A) Interlocutory appeals.** Upon written request of a party or on its own motion, the council may review an interlocutory order of the presiding officer. In determining whether to do so, the council shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the council at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

**501—6.13(80B,17A) Final decision.**

**6.13(1)** When the council presides over the reception of evidence at the hearing, its decision is a final decision.

**6.13(2)** When the council does not preside over the reception of evidence at the hearing, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the council without further proceedings unless there is an appeal to, or review on motion of, the council within the time provided in rule 501—6.14(80B,17A).

**6.13(3)** Final decisions shall be served on the affected law enforcement officer using one of the following methods: the same manner as the service of original notice as provided in the Iowa Rules of Civil Procedure; by certified restricted mail, return receipt requested; by signed acknowledgment accepting service; or, when service cannot be accomplished using the aforementioned methods, notice of hearing shall be published once each week for three consecutive weeks in a newspaper of general circulation, published or circulated in the county of last-known residence of the affected law enforcement officer. If the officer is represented by an attorney, the final decision shall be mailed to the attorney. The attorney may waive the requirement to serve the affected law enforcement officer through a written acknowledgment that the attorney is accepting service on behalf of the client.

**501—6.14(80B,17A) Appeals and review.**

**6.14(1)** *Appeal by party.* Any adversely affected party may appeal a proposed decision to the council within 30 days after issuance of the proposed decision.

**6.14(2)** *Review.* The council may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

**6.14(3)** *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the council. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

*a.* The parties initiating the appeal;

*b.* The proposed decision or order appealed from;

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

*d.* The relief sought; and

*e.* The grounds for relief.

**6.14(4)** *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a nonappealing party, within 14 days of service of the notice of appeal. The council may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

**6.14(5)** *Scheduling.* The council shall issue a schedule for consideration of the appeal.

**6.14(6)** *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter, any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs. The council may resolve the appeal on the briefs or provide an opportunity for oral argument. The council may shorten or extend the briefing period as appropriate.

**501—6.15(80B,17A) Application for rehearing.**

**6.15(1)** *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

**6.15(2)** *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the council decision on the existing record and whether, on the basis of the grounds enumerated in subrule 6.14(4), the applicant requests an opportunity to submit additional evidence.

**6.15(3)** *Time of filing.* The application shall be filed with the council within 20 days after issuance of the final decision.

**6.15(4)** *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the council shall serve copies on all parties.

**6.15(5)** *Disposition.* Any application for a rehearing shall be deemed denied unless the council grants the application within 20 days after its filing.

**501—6.16(80B,17A) Stays of council actions.**

**6.16(1)** *When available.*

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

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

**6.16(2)** *When granted.* In determining whether to grant a stay, the director or presiding officer shall consider the factors listed in Iowa Code section 17A.19(5).

**6.16(3)** *Vacation.* A stay may be vacated by the issuing authority upon application of the council or any other party.

**501—6.17(80B,17A) No factual dispute contested cases.** If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties,

without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

**501—6.18(80B,17A) Reinstatement.** Any person whose certification has been suspended may apply to the board for reinstatement in accordance with the terms and conditions of the order of suspension and this rule. Any person whose certification has been revoked is not eligible for reinstatement.

**6.18(1)** All proceedings for reinstatement shall be initiated by the law enforcement officer or reserve peace officer, who shall file with the academy council an application for reinstatement. Such application shall be docketed in the original case in which the certification was suspended. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the academy council.

**6.18(2)** An application for reinstatement shall allege facts which, if established, will be sufficient to enable the academy council to determine that the basis for the suspension of the law enforcement officer's or reserve peace officer's certification no longer exists and that it will be in the public interest for the certification to be reinstated. The burden of proof to establish such facts shall be on the law enforcement officer or reserve peace officer seeking reinstatement.

**6.18(3)** An order denying or granting reinstatement shall be based upon a decision which incorporates findings of fact and conclusions of law.

These rules are intended to implement Iowa Code chapters 17A and 80B.

ITEM 16. Rescind 501—Chapter 7 and adopt the following **new** chapter in lieu thereof:

## CHAPTER 7
## PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

**501—7.1(17A,22) Definitions.** As used in this chapter:

*"Agency"* means the Iowa law enforcement academy.

*"Confidential record"* means a record which is not available as a matter of right for examination and copying by members of the public under applicable provisions of law. Confidential records include records or information contained in records that the agency is prohibited by law from making available for examination by members of the public, and records or information contained in records that are specified as confidential by Iowa Code section 22.7, or other provision of law, but that may be disclosed upon order of a court, the lawful custodian of the record, or by another person duly authorized to release the record. Mere inclusion in a record of information declared confidential by an applicable provision of law does not necessarily make that entire record a confidential record.

*"Custodian"* means the Iowa law enforcement academy, or a person lawfully delegated authority by the Iowa law enforcement academy to act for the agency in implementing Iowa Code chapter 22.

*"Open record"* means a record other than a confidential record.

*"Personally identifiable information"* means information about or pertaining to an individual in a record which identifies the individual and which is contained in a record system.

*"Record"* means the whole or a part of a public record as defined in Iowa Code section 22.1.

*"Record system"* means any group of records under the control of the agency from which a record may be retrieved by a personal identifier such as the name of an individual, number, symbol, or other unique retriever assigned to an individual.

**501—7.2(17A,22) Statement of policy.** This chapter implements Iowa Code section 22.11 by establishing agency policies and procedures for the maintenance of records. The purpose of this chapter is to facilitate public access to open records. It also seeks to facilitate sound agency determinations with respect to the handling of confidential records and the implementation of the fair information practices

Act. This agency is committed to the policies set forth in Iowa Code chapter 22; agency staff shall cooperate with members of the public in implementing the provisions of that chapter.

**501—7.3(17A,22) Requests for access to records.**

**7.3(1)** *Location of record.* A request for access to a record should be directed to the office where the record is kept. If the location of the record is not known by the requester, the request shall be directed to the Iowa Law Enforcement Academy, P.O. Box 130, Camp Dodge, Johnston, Iowa 50131.

**7.3(2)** *Office hours.* Open records shall be available during customary office hours, which are 8 a.m. to 4:30 p.m. daily, excluding Saturdays, Sundays and legal holidays.

**7.3(3)** *Request for access.* A request for access to open records may be made in writing, by electronic mail, in person or by telephone. The request shall identify the particular records sought by name or description in order to facilitate the location of the record. Mail or telephone requests shall include the name, address, and telephone number of the person requesting the information. A person shall not be required to give a reason for requesting an open record.

**7.3(4)** *Response to requests.* Access to an open record shall be provided promptly upon request unless the size or nature of the request makes prompt access infeasible. If the size or nature of the request for access to an open record requires time for compliance, the custodian shall comply with the request as soon as feasible. Access to an open record may be delayed for one of the purposes authorized by Iowa Code section 22.8(4) or 22.10(4). The custodian shall promptly give notice to the requester of the reason for any delay in access to an open record and an estimate of the length of that delay and, upon request, shall promptly provide that notice to the requester in writing.

The custodian of a record may deny access to the record by members of the public only on the grounds that such a denial is warranted under Iowa Code sections 22.8(4) and 22.10(4), or that it is a confidential record, or that its disclosure is prohibited by a court order. Access by members of the public to a confidential record is limited by law and, therefore, may generally be provided only in accordance with the provisions of rule 501—7.6(17A,22) and other applicable provisions of law.

**7.3(5)** *Security of record.* No person may, without permission from the custodian, search or remove any record from agency files. Examination and copying of agency records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

**7.3(6)** *Copying.* A reasonable number of copies of an open record may be made in the agency's office. If photocopy equipment is not available in the agency office where an open record is kept, the custodian shall permit its examination in that office and shall arrange to have copies promptly made elsewhere.

**7.3(7)** *Fees.*

*a. When charged.* The agency may charge fees in connection with the examination or copying of records only if the fees are authorized by law. To the extent permitted by applicable provisions of law, the payment of fees may be waived when the imposition of fees is inequitable or when a waiver is in the public interest.

*b. Copying and postage costs.* Price schedules for published materials and for photocopies of records supplied by the agency shall be prominently posted in agency offices. Copies of records may be made by or for members of the public on agency photocopy machines or from electronic storage systems at cost as determined and posted in agency offices by the custodian. When the mailing of copies of records is requested, the actual costs of such mailing may also be charged to the requester.

*c. Search and supervisory fees.* Fees may be charged for actual agency expenses in searching for and supervising the examination and copying of requested records. The custodian shall notify the requester of the hourly fees to be charged for searching for records and supervision of records during examination and copying. That hourly fee shall not be in excess of the hourly wage of an agency employee who ordinarily would be appropriate and suitable to perform these search and supervisory functions.

*d. Advance deposits.*

(1) When the estimated total fee chargeable under this subrule exceeds $25, the custodian may require a requester to make an advance payment to cover all or a part of the estimated fee.

(2) When a requester has previously failed to pay a fee chargeable under this subrule, the custodian may require payment of the full amount of any fees previously owed and of any estimated fees for the new request prior to processing any new request from the requester.

**501—7.4(17A,22) Requests for treatment of a record as a confidential record and its withholding from examination.** The custodian may treat a record as a confidential record and withhold it from examination only to the extent that the custodian is authorized by Iowa Code section 22.7, another applicable provision of law, or a court order, to refuse to disclose that record to members of the public.

**7.4(1)** *Persons who may request.* Any person who would be aggrieved or adversely affected by disclosure of a record and who asserts that Iowa Code section 22.7, another applicable provision of law, or a court order, authorizes the custodian to treat the record as a confidential record, may request the custodian to treat that record as a confidential record and to withhold it from public inspection.

**7.4(2)** *Request.* A request that a record be treated as a confidential record and be withheld from public inspection shall be in writing and shall be filed with the custodian. The request must set forth the legal and factual basis justifying such confidential record treatment for that record, and the name, address, and telephone number of the person authorized to respond to any inquiry or action of the custodian concerning the request. A person requesting treatment of a record as a confidential record may also be required to sign a certified statement or affidavit enumerating the specific reasons justifying the treatment of that record as a confidential record and to provide any proof necessary to establish relevant facts. Requests for treatment of a record as such a confidential record for a limited time period shall also specify the precise period of time for which that treatment is requested.

A person filing such a request shall, if possible, accompany the request with a copy of the record in question from which those portions for which such confidential record treatment has been requested have been deleted. If the original record is being submitted to the agency by the person requesting such confidential treatment at the time the request is filed, the person shall indicate conspicuously on the original record that all or portions of it are confidential.

**7.4(3)** *Failure to request.* Failure of a person to request confidential record treatment for a record does not preclude the custodian from treating it as a confidential record. However, if a person who has submitted business information to the agency does not request that it be withheld from public inspection under Iowa Code section 22.7(3) or 22.7(6), the custodian of records containing that information may proceed as if that person has no objection to its disclosure to members of the public.

**7.4(4)** *Timing of decision.* A decision by the custodian with respect to the disclosure of a record to members of the public may be made when a request for its treatment as a confidential record that is not available for public inspection is filed, or when the custodian receives a request for access to the record by a member of the public.

**7.4(5)** *Request granted or deferred.* If a request for such confidential record treatment is granted, or if action on such a request is deferred, a copy of the record from which the matter in question has been deleted and a copy of the decision to grant the request or to defer action upon the request will be made available for public inspection in lieu of the original record. If the custodian subsequently receives a request for access to the original record, the custodian will make reasonable and timely efforts to notify any person who has filed a request for its treatment as a confidential record that is not available for public inspection of the pendency of that subsequent request.

**7.4(6)** *Request denied and opportunity to seek injunction.* If a request that a record be treated as a confidential record and be withheld from public inspection is denied, the custodian shall notify the requester in writing of that determination and the reasons therefor. On application by the requester, the custodian may engage in a good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief under the provisions of Iowa Code section 22.8, or other applicable provision of law. However, such a record need not be withheld from public inspection for any period of time if the custodian determines that the requester had no reasonable grounds to justify the treatment of that record as a confidential record. The custodian shall notify the requester in writing of the time period allowed to seek injunctive relief or the reasons for the determination that no reasonable grounds exist to justify the treatment of that record as a confidential record. The custodian may extend the period

of good faith, reasonable delay in allowing examination of the record so that the requester may seek injunctive relief only if no request for examination of that record has been received, or if a court directs the custodian to treat it as a confidential record, or to the extent permitted by another applicable provision of law, or with the consent of the person requesting access.

**501—7.5(17A,22) Procedure by which additions, dissents, or objections may be entered into certain records.** Except as otherwise provided by law, a person may file a request with the custodian to review, and to have a written statement of additions, dissents, or objections entered into, a record containing personally identifiable information pertaining to that person. However, this does not authorize a person who is a subject of such a record to alter the original copy of that record or to expand the official record of any agency proceeding. The requester shall send the request to review such a record or the written statement of additions, dissents, or objections to the custodian or to the Iowa law enforcement academy. The request to review such a record or the written statement of such a record of additions, dissents or objections must be dated and signed by the requester, and shall include the current address and telephone number of the requester or the requester's representative.

**501—7.6(17A,22) Access to confidential records.** Under Iowa Code section 22.7 or other applicable provisions of law, the lawful custodian may disclose certain confidential records to one or more members of the public. Other provisions of law authorize or require the custodian to release specified confidential records under certain circumstances or to particular persons. In requesting the custodian to permit the examination and copying of such a confidential record, the following procedures apply and are in addition to those specified for requests for access to records in rule 501—7.3(17A,22).

**7.6(1)** *Proof of identity.* A person requesting access to a confidential record may be required to provide proof of identity or authority to secure access to the record.

**7.6(2)** *Requests.* The custodian may require that a request to examine and copy a confidential record be in writing. A person requesting access to such a record may be required to sign a certified statement or affidavit enumerating the specific reasons justifying access to the confidential record and to provide any proof necessary to establish relevant facts.

**7.6(3)** *Notice to subject of record and opportunity to obtain injunction.* After the custodian receives a request for access to a confidential record, and before the custodian releases such a record, the custodian may make reasonable efforts to notify promptly any person who is a subject of that record, is identified in that record, and whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**7.6(4)** *Request denied.* When the custodian denies a request for access to a confidential record, the custodian shall promptly notify the requester. If the requester indicates to the custodian that a written notification of the denial is desired, the custodian shall promptly provide such a notification that is signed by the custodian and that includes:

*a.* The name and title or position of the custodian responsible for the denial; and

*b.* A citation to the provision of law vesting authority in the custodian to deny disclosure of the record and a brief statement of the reasons for the denial to this requester.

**7.6(5)** *Request granted.* When the custodian grants a request for access to a confidential record to a particular person, the custodian shall notify that person and indicate any lawful restrictions imposed by the custodian on that person's examination and copying of the record.

**501—7.7(17A,22) Notice to suppliers of information.** The agency shall notify persons completing agency forms of the use that will be made of personal information, which persons outside the agency might routinely be provided this information, which parts of the requested information are required and which are optional, and the consequences of a failure to provide the information requested. This notice may be given in these rules, on the form used to collect the information, on a separate fact sheet

or letter, in brochures, in formal agreements, in contracts, in handbooks, in manuals, verbally, or by other appropriate means. Notice need not be given in connection with discovery requests in litigation or administrative proceedings, subpoenas, investigations of possible violations of law, or similar demands for information.

**501—7.8(17A,22) Disclosures without the consent of the subject.**

**7.8(1)** Open records are routinely disclosed without the consent of the subject.

**7.8(2)** To the extent allowed by law, disclosure of confidential records may occur without the consent of the subject. Following are instances where disclosure, if lawful, will generally occur without notice to the subject:

*a.* For a routine use as defined in rule 501—7.9(17A,22) or in any notice for a particular record system.

*b.* To a recipient who has provided the agency with advance written assurance that the record will be used solely as a statistical research or reporting record, provided that the record is transferred in a form that does not identify the subject.

*c.* To another government agency or to an instrumentality of any governmental jurisdiction within or under the control of the United States for a civil or criminal law enforcement activity if the activity is authorized by law, and if an authorized representative of such government agency or instrumentality has submitted a written request to the agency specifying the record desired and the law enforcement activity for which the record is sought.

*d.* To an individual pursuant to a showing of compelling circumstances affecting the health or safety of any individual if a notice of the disclosure is transmitted to the last-known address of the subject.

*e.* To the legislative services agency under Iowa Code section 2A.3.

*f.* Disclosures in the course of employee disciplinary proceedings.

*g.* In response to a court order or subpoena.

**501—7.9(17A,22) Routine use.**

**7.9(1)** Defined. "Routine use" means the disclosure of a record without the consent of the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

**7.9(2)** To the extent allowed by law, the following uses are considered routine uses of all agency records:

*a.* Disclosure to those officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of any officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

*b.* Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible criminal prosecution, civil court action, or regulatory order.

*c.* Disclosure to the department of inspections and appeals for matters in which it is performing services or functions on behalf of the agency.

*d.* Transfers of information within the agency, to other state agencies, or to local units of government as appropriate to administer the program for which the information is collected.

*e.* Information released to staff of federal and state entities for audit purposes or for purposes of determining whether the agency is operating a program lawfully.

*f.* Any disclosure specifically authorized by the statute under which the record was collected or maintained.

**501—7.10(17A,22) Consensual disclosure of confidential records.** To the extent permitted by any applicable provision of law, a person who is the subject of a confidential record may have a copy of the portion of that record concerning the subject disclosed to a third party. A request for such a disclosure

must be in writing and must identify the particular record or records that may be disclosed, and the particular person or class of persons to whom the record may be disclosed (and, where applicable, the time period during which the record may be disclosed). The person who is the subject of the record and, where applicable, the person to whom the record is to be disclosed, may be required to provide proof of identity. (Additional requirements may be necessary for special classes of records.) Appearance of counsel on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency to disclose records about that person to the person's attorney.

**501—7.11(17A,22) Release to subject.**

**7.11(1)** The subject of a confidential record may file a written request to review confidential records about that person as provided in rule 501—7.5(17A,22). However, the agency need not release the following records to the subject:

*a.* The identity of a person providing information to the agency need not be disclosed directly or indirectly to the subject of the information when the information is authorized to be held confidential pursuant to Iowa Code section 22.7(18) or other provision of law.

*b.* Records need not be disclosed to the subject when they are the work product of an attorney or are otherwise privileged.

*c.* Peace officers' investigative reports may be withheld from the subject, except as required by the Iowa Code. (See Iowa Code section 22.7(5).)

*d.* Examination may be withheld as defined in Iowa Code section 22.7(19).

*e.* Decertification requests or information concerning decertification procedures under Iowa Code section 80B.13(8) and 501—Chapter 6.

*f.* As otherwise authorized by law.

**7.11(2)** Where a record has multiple subjects with interest in the confidentiality of the record, the agency may take reasonable steps to protect confidential information relating to another subject.

**501—7.12(17A,22) Availability of records.**

**7.12(1)** *General.* Agency records are open for public inspection and copying unless otherwise provided by rule or law.

**7.12(2)** *Confidential records.* The following records may be withheld from public inspection. Records are listed by category according to the legal basis for withholding them from public inspection.

*a.* Sealed bids received prior to the time set for public opening of bids. (Iowa Code section 72.3)

*b.* Tax records made available to the agency. (Iowa Code sections 422.20 and 422.72)

*c.* Records which are exempt from disclosure under Iowa Code section 22.7.

*d.* Minutes or audio recordings of closed meetings of a government body. (Iowa Code section 21.5(5))

*e.* Identifying details in final orders, decisions and opinions to the extent required to prevent a clearly unwarranted invasion of personal privacy or trade secrets under Iowa Code section 17A.3(1)*"e."*

*f.* Those portions of agency staff manuals, instructions or other statements issued which set forth criteria or guidelines to be used by agency staff in auditing, in making inspections, in settling commercial disputes or negotiating commercial arrangements; or in the selection or handling of cases such as operational tactics or allowable tolerances, or criteria for the defense, prosecution or settlement of cases when disclosure of these statements would:

(1) Enable law violators to avoid detection;

(2) Facilitate disregard of requirements imposed by law; or

(3) Give a clearly improper advantage to persons who are in an adverse position to the agency. (See Iowa Code sections 17A.2(11)*"f"* and 17A.3(1)*"d."*)

*g.* Records which constitute attorney work product, attorney-client communications, or which are otherwise privileged. Attorney work product is confidential under Iowa Code sections 22.7(4), 622.10 and 622.11, state and federal rules of evidence or procedure, the Code of Professional Responsibility, and case law.

*h.* Examinations and results. (Iowa Code section 22.7(19))

*i.* Agency instructional outlines when disclosure would be prohibited by Iowa Code section 17A.2(11)*"f."*

*j.* Criminal investigative reports. (Iowa Code section 22.7(5))

*k.* Computer resource security files containing names, identifiers, and passwords of users of computer resources. Such files must be kept confidential to maintain security for access to confidential records pursuant to Iowa Code section 22.7. (Iowa Code section 22.7(50))

*l.* Data or information collected for the purpose of assessing, analyzing, measuring, preparing for, or responding to suspected, potential, or actual information security threats. (Iowa Code section 22.7(50))

*m.* Detailed security audit information. Such information includes but is not limited to security assessment reports; information directly related to vulnerability assessments; information contained in records relating to security measures such as security and response plans, security codes and combinations, passwords, restricted area passes, keys, and security or response procedures; emergency response protocols; and information contained in records that if disclosed would significantly increase the vulnerability of critical physical systems or infrastructures of the office. (Iowa Code section 22.7(50))

*n.* Information security data, information security proposals, or information security assessments compiled, prepared, or developed by a governmental body, or compiled, prepared, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.7(50))

*o.* Data processing software, as defined in Iowa Code section 22.3A, which is developed by a government body, or developed by a nongovernment body and used by a government body pursuant to a contractual relationship with the nongovernment body. (Iowa Code section 22.3A(2)*"a"*)

*p.* Log-on identification passwords, Internet protocol addresses, private keys, or other records containing information which might lead to the disclosure of private keys used in a digital signature or other similar technologies as provided in Iowa Code chapter 554D.

*q.* Records which if disclosed might jeopardize the security of an electronic transaction pursuant to Iowa Code chapter 554D.

**501—7.13(17A,22) Personally identifiable information.** This rule describes the nature and extent of personally identifiable information which is collected, maintained, and retrieved by the agency by personal identifier in a records system as defined in rule 501—7.1(17A,22). Unless otherwise stated, the authority for the Iowa law enforcement academy to maintain the record is provided by Iowa Code chapter 80B, the statutes governing the subject matter of the record.

For each record system, this rule describes the legal authority for the collection of that information, the means of storage of that information, and indicates whether a data processing system matches, collates, or permits the comparison of personally identifiable information in one record system with personally identifiable information in another record system. The record systems maintained by the agency are:

**7.13(1)** *Law enforcement officer personal files.* The Iowa law enforcement academy is charged by Iowa Code chapter 80B to establish training and hiring standards and to certify individuals as law enforcement officers in the state of Iowa. Training records, law enforcement officer status, and personal questionnaires are necessary to accomplish the mandate of Iowa Code chapter 80B.

These personal files contain information about past and present law enforcement officers in the state. These files may contain hiring and termination information, personal questionnaires and status changes (required by rule 501—3.1(80B) and rule 501—3.2(80B)), medical information showing compliance with rule 501—2.1(80B) and rule 501—2.2(80B) as authorized by Iowa Code section 80B.11, criminal history data, restoration of citizenship records, pardon records, training records, test scores, disciplinary reports and evaluation reports prepared during recruit training, decertification requests, and investigative reports. These files may also contain published articles concerning an individual officer and other data relevant to a law enforcement officer's career in law enforcement.

Some of these records may be confidential under Iowa Code section 22.7 or Iowa Code chapter 692. Law enforcement officer personal records are stored in both paper and computerized form.

**7.13(2)** *Decertification files.* These files are maintained pursuant to Iowa Code section 80B.13(8). These files contain requests or inquiries made by hiring authorities concerning decertification of a person who is certified as a law enforcement officer in the state of Iowa. The Iowa law enforcement academy also has independent authority pursuant to Iowa Code section 80B.13(8) to revoke a law enforcement officer's certification for conviction of a felony or revoke or suspend a law enforcement officer's certification for a violation of rules adopted pursuant to Iowa Code section 80B.11(1)*"h."* These files may contain official administrative or court filings or records, investigative reports, criminal history data, and attorney-client work product concerning possible or impending litigation. Some of this information may be confidential under Iowa Code sections 17A.2 and 22.7, Iowa Code chapter 692, constitutional restraints, statute and the Code of Professional Responsibility. Except as previously noted, administrative hearing filings or records and court records or filings are public records. This information is stored in paper and computerized forms.

**7.13(3)** *Litigation files.* These files or records contain information regarding litigation, or anticipated litigation, which includes judicial and administrative proceedings. The records include briefs, depositions, docket sheets, documents, correspondence, attorneys' notes, memoranda, research materials, witness information, investigation materials, information compiled under the direction of the attorney, and case management records. The files contain materials which are confidential as attorney work product and attorney-client communications. Some materials are confidential under other applicable provisions of law or because of a court order. Persons wanting to obtain copies of pleadings and other documents filed in litigation should obtain these from the clerk of the appropriate court which maintains the official copy. Copies of pleadings and other documents filed in litigation with the Iowa law enforcement academy may be obtained from the Iowa law enforcement academy during normal business hours as these documents are public records. These records are maintained in paper and computerized forms.

**7.13(4)** *Personnel files.* The agency maintains files containing information about present and former employees, families and dependents, and applicants for positions with the agency. These files include payroll records, attendance records, psychological testing results, biographical information, background investigative reports and fingerprint checks, medical information relating to disability, performance reviews and evaluations, disciplinary information, information required for tax withholding, information concerning employee benefits, affirmative action reports, and other information concerning the employer-employee relationship. Some of this information is confidential under Iowa Code sections 22.7(7) and 22.7(11) and Iowa Code chapter 692.

**7.13(5)** *Library user files.* These files contain information on individuals who have checked out books, films, tapes, etc. from the Iowa law enforcement academy library. This information is confidential pursuant to Iowa Code section 22.7(13). This information is kept in paper form and may appear in computerized form.

**7.13(6)** *Law enforcement class files.* These files contain information concerning individuals who have attended training classes established by the Iowa law enforcement academy. These files may contain grade information, class rosters, class schedules, class tests, photographs of class members, and disciplinary information. Some of this information may be confidential pursuant to Iowa Code section 22.7. This information is kept in computerized and paper form.

**7.13(7)** *Implied consent training files.* These files contain information concerning those officers who are certified to invoke implied consent pursuant to Iowa Code chapter 321J. These files are public records and are accessible during normal working hours. Some of this information may be confidential pursuant to Iowa Code section 22.7. This information is kept in computerized and paper form.

**7.13(8)** *Specialized instructor files.* These files contain information concerning individuals who have attended specialized training programs or through experience are qualified to instruct in specialized areas of law enforcement. These records may be retrieved by personal identifier or through class name. Some of this information may be confidential pursuant to Iowa Code section 22.7. These records are kept in both computerized and paper form.

**7.13(9)** *Psychological testing.* These files contain information concerning a law enforcement applicant's test scores regarding cognitive and personality tests mandated by Iowa Code section 80B.11(1)*"g."* In these files other psychological examinations requested by hiring agencies are also stored by a personal identifier. Some of this information may be confidential pursuant to Iowa Code section 22.7(19). Law enforcement officers interested in the results of their psychological testing should contact the hiring agency that authorized the testing. This information is maintained in both computerized and paper form.

**7.13(10)** *Contract file.* This file contains information concerning contracts between the Iowa law enforcement academy and outside agencies or individuals. Some of this information may be confidential pursuant to Iowa Code section 22.7(6). These records are kept in paper form or computerized form.

**7.13(11)** *Salary files.* These files contain information concerning financial data regarding payments made to permanent or temporary employees of the Iowa law enforcement academy. These records are maintained concurrently by the Iowa law enforcement academy, the Iowa department of administrative services, and the Iowa department of revenue. These records are kept in paper and computerized form.

**501—7.14(17A,22) Other groups of records.** This rule describes groups of records maintained by the agency other than a record system as defined in rule 501—7.1(17A,22). These records are routinely available to the public; however, the agency's files of these records may contain confidential information as discussed in rule 501—7.12(17A,22). The records listed may contain information about individuals. All records are stored on paper and in computer systems unless otherwise noted.

**7.14(1)** *Council records.* Agendas, minutes, and materials presented to the Iowa law enforcement academy council are available at the Iowa law enforcement academy, except those records concerning executive sessions which are exempt from disclosure under Iowa Code section 21.5 or which are otherwise confidential by law. Council records contain information about people who participate in meetings. This information is collected pursuant to Iowa Code section 21.5.

**7.14(2)** *Administrative records.* This includes documents concerning budget, property inventory, reservation and use of facility space, purchasing, yearly reports, office policies for employees, time sheets, printing and supply requisitions, and income sources such as psychological testing fees, petty cash, tuition, film rentals, and room rentals.

**7.14(3)** *Publications.* The office receives a number of books, periodicals, videotapes, films, newsletters, government documents, etc. These records are maintained in the library established pursuant to Iowa Code section 80B.15 for use by law enforcement training centers and institutions who have a two-year program in law enforcement. Some of these records may be protected by copyright law. Many of these publications of general interest are available in the state law library.

**7.14(4)** *Rule-making records.* Public documents generated during the promulgation of agency rules, including notices and public comments, are available for public inspection.

**7.14(5)** *Office manuals.* Information in office manuals such as the instructor outlines or policy manuals may be confidential under Iowa Code section 17A.2(11)*"f"* or other applicable provision of law.

**7.14(6)** *Office publications.* The agency maintains statistical reports and other written documentation to educate the public about the Iowa law enforcement academy to be used in program planning and budget projections.

**7.14(7)** *Legislative files.* These files keep a record of bills being considered by the Iowa legislature each legislative session. These records are public records and can best be obtained by contacting the Iowa house or senate bill room at the state capitol.

**7.14(8)** *Research files.* These files are kept as working files to research and scrutinize different concerns particular to law enforcement and the academy's training and rule-making obligations. Some of this information is confidential as attorney-client work product, as under Iowa Code section 17A.2 or 22.7, or other applicable provisions of law.

**7.14(9)** *All other records.* Records are open if not exempted from disclosure by law.

**501—7.15(17A,22) Data processing systems.** None of the data processing systems used by the agency compare personally identifiable information in one record system with personally identifiable information in another record system.

These rules are intended to implement Iowa Code chapters 17A and 22.

ITEM 17. Adopt the following **new** subrule 8.1(5):

**8.1(5)** *Mandatory reporter training.*

*a.* Pursuant to Iowa Code sections 232.69(1)*"b"*(11) and 232.69(3)*"b,"* a peace officer shall complete at least two hours of additional child abuse identification and reporting training every three years. If the peace officer completes at least one hour of additional child abuse identification and reporting training prior to the three-year expiration period, the peace officer shall be deemed in compliance with the training requirements of this rule for an additional three years.

*b.* Pursuant to Iowa Code sections 235B.3(2)*"b"* and 235B.16(5)*"b,"* a peace officer shall complete at least two hours of additional dependent adult abuse identification and reporting training every three years. If the peace officer completes at least one hour of additional dependent adult abuse identification and reporting training prior to the three-year expiration period, the peace officer shall be deemed in compliance with the training requirements of this rule for an additional three years.

*c.* The elected or appointed official designated as the head of the agency employing the regular law enforcement officer shall ensure compliance with the training requirements of this subrule. The core training curriculum relating to the identification and reporting of child abuse or dependent adult abuse shall be developed and provided by the department of human services.

*d.* A child abuse or dependent adult abuse training certificate relating to the identification and reporting of child abuse or dependent adult abuse issued prior to July 1, 2019, remains effective and continues in effect as issued for the five-year period following its issuance.

ITEM 18. Amend paragraph **10.1(3)"b"** as follows:

*b.* Verification must be received by the council that a fingerprint check has been made with the Federal Bureau of Investigation and the division of criminal investigation of the Iowa department of public safety and that the applicant ~~has no record of a felony conviction or conviction of a crime involving moral turpitude.~~ has not been convicted or adjudicated of any offense listed in 501—paragraph 2.1(5)*"a."* Fingerprint check responses from these agencies must be dated not more than one year prior to the date of the receipt by the academy of the application to the council for certification.

ITEM 19. Amend rule 501—10.4(80D) as follows:

**501—10.4(80D) Standards for certification.** An applicant for certification to carry weapons as a reserve peace officer must be of good moral character and not have been convicted ~~of a felony or a crime involving moral turpitude. (See subrule 2.1(5).) The offenses of domestic abuse and stalking or other offenses of domestic violence, and any offense in which a weapon was used in the commission, are crimes involving moral turpitude.~~ or adjudicated of any offense listed in 501—paragraph 2.1(5)*"a."*

ITEM 20. Amend subrule 10.100(5) as follows:

**10.100(5)** Is of good moral character as determined by a thorough background investigation including a fingerprint search conducted on local, state and national fingerprint files, and has not been convicted ~~of a felony or a crime involving moral turpitude. "Moral turpitude" is defined as an act of baseness, vileness, or depravity in the private and social duties which a person owes to another person, or to society in general, contrary to the accepted and customary rule of right and duty between person and person. Moral turpitude is conduct that is contrary to justice, honesty or good morals. The following nonexclusive list of acts has been held by the courts to involve moral turpitude: income tax evasion, perjury, insubordination, theft, indecent exposure, sex crimes, conspiracy to commit a crime, defrauding the government, and illegal drug offenses. The offenses of assault, domestic abuse, or other offenses of domestic violence, stalking, and any offense in which a weapon was used in the commission are crimes involving moral turpitude. Various factors, however, may cause an offense~~

~~which is generally not regarded as constituting moral turpitude to be regarded as such.~~ or adjudicated of any offense listed in 501—paragraph 2.1(5)*"a."*

ITEM 21. Amend subrule 10.100(8) as follows:

**10.100(8)** ~~Has vision corrected to 20/20. Vision tests conducted within 12 months before appointment or selection may be used. A person who performs policing duties alone and without the direct supervision of a certified regular law enforcement officer who is physically present with the reserve peace officer at all times must have uncorrected vision of not less than 20/100 in both eyes, corrected to 20/20. Policing duties include but are not limited to responding to calls, making traffic stops, and patrolling the jurisdiction.~~ Has an uncorrected vision of not less than 20/100 in both eyes, corrected to 20/20.

The applicant shall have color vision consistent with the occupational demands of law enforcement. An applicant's passing any of the following color vision tests indicates that the applicant has color vision abilities consistent with the occupational demands of law enforcement:

*a.* and *b.* No change.

An individual with extreme anomalous trichromatism or monochromasy color vision, as determined through testing, is not eligible to serve as a reserve peace officer in the state of Iowa.

## ARC 4855C

# NATURAL RESOURCE COMMISSION[571]

**Notice of Intended Action**

**Proposing rule making related to establishing a safety zone on Beaver Creek and providing an opportunity for public comment**

The Natural Resource Commission (Commission) hereby proposes to amend Chapter 40, "Boating Speed and Distance Zoning," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 321G.2, 321I.2, 462A.3 and 462A.26.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 321G.2, 321I.2, 462A.3 and 462A.26.

*Purpose and Summary*

Beaver Creek is a small river with increasing recreational use that is encouraged in part by publicity surrounding the City of Johnston's sponsorship of a recreational water trails plan. Beaver Creek flows through the Camp Dodge military reservation in Polk County. As recreation has increased on Beaver Creek, concerns among Iowa National Guard personnel at Camp Dodge have increased because of the potential for accidental injury and death at the facility's live-fire practice range. Beaver Creek is within a "surface danger zone," which is the area designated within the Camp Dodge training complex for containment of projectiles, fragments, debris, and components resulting from the firing, launching, or detonation of weapon systems, including explosives and demolitions. Currently, members of the public are potentially unaware of this danger when passing through the Camp Dodge facility via Beaver Creek. This proposed rule making creates a safety zone into which access may be prohibited when clearly identified by signage in order to reduce risk to public safety. If at some future date live-fire ammunition is no longer used during training exercises at Camp Dodge, the Commission may seek to rescind this rule.

NATURAL RESOURCE COMMISSION[571](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

This rule is subject to the waiver provisions of 571—Chapter 11. Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Commission for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Nate Hoogeveen
Department of Natural Resources
Wallace State Office Building
502 East Ninth Street
Des Moines, Iowa 50319
Fax: 515.725.8201
Email: nate.hoogeveen@dnr.iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location:

| | |
|---|---|
| February 4, 2020 | Conference Room 4E |
| 2:30 to 3:30 p.m. | Wallace State Office Building |
| | Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** rule 571—40.61(321G,321I,462A):

**571—40.61(321G,321I,462A) Beaver Creek safety zone.** A safety zone is hereby established on Beaver Creek within the property boundaries of the Camp Dodge military reservation in Polk County.

**40.61(1)** Watercraft and vehicles shall be prohibited from entering the safety zone in order to prevent access to areas within Camp Dodge where a hazard to the public may exist. This prohibition shall not apply to watercraft or vehicles explicitly authorized to enter the safety zone by the Iowa national guard. The safety zone boundaries shall be indicated by signage including the wording "Warning, Restricted Area, No Entrance." The Iowa national guard shall be responsible for the acquisition, placement, and maintenance of any signage.

**40.61(2)** The safety zone shall be recognized by the state of Iowa only where signage is posted as required. Any section of Beaver Creek that is not designated as a safety zone shall remain open to any otherwise lawful public access.

**40.61(3)** Signs establishing the safety zone boundaries may be moved within the present or future boundaries of Camp Dodge at the sole discretion of Iowa national guard personnel. The Iowa national guard shall notify the department of natural resources when the location of the safety zone boundary is changed.

This rule is intended to implement Iowa Code sections 321G.2, 321I.2, 462A.3, and 462A.26.

## ARC 4861C

# NATURAL RESOURCES DEPARTMENT[561]

**Notice of Intended Action**

**Proposing rule making related to appeals of administrative orders and providing an opportunity for public comment**

The Department of Natural Resources (Department) hereby proposes to amend Chapter 7, "Rules of Practice in Contested Cases," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 455A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 455B.110.

*Purpose and Summary*

The proposed amendments are necessary to align Department rules with 2019 Iowa Acts, Senate File 409, signed by Governor Reynolds on May 9, 2019. Senate File 409, in part, amends the process and timeline for individuals to appeal administrative orders issued by the Department. The legislation clarifies when the appeal period commences and extends the appeal period from 30 days to 60 days. This proposed rule making is intended to implement that legislative change.

Additionally, the proposed amendments address an existing anomaly in Department rules that requires the Environmental Protection Commission and the Natural Resource Commission to consider a proposed decision before the appeal period for that decision has concluded. This anomaly results in the Commissions considering proposed decisions that may still be appealed by the affected parties. This proposed rule making does not alter the rights of any party, including the rights of Commissioners to adopt, reject or revise proposed decisions. It simply allows the Commissioners to consider a proposed decision after the conclusion of the appeal period.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

*Fiscal Impact*

This proposed rule making has no fiscal impact to the State of Iowa. A copy of the fiscal impact statement is available from the Department upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 5, 2020. Comments should be directed to:

David Scott
Iowa Department of Natural Resources
1023 West Madison Street
Washington, Iowa 52353
Email: david.scott@dnr.iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows. Upon arrival, attendees should proceed to the fourth floor to check in at the Department reception desk and be directed to the appropriate hearing location.

| | |
|---|---|
| February 5, 2020 | Conference Room 4E |
| 1 to 2 p.m. | Wallace State Office Building |
| | Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing will be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 7.4(1) as follows:

**7.4(1)** *Time.* ~~Any person appealing an action of the department shall file a written notice of appeal within 30 days of receipt of notice of the department's action, unless a shorter time period is specified by a particular statute or rule governing the subject matter or by the agency action in question. The written~~

~~notice of appeal shall be filed with the director with a copy to the Bureau Chief, Legal Services Bureau, Department of Natural Resources, 502 East 9th Street, Des Moines, Iowa 50319.~~

*a.* Any order issued by the director of the department shall comply with the requirements established in Iowa Code section 455B.110 and may be appealed. The written notice of appeal of the order must be received by the director within 60 days of proper issuance of the order.

*b.* Any person appealing any other action by the department that is subject to appeal shall file a written notice of appeal within 60 days of the action, unless a shorter time period is specified by a particular statute or rule governing the subject matter of the action.

*c.* Unless otherwise stated in the order or notice provided, any written notice of appeal shall be filed with the director of the department, and a copy shall be sent to the legal services bureau chief.

ITEM 2. Amend subparagraph **7.17(5)"a"(2)** as follows:

(2) Agency decision to review. The agency may initiate review of a proposed decision on its own motion ~~at any time within 30 days following the issuance of the proposed decision or~~ at the next ~~regular~~ meeting of the relevant commission~~, whichever date last occurs~~ after the appeal period in subparagraph 7.17(5)*"a"*(1) has concluded. The agency shall preside in the case of review of a proposed decision of the administrative law judge or appeal board on motion of the agency.

## ARC 4860C

# PROFESSIONAL LICENSURE DIVISION[645]

**Notice of Intended Action**

**Proposing rule making related to licensure of barbers who complete training while in custody of the department of corrections and providing an opportunity for public comment**

The Board of Barbering hereby proposes to amend Chapter 21, "Licensure," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 158.15 and 147.76.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 158.3.

*Purpose and Summary*

2019 Iowa Acts, chapter 99, section 12, amends Iowa Code section 158.3, which governs the licensure requirements of barbers. This proposed rule making amends the Board's requirements that an applicant who completes a barbering apprenticeship training program registered by the Office of Apprenticeship of the United States Department of Labor while committed to the custody of the Director of the Iowa Department of Corrections shall be allowed to take the examination for a license to practice barbering.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Division of Professional Licensure are subject to the waiver provisions accorded under 645—Chapter 18.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Susan Reynolds
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319-0075
Email: susan.reynolds@idph.iowa.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 4, 2020<br>8 to 8:30 a.m. | Fifth Floor Conference Room 526<br>Lucas State Office Building<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definition of "Apprentice" in rule **645—21.1(158)**:

*"Apprentice"* means any person, other than a helper, journeyperson, or master, who is working under the supervision of either a master or a journeyperson and is progressing toward completion of a barbering apprenticeship training program registered by the Office of Apprenticeship of the United States Department of Labor while learning and assisting in the practice of barbering.

ITEM 2. Amend paragraph **21.2(1)"a"** as follows:

*a.* Applicants shall complete a board-approved application form. Application forms may be obtained from the board's ~~Web site (http://www.idph.state.ia.us/licensure)~~ website (www.idph.iowa.gov/licensure) or directly from the board office. The application and licensure fees shall be sent to the Board of Barbering, Professional Licensure Division, Fifth Floor, Lucas State Office Building, Des Moines, Iowa 50319-0075.

ITEM 3. Amend paragraph **21.2(1)"c"** as follows:

*c.* Applicants shall provide an official copy of the transcript or diploma sent directly from the school to the board showing proof of completion of training at a barber school licensed by the board. If the applicant graduated from a school that is not licensed by the board, the applicant shall direct the school

to provide an official transcript showing completion of a course of study that meets the requirements of rule 645—23.8(158). If the applicant completed a barbering apprenticeship training program registered by the Office of Apprenticeship of the United States Department of Labor while committed to the custody of the director of the department of corrections, the applicant shall request the department of corrections to provide an official transcript showing completion of the apprentice program.

## ARC 4854C

# PROFESSIONAL LICENSURE DIVISION[645]

**Notice of Intended Action**

**Proposing rule making related to child abuse and dependent adult abuse identification and reporting training and providing an opportunity for public comment**

The Board of Optometry hereby proposes to amend Chapter 180, "Licensure of Optometrists," and Chapter 181, "Continuing Education for Optometrists," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 272C.2, 232.69(3)"e" and 235B.16(5)"f."

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 232.69 and 235B.16.

*Purpose and Summary*

2019 Iowa Acts, chapter 91, amends Iowa Code sections 232.69 and 235B.16, which govern mandatory training in child and dependent adult abuse identification and reporting for certain professionals. This proposed rule making amends the Board's requirements for mandatory training in child and dependent adult abuse identification and reporting to reflect the statutory changes and requires that optometrists who must report child or dependent adult abuse comply with the training requirements provided in Iowa Code sections 232.69 and 235B.16 every three years. In addition, this proposed rule making amends subparagraph 180.5(4)"e"(2) to delete a reference to a previously rescinded rule and substitute a reference to the current rule. This proposed rule making also amends the Board's rules on continuing education requirements to reflect the statutory changes to Iowa Code sections 232.69 and 235B.16.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

A waiver provision is not included in this rule making because all administrative rules of the professional licensure boards in the Professional Licensure Division are subject to the waiver provisions accorded under 645—Chapter 18.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Sharon Dozier
Professional Licensure Division
Iowa Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: sharon.dozier@idph.gov

*Public Hearing*

A public hearing at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| February 4, 2020<br>10 to 10:30 a.m. | Fifth Floor Conference Room 526<br>Lucas State Office Building<br>Des Moines, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making. In an effort to ensure accuracy in memorializing a person's comments, a person may provide written comments in addition to or in lieu of oral comments at the hearing.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend subrule 180.5(4) as follows:

**180.5(4)** Mandatory reporter training requirements.

*a.* A licensee who, in the scope of professional practice or in the licensee's employment responsibilities, examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of ~~two hours of~~ training in child abuse identification and reporting as required by Iowa Code section 232.69(3)*"b"* in the previous ~~five~~ three years or condition(s) for waiver of this requirement as identified in paragraph 180.5(4)*"e."*

*b.* A licensee who, in the course of employment, examines, attends, counsels or treats adults in Iowa shall indicate on the renewal application completion of ~~two hours of~~ training in dependent adult abuse identification and reporting as required by Iowa Code section 235B.16(5)*"b"* in the previous ~~five~~ three years or condition(s) for waiver of this requirement as identified in paragraph 180.5(4)*"e."*

*c.* ~~A licensee who, in the scope of professional practice or in the course of the licensee's employment responsibilities, examines, attends, counsels or treats both adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting for dependent adults and children in the previous five years or condition(s) for waiver of this requirement as identified in paragraph *"e."*~~

~~Training may be completed through separate courses as identified in paragraphs *"a"* and *"b"* or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.~~ The ~~course~~ course(s) shall be ~~a~~ the curriculum ~~approved~~ provided by the Iowa department of ~~public health abuse education review panel~~ human services.

*d.* The licensee shall maintain written documentation for ~~five~~ three years after mandatory training as identified in paragraphs 180.5(4)*"a"* to *"c,"* including program date(s), content, duration, and proof of participation.

*e.* The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including an exemption of continuing education requirements or extension of time in which to fulfill requirements due to a physical or mental disability or illness as identified in ~~645—Chapter 181~~ rule 645—4.14(272C).

*f.* The board may select licensees for audit of compliance with the requirements in paragraphs 180.5(4)*"a"* to *"e."*

ITEM 2. Amend paragraph **181.3(2)"a"** as follows:

*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, all state optometric associations, and the department of ophthalmology of the school of medicine of the University of Iowa;

(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) Training on child abuse and dependent adult abuse identification and reporting required pursuant to Iowa Code sections 232.69 and 235B.16 and 645—subrule 180.5(4).

~~(4)~~ Beginning with the July 1, 2006, biennium, therapeutic licensees who provide proof of current CELMO certification meet continuing education requirements for the biennium.

ITEM 3. Amend subparagraph **181.3(2)"b"(4)** as follows:

(4) ~~Two~~ Four hours of credit for dependent adult abuse and child abuse identification.

## ARC 4856C

# PUBLIC HEALTH DEPARTMENT[641]

**Notice of Intended Action**

**Proposing rule making related to radiation machines and radioactive materials and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 37, "Physical Protection of Category 1 and Category 2 Quantities of Radioactive Material," Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," 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," and Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 136C.3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 136C.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Purpose and Summary*

The proposed amendments reflect current federal regulations, amend rules to correct errors discovered by staff, and amend rules to meet U.S. Nuclear Regulatory Commission (USNRC) compatibility requirements pursuant to the stipulations of the state of Iowa's status as a USNRC agreement state. Additional amendments clarify rules related to new technology for dosimetry processes that have become available and radiation machines used on humans for security purposes at correctional facilities and jails.

Iowa rules must maintain compatibility as defined by the USNRC. Most of these amendments require the wording to be the same as or substantially the same as that published in the CFR by the USNRC. The dosimetry and machine-related rules are two areas that have been prohibited in the current rules and have been allowed through a variance process for the last couple of years.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Angela Leek
Bureau of Radiological Health
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: angela.leek@idph.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 1. Amend subrule 37.1(4) as follows:

**37.1(4)** All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 16, 2018~~ [effective date of these amendments].

ITEM 2. Amend paragraph **37.23(2)"b"** as follows:

*b.* Each licensee shall name one or more individuals to be reviewing officials. After completing the background investigation on the reviewing official, the licensee shall provide under oath or affirmation, a certification that the reviewing official is deemed trustworthy and reliable by the licensee. Each licensee shall provide oath or affirmation certifications to the agency. The fingerprints of the named reviewing official must be taken by a law enforcement agency, federal or state agencies that provide fingerprinting services to the public, or commercial fingerprinting services authorized by a state to take fingerprints. Every ten years, the licensee shall recertify that the reviewing official is deemed trustworthy and reliable in accordance with 37.25(3).

ITEM 3. Amend subrule 37.27(3) as follows:

**37.27(3)** *Procedures for processing of fingerprint checks.*

*a.* For the purpose of complying with these rules, licensees shall use an appropriate method listed in 10 CFR 37.7 to submit to the U.S. Nuclear Regulatory Commission, Director, Division of ~~Facilities and Security~~ Physical and Cyber Security Policy, 11545 Rockville Pike, ATTN: Criminal History Program/Mail Stop ~~TWB-05-B32M~~ T-8B20, Rockville, Maryland 20852, one completed, legible standard fingerprint card (Form FD-258, ORIMDNRCOOOZ), electronic fingerprint scan or, where practicable, other fingerprint record for each individual requiring unescorted access to category 1 or category 2 quantities of radioactive material. Copies of these forms may be obtained by ~~writing the Office of the Chief Information Officer, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, by calling (630)829-9565, or by email to FORMS.Resource@nrc.gov~~ emailing MAILSVS.Resource@nrc.gov. Guidance on submitting electronic fingerprints can be found at ~~www.nrc.gov/site-help/e-submittals.html~~ www.nrc.gov/security/chp.html.

*b.* Fees for the processing of fingerprint checks are due upon application. Licensees shall submit payment with the application for the processing of fingerprints through corporate check, certified check, cashier's check, money order, or electronic payment, made payable to "U.S. NRC." (For guidance on making electronic payments, contact the ~~Security Branch, Division of Facilities and Security at 1-301-492-3531~~ Division of Physical and Cyber Security Policy by emailing Crimhist.Resource@nrc.gov.) Combined payment for multiple applications is acceptable. The Nuclear Regulatory Commission publishes the amount of the fingerprint check application fee on the NRC's public website. (To find the current fee amount, go to the ~~Electronic Submittals page at www.nrc.gov/site-help/e-submittals.html and see the link for the Criminal History Program under Electronic Submission Systems.)~~ Licensee Criminal History Records Checks & Firearms Background Check information page at www.nrc.gov/security/chp.html and see the link for "How do I determine how much to pay for the request?")

*c.* The Nuclear Regulatory Commission will forward to the submitting licensee all data received from the FBI as a result of the licensee's application(s) for criminal history records checks.

ITEM 4. Amend subrule 37.43(4) as follows:

**37.43(4)** *Protection of information.*

*a.* Licensees authorized to possess category 1 or category 2 quantities of radioactive material shall limit access to and unauthorized disclosure of their security plan, implementing procedures, and the list of individuals that have been approved for unescorted access.

*b.* Efforts to limit access shall include the development, implementation, and maintenance of written policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, the security plan, ~~and~~ implementing procedures, and the list of individuals that have been approved for unescorted access.

*c.* Before granting an individual access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access, licensees shall:

(1) Evaluate an individual's need to know the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access; and

(2) If the individual has not been authorized for unescorted access to category 1 or category 2 quantities of radioactive material, safeguards information, or safeguards information-modified handling, the licensee must complete a background investigation to determine the individual's trustworthiness and reliability. A trustworthiness and reliability determination shall be conducted by the reviewing official and shall include the background investigation elements contained in 37.25(1).

*d.* Licensees need not subject the following individuals to the background investigation elements for protection of information:

(1) The categories of individuals listed in rule 641—37.29(136C); or

(2) Security service provider employees, provided written verification that the employee has been determined to be trustworthy and reliable, by the required background investigation in 37.25(1), has been provided by the security service provider.

*e.* The licensee shall document the basis for concluding that an individual is trustworthy and reliable and should be granted access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

*f.* Licensees shall maintain a list of persons currently approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access. When a licensee determines that a person no longer needs access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access, or no longer meets the access authorization requirements for access to the information, the licensee shall remove the person from the approved list as soon as possible, but no later than seven working days, and take prompt measures to ensure that the individual is unable to obtain the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

*g.* When the security plan is not in use, the licensee shall store its security plan, ~~and~~ implementing procedures, and the list of individuals that have been approved for unescorted access in a manner to prevent unauthorized access. Information stored in nonremovable electronic form must be password protected.

*h.* The licensee shall retain as a record for three years after the document is no longer needed:

(1) A copy of the information protection procedures; and

(2) The list of individuals approved for access to the security plan, ~~or~~ implementing procedures, or the list of individuals that have been approved for unescorted access.

ITEM 5. Amend rule 641—37.77(136C) as follows:

**641—37.77(136C) Advance notification of shipment of category 1 quantities of radioactive material.**

**37.77(1)** As specified in 37.77(1)*"a"* and *"b,"* each licensee shall provide advance notification to the NRC and the governor of a state, or the governor's designee, of the shipment of licensed material in a category 1 quantity, through or across the boundary of the state, before the transport, or delivery to a carrier for transport, of the licensed material outside the confines of the licensee's facility or other place of use or storage.

*a. Procedures for submitting advance notification.*

(1) The notification must be made to the NRC and to the office of each appropriate governor or governor's designee. The contact information, including telephone and mailing addresses, of governors and governors' designees, is available on the NRC's website at scp.nrc.gov/special/designee.pdf. A list of the contact information is also available upon request from the Director, Division of ~~Intergovernmental Liaison and Rulemaking, Office of Federal and State Materials and Environmental Management Programs,~~ Materials Safety, Security, State, and Tribal Programs, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. Notifications to the NRC must be to the NRC's Director, ~~Division of Security Policy,~~ Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

The notification to the NRC may be made by email to RAMQC_SHIPMENTS@nrc.gov or by fax to (301)816-5151.

(2) A notification delivered by mail must be postmarked at least seven days before transport of the shipment commences at the shipping facility.

(3) A notification delivered by any means other than mail must reach the NRC at least four days before the transport of the shipment commences and must reach the office of the governor or the governor's designee at least four days before transport of a shipment within or through the state.

*b. Information to be furnished in advance notification of shipment.* Each advance notification of shipment of category 1 quantities of radioactive material must contain the following information, if available at the time of notification:

(1) The name, address, and telephone number of the shipper, carrier, and receiver of the category 1 radioactive material;

(2) The license numbers of the shipper and receiver;

(3) A description of the radioactive material contained in the shipment, including the radionuclides and quantity;

(4) The point of origin of the shipment and the estimated time and date that shipment will commence;

(5) The estimated time and date that the shipment is expected to enter each state along the route;

(6) The estimated time and date of arrival of the shipment at the destination; and

(7) A point of contact, with a telephone number, for current shipment information.

*c. Revision notice.*

(1) The licensee shall provide any information not previously available at the time of the initial notification, as soon as the information becomes available but not later than commencement of the shipment, to the governor of the state or the governor's designee and to the NRC's Director ~~of Nuclear Security~~, Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001.

(2) A licensee shall promptly notify the governor of the state or the governor's designee of any changes to the information provided in accordance with 37.77(1)*"b"* and 37.77(1)*"c"*(1). The licensee shall also immediately notify the NRC's Director, ~~Division of Security Policy,~~ Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001, of any such changes.

*d. Cancellation notice.* Each licensee who cancels a shipment for which advance notification has been sent shall send a cancellation notice to the governor of each state or to the governor's designee previously notified and to the NRC's Director, ~~Division of Security Policy,~~ Office of Nuclear Security and Incident Response, U.S. Nuclear Regulatory Commission, Washington, DC 20555-0001. The licensee shall send the cancellation notice before the shipment would have commenced or as soon thereafter as possible. The licensee shall state in the notice that it is a cancellation and identify the advance notification that is being canceled.

*e. Records.* The licensee shall retain a copy of the advance notification and any revision and cancellation notices as a record for three years.

*f. Protection of information.* State officials, state employees, and other individuals, whether or not licensees of the commission or an agreement state, who receive schedule information of the kind specified in 37.77(1)*"b"* shall protect that information against unauthorized disclosure as specified in 37.43(4).

ITEM 6. Amend subrule 38.1(2) as follows:

**38.1(2)** All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 16, 2018~~ [effective date of these amendments].

ITEM 7. Adopt the following **new** definitions of "FDA" and "Sealed Source and Device Registry" in rule **641—38.2(136C)**:

*"FDA"* means the Food and Drug Administration.

*"Sealed Source and Device Registry"* or *"SSDR"* means the national registry that contains all the registration certificates, generated by both the NRC and the agreement states, that summarizes the radiation safety information for the sealed sources and devices and describes the licensing and use conditions approved for the product.

ITEM 8. Amend rule **641—38.2(136C)**, definitions of "Agreement state," "Decay-in-storage," "Preceptor" and "Reportable medical event," as follows:

*"Agreement state"* means any state with which the U.S. Nuclear Regulatory Commission or the U.S. Atomic Energy Commission has entered into an effective agreement under Subsection 274b of the Atomic Energy Act of 1954 as amended (73 Stat. 689). The state of Iowa is an agreement state as of January 1, 1986.

*"Decay-in-storage"* means the holding of radioactive material having half-lives of less than or equal to 120 days~~, except Cobalt-57,~~ until it decays to background levels. Before disposal in ordinary trash, the material must have been held for a minimum of ten half-lives and its radioactivity is indistinguishable from background as indicated by a survey meter set on its most sensitive scale with no interposing shielding.

*"Preceptor"* means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, ~~or~~ a radiation safety officer, or an associate radiation safety officer.

*"Reportable medical event"* means the medical event~~, except for an event that results from patient intervention, in which the administration of by-product material or radiation from by-product material results in~~:

~~*a.* A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin; and~~

~~1. The total dose delivered differs from the prescribed dose by 20 percent or more;~~

~~2. The total dosage delivered differs from the prescribed dosage by 20 percent or more or falls outside the prescribed dosage range; or~~

~~3. The fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50 percent or more.~~

~~*b.* A dose that exceeds 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin from any of the following:~~

~~1. An administration of the wrong radioactive drug containing by-product material;~~

~~2. An administration of a radioactive drug containing by-product material by the wrong route of administration;~~

~~3. An administration of a dose or dosage to the wrong individual or human research subject;~~

~~4. An administration of a dose or dosage delivered by the wrong mode of treatment; or~~

~~5. A leaking sealed source.~~

~~*c.* A dose to the skin or an organ or tissue other than the treatment site that exceeds by 50 rem (0.5 Sv) to an organ or tissue and 50 percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).~~

~~*d.* An event resulting from intervention of a patient or human research subject in which administration of by-product material or radiation from by-product material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.~~

*a.* In which, except for an event that results from patient intervention:

(1) The administration of byproduct material or radiation from byproduct material, except permanent implant brachytherapy, results in:

1. A dose that differs from the prescribed dose or dose that would have resulted from the prescribed dosage by more than 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin; and

- The total dose delivered differs from the prescribed dose by 20 percent or more;

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- The total dosage delivered differs from the prescribed dosage by 20 percent or more or falls outside the prescribed dosage range; or
- The fractionated dose delivered differs from the prescribed dose, for a single fraction, by 50 percent or more.

2. A dose that exceeds 5 rem (0.05 Sv) effective dose equivalent, 50 rem (0.5 Sv) to an organ or tissue, or 50 rem (0.5 Sv) shallow dose equivalent to the skin from any of the following:

- An administration of the wrong radioactive drug containing byproduct material or the wrong radionuclide for a brachytherapy procedure;
- An administration of a radioactive drug containing byproduct material by the wrong route of administration;
- An administration of a dose or dosage to the wrong individual or human research subject;
- An administration of a dose or dosage delivered by the wrong mode of treatment; or
- A leaking sealed source.

3. A dose to the skin or an organ or tissue other than the treatment site that exceeds by:

- 50 rem (0.5 Sv) or more the expected dose to that site from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration; and
- 50 percent or more the expected dose from the procedure if the administration had been given in accordance with the written directive prepared or revised before administration;

(2) For permanent implant brachytherapy, the administration of byproduct material or radiation from byproduct material (excluding sources that were implanted in the correct site but migrated outside the treatment site) that results in:

1. The total source strength administered differing by 20 percent or more from the total source strength documented in the postimplantation portion of the written directive;

2. The total source strength administered outside of the treatment site exceeding 20 percent of the total source strength documented in the postimplantation portion of the written directive; or

3. An administration that includes any of the following:

- The wrong radionuclide;
- The wrong individual or human research subject;
- Sealed source(s) implanted directly into a location discontiguous from the treatment site, as documented in the postimplantation portion of the written directive; or
- A leaking sealed source resulting in a dose that exceeds 50 rem (0.5 Sv) to an organ or tissue.

*b.* Resulting from intervention of a patient or human research subject in which administration of byproduct material or radiation from byproduct material results or will result in unintended permanent functional damage to an organ or a physiological system, as determined by a physician.

ITEM 9. Rescind the definition of "Teletherapy" in rule **641—38.2(136C)**.

ITEM 10. Amend rule 641—38.6(136C) as follows:

**641—38.6(136C) Prohibited uses.** A hand-held fluoroscopic screen shall not be used with X-ray equipment unless it has been accepted for certification by the U.S. Food and Drug Administration, Center for Devices and Radiological Health. A shoe-fitting fluoroscopic device shall not be used. Radiation from radiation-emitting machines or radioactive materials shall not be used on humans for nonmedical purposes except as approved by the agency for security-related purposes.

ITEM 11. Amend subrule 38.8(2) as follows:

**38.8(2)** *Radioactive material fee schedule.* Fees associated with the possession and use of radioactive materials in Iowa shall not exceed those specified in 10 CFR 170.31 and 10 CFR 171.16. The following fee schedule shall apply.

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| | Program Code | Category | Type | New License Fee | Inspection Priority | Annual Fee |
|---|---|---|---|---|---|---|
| (3.L.) | 01100 | AAB | Academic Type A Broad | $5,400 | 1 | $14,600 |
| (8.A.) | 03710 | CD | Civil Defense | $2,500 | 5 | $2,000 |
| (3.E.) | 03510 | I1 | Irradiators, Self-Shielding <10,000 Curies | $3,200 | 5 | $2,600 |
| (3.O.) | 03320 | IR1 | Industrial Radiography – Temporary Job Sites | $3,100 | 1 | $8,000 |
| (3.P.) | 03120 | FG | Measuring Systems – Fixed Gauge | $3,400 | 5 | $2,000 |
| (3.P.) | 03121 | PG | Measuring Systems – Portable Gauge | $3,400 | 5 | $2,000 |
| (3.P.) | 02410 | IVL | *In-Vitro* Testing Laboratory | $3,400 | 5 | $2,000 |
| (7.C.) | 02230 | HDR | High Dose Rate Afterloader | $5,500 | 1 | $5,100 |
| (7.C.) | 02120 | M1 | Medical – Diagnostic & Therapy | $5,500 | 3 | $4,000 |
| (7.C.) | 02121 | M2 | Medical – Diagnostic Only | $5,500 | 4 | $3,600 |
| (7.C.) | 02240 | MET | Medical – Diagnostic, Therapeutic, Emerging Technologies | $5,500 | 2 | $4,500 |
| (3.S.) | 03210 | PET | Accelerator-Produced RAM | $7,500 | 1 | $5,375 |
| (3.C.) | 02500 | NP | Nuclear Pharmacy | $5,100 | 1 | $7,700 |
| (7.C.) | 02231 | NV1 | Nuclear Medical Van | $4,140 | 2 | $4,000 |
| (7.C.) | 22160 | PMM | Pacemaker – Byproduct and/or SNM | $2,600 | ~~T~~ R | Note 5 |
| (3.M.) | 03620 | RD2 | Research & Development – Other | $4,375 | 3 | $4,000 |
| (2.C.) | 11300 | SM1 | Source Material, Other, >150 Kilograms | $2,600 | 3 | $4,000 |
| (1.D.) | 22120 | SNM2 | SNM Plutonium – Neutron Source | $2,600 | 5 | $3,750 |
| (3.P.) | 03221 | CAL | Calibration and W/L Tests | $2,275 | 5 | $3,900 |
| (3.P.) | 03122 | XRF | X-Ray Fluorescent Analyzer | $2,275 | ~~7~~ 5 | $1,860 |
| (3.P.) | 02400 | VMT | Veterinary Medicine – Therapy | $3,250 | 3 | $3,900 |
| (3.B.) | 03214 | MD | Manufacturing/Distribution | $3,500 | 3 | $3,980 |

Notes:

1. Reciprocity fee is $1,800 annually (180 days).
2. Inspection priorities are based on NRC inspection manual chapter 2800. Priority ~~"T"~~ "R" is a ~~telephonic~~ remote contact and is not considered an inspection.
3. License amendment fee for all categories is $600.
4. Annual fees are due no later than September 1 of each year. A 10% late charge will be assessed per month for late payments. Licensees with more than two authorized locations of use will be charged an additional 10% of the annual fee per location.
5. Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses with the agency.
6. General license registration fee is $700 annually on registration anniversary.

ITEM 12. Amend subrule 38.8(12) as follows:

**38.8(12)** *Fee waiver.* Any fee may be waived in exchange for services (low-level waste disposal, radiation detection instrument calibration, instrument repair, sample analysis, etc.) provided to the agency. The waiver may only occur as a result of a 28E agreement or memorandum of understanding between the parties.

ITEM 13. Amend subrule 38.9(1) as follows:

**38.9(1)** *Scope.*

*a.* This rule prescribes the procedure in cases initiated by the staff, or upon a request by any person, to impose requirements by order, or to modify, suspend, or revoke a license, registration, or certificate or to take other action as may be proper against any person subject to the jurisdiction of the agency. The term "regulated entity" as used in this rule refers to any facility, person, partnership, corporation or other organization which is regulated by the agency by virtue of these rules, the Iowa Code, licensing documents, registrations, certificates, or other official regulatory promulgation. "Authorization" means license, registration, certificate, permit, or any other document issued or received by the agency that authorizes specific activities related to the possession and use of radioactive materials or radiation-producing machines in Iowa.

*b.* This rule also prescribes the procedures in cases initiated by the staff to impose civil penalties pursuant to Iowa Code section 136C.4~~, to impose serious misdemeanor penalties pursuant to Iowa Code section 136B.5 or to impose simple misdemeanor penalties pursuant to Iowa Code section 136D.8~~.

ITEM 14. 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 ~~May 16, 2018~~ [effective date of these amendments].

ITEM 15. Amend paragraph **39.3(2)"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 storage area located in Iowa where records of equipment maintenance and quality assurance, personnel monitoring, and personnel certification must be kept for review during an inspection. The records may be stored on a ~~van~~ vehicle, if appropriate. An Iowa mailing address is not required. Application for registration shall be completed on forms furnished by the agency, shall contain all information required by the agency as indicated on the forms and accompanying instructions, and shall include the appropriate fee from 641—38.8(136C).

ITEM 16. Amend subparagraph **39.4(21)"e"(3)** as follows:

(3) 1. Persons who receive, acquire, possess, or use depleted uranium pursuant to the general license established by 39.4(21)*"e"*(1) shall file Agency Form "Registration Certificate—Use of Depleted Uranium Under General License" with the agency. The form shall be submitted within 30 days after the first receipt or acquisition of such depleted uranium. The general licensee shall furnish on the Agency Form "Registration Certificate—Use of Depleted Uranium Under a General License" the following information and such other information as may be required by that form:

- Name and address of the general licensee;
- A statement that the general licensee has developed and will maintain procedures designed to establish physical control over the depleted uranium described in 39.4(21)*"e"*(1) and designed to prevent transfer of such depleted uranium in any form, including metal scrap, to persons not authorized to receive the depleted uranium; and
- Name and title, address, and telephone number of the individual duly authorized to act for and on behalf of the general licensee in supervising the procedures identified in 39.4(21)*"e"*(3)"1."

2. The general licensee possessing or using depleted uranium under the general license established by 39.4(21)*"e"*(1) shall report in writing to the agency any changes in information furnished by the general licensee in Agency Form "Registration Certificate—Use of Depleted Uranium Under General License." The report shall be submitted within 30 days after the effective date of such change.

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ITEM 17. Amend subparagraph **39.4(22)"d"(3)** as follows:

(3) Any person who acquires, receives, possesses, uses or transfers radioactive material in a device pursuant to the general license in 39.4(22)*"d"*(1):

1. to 12. No change.

13. Shall register as follows:

- Shall register devices as approved in the Sealed Source and Device Registry. Each address for a location of use, as described in 39.4(22)*"d"*(3)"13," represents a separate general licensee and requires a separate registration and fee;
- If in possession of devices meeting the criteria of 39.4(22)*"d"*(3)"13," shall register these devices annually with the agency and shall pay the fee required in 641—paragraph 38.8(2)*"c."* Registration must be done by verifying, correcting, and adding to the information provided in a request for registration received from the agency. The registration information must be submitted 30 days from the date of the request for registration or as otherwise indicated in the request. In addition, a general licensee holding devices meeting the criteria of 39.4(22)*"d"*(3)"13" is subject to the bankruptcy notification requirement of 39.4(32)*"e"*;
- In registering devices, the general licensee shall furnish the following information and any other information specifically requested by the agency:

—Name and mailing address of the general licensee;

—Information about each device: the manufacturer (or initial transferor), model number, serial number, the radioisotope and activity (as indicated on the label);

—Name, title, and telephone number of the responsible person designated as a representative of the general licensee;

—Address or location at which the device(s) is both used and stored. For portable devices, the address of the primary place of storage;

—Certification by the responsible representative of the general licensee that the information concerning the device(s) has been verified through a physical inventory and check of label information.;

—Certification by the responsible representative of the general licensee that the licensee is aware of the requirements of the general license.

- Persons generally licensed by this agency under 39.4(22)*"d"*(3)"13" or an agreement state are not subject to registration requirements of 39.4(22)*"d"*(3)"13" if the devices are used in areas subject to this agency's jurisdiction for a period of less than 180 days in any calendar year. The agency will not request registration information from such licensees;

14. and 15. No change.

ITEM 18. Amend subparagraph **39.4(29)"j"(1)** as follows:

(1) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing ~~by-product~~ byproduct material for use by persons authorized pursuant to 641—41.2(136C) will be approved if:

1. to 3. No change.

4. The applicant ~~satisfies~~ commits to the following labeling requirements:

- A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted.
- A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

ITEM 19. Amend subparagraph **39.4(29)"j"(2)** as follows:

(2) A licensee as described by 39.4(29)*"j"*(1)"2":

1. to 4. No change.

5. Shall provide to the agency a copy of each individual's:

- Certification by a specialty board whose certification process has been recognized by the NRC or an agreement state as specified in 641—paragraph 41.2(78)*"a"* ~~with the written attestation signed by a preceptor as required by 641—paragraph 41.2(78)*"c"*~~; or
- NRC or agreement state license; or
- NRC master materials licensee permit; or
- Permit issued by a licensee or NRC master materials permittee of broad scope or authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or
- Documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and
- State pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to 39.4(29)*"j"*(2)"2," first and third bulleted paragraphs, the individual to work as an authorized nuclear pharmacist.

ITEM 20. Renumber subparagraphs **39.4(29)"j"(3)** and **(4)** as **39.4(29)"j"(4)** and **(5)**.

ITEM 21. Adopt the following **new** subparagraph **39.4(29)"j"(3)**:

(3) A licensee shall satisfy the labeling requirements in 39.4(29)*"j."*

ITEM 22. Amend paragraph **39.4(32)"e"** as follows:

*e.* Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with 641—subrule 41.2(34). The licensee shall record the results of each test and retain each record for three years after the record is made. The licensee shall report the results of any test that exceeds the permissible concentration listed in 641—paragraph 41.2(34)*"a"* at the time of generator elution, in accordance with 641—paragraph 41.2(34)*"e."*

ITEM 23. Amend subrule 40.1(5) as follows:

**40.1(5)** All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 16, 2018~~ [effective date of these amendments].

ITEM 24. Amend subrule 40.16(1) as follows:

**40.16(1)** If the licensee or registrant is required to monitor pursuant to both ~~40.19(1)~~ 40.37(1) and ~~40.19(2)~~ 40.37(2), the licensee or registrant shall demonstrate compliance with the dose limits by summing external and internal doses. If the licensee or registrant is required to monitor only pursuant to ~~40.19(1)~~ 40.37(1), or only pursuant to ~~40.19(2)~~ 40.37(2), then summation is not required to demonstrate compliance with the dose limits. The licensee or registrant may demonstrate compliance with the requirements for summation of external and internal doses pursuant to 40.16(2), 40.16(3) and 40.16(4). The dose equivalents for the lens of the eye, the skin, and the extremities are not included in the summation, but are subject to separate limits.

ITEM 25. Amend subrule 40.37(3) as follows:

**40.37(3)** Location of individual monitoring devices. Each licensee or registrant shall ensure that individuals who are required to monitor occupational doses in accordance with 641—40.37(136C) wear individual monitoring devices in accordance with the dosimetry vendor specifications and processed in accordance with NVLAP-approved calculation methods. Additional requirements are as follows:

~~*a.* An individual monitoring device used for monitoring the dose to the whole body shall be worn at the unshielded portion of the whole body likely to receive the highest exposure. When a protective apron is worn, the location of the individual monitoring device shall be near the midline of the body, under the apron;~~

~~*b.*~~ *a.* An individual monitoring device used for monitoring the dose to an embryo/fetus of a declared pregnant woman shall be located at the waist under any protective apron being worn by the woman;

~~*c.*~~ *b.* An individual monitoring device used for monitoring the eye dose equivalent, to demonstrate compliance with 641—40.15(136C) shall be located at the neck (collar), outside any protective apron being worn by the monitored individual, or at an unshielded location closer to the eye;

~~*d.*~~ *c.* An individual monitoring device used for monitoring the dose to the extremities, to demonstrate compliance with 641—40.15(136C), shall be worn on the extremity likely to receive the highest exposure. Each individual monitoring device shall be oriented to measure the highest dose to the extremity being monitored.

ITEM 26. Amend paragraph **41.2(1)"b"** as follows:

*b.* All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 16, 2018~~ [effective date of these amendments].

ITEM 27. Adopt the following **new** definitions of "Associate radiation safety officer," "Ophthalmic physicist," "Stereotactic radiosurgery" and "Teletherapy" in subrule **41.2(2)**:

*"Associate radiation safety officer"* means an individual who:

*a.* Meets the requirements of 41.2(65) and 41.2(77); and

*b.* Is currently identified as an associate radiation safety officer for the types of use of byproduct material for which the duties and tasks by the radiation safety officer on:

1. A specific medical use license issued by the NRC or an agreement state; or
2. A medical use permit issued by an NRC master material licensee.

*"Ophthalmic physicist"* means an individual who:

*a.* Meets the requirements of 41.2(85)*"a"*(2) and 41.2(77); and

*b.* Is identified as an ophthalmic physicist on a:

1. Specific medical use license issued by an NRC or an agreement state;
2. Permit issued by an NRC or agreement state broad scope medical use licensee;
3. Medical use permit issued by an NRC master material licensee; or
4. Permit issued by an NRC master material licensee broad scope medical use permittee.

*"Stereotactic radiosurgery"* means the use of external radiation in conjunction with a stereotactic guidance device to very precisely deliver a therapeutic dose to a tissue volume.

*"Teletherapy"* means therapeutic irradiation in which the source of radiation is at a distance from the body.

ITEM 28. Amend subrule **41.2(2)**, definition of "Radiation safety officer," as follows:

*"Radiation safety officer"* means an individual who, in addition to the definition in 641—38.2(136C)~~, meets the requirements of 41.2(77) and 41.2(65)*"a,"* or 41.2(65)*"c"*(1), or before May 3, 2006, meets the requirements in 10 CFR 35.900(a) and 10 CFR 35.59; or is identified as a radiation safety officer on a specific medical use license issued by Iowa, the NRC, or agreement state or a medical use permit issued by an NRC master material licensee.~~:

*a.* Meets the requirements of 41.2(65) and 41.2(77); and

*b.* Is identified as a radiation safety officer on:

1. A specific medical use license issued by the NRC or an agreement state; or
2. A medical use permit issued by an NRC master material licensee.

ITEM 29. Rescind the definition of "Teletherapy physicist" in subrule **41.2(2)**.

ITEM 30. Amend subrules 41.2(4) and 41.2(5) as follows:

**41.2(4)** *License amendments.*

*a.* A licensee shall apply for and receive a license amendment:

~~*a.*~~ (1) Before using ~~radioactive~~ byproduct material for a method or type of medical use not permitted by the license issued under this rule;

~~*b.*~~ (2) Before permitting anyone~~, except a visiting authorized user or visiting authorized nuclear pharmacist described in 41.2(12),~~ to work as an authorized user or authorized nuclear pharmacist under the license unless the individual meets "visiting" status in accordance with 41.2(12);

~~*c.*~~ (3) Before changing a radiation safety officer~~, teletherapy physicist or authorized medical physicist~~;

(4) Before permitting anyone to work as an associate radiation safety officer, or before the radiation safety officer assigns duties and tasks to an associate radiation safety officer that differ from those for which this individual is authorized on the license;

~~*d.*~~ (5) Before receiving ~~radioactive~~ byproduct material in excess of the amount authorized on the license;

~~*e.*~~ (6) Before adding to or changing the address or addresses of use identified in the application or on the license; and

(7) Before it receives a sealed source from a different manufacturer or of a different model number than authorized by its license unless the sealed source is used for manual brachytherapy, is listed in the Sealed Source and Device Registry, and is in a quantity and for an isotope authorized by the license.

~~*f.* Before changing statements, representations, and procedures which are incorporated into the license.~~

*b.* License amendment exemptions regarding Type A specific licenses of broad scope. A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(1) The provision of 41.2(4)*"a"*(2);

(2) The provisions of 41.2(4)*"a"*(6) regarding additions to or changes in the areas of use only at the addresses specified in the license.

**41.2(5)** *Notifications.*

~~*a.* A licensee shall provide to the agency a copy of the board certification, the NRC or agreement state license, or the permit issued by a licensee of broad scope for each individual no later than 30 days after the date that the licensee permits the individual to work as a visiting authorized user or a visiting authorized nuclear pharmacist.~~

~~*b.* A licensee shall notify the agency by letter no later than 30 days after:~~

~~(1) An authorized user, an authorized nuclear pharmacist, radiation safety officer, or teletherapy physicist permanently discontinues performance of duties under the license or has a name change; or~~

~~(2) The licensee's mailing address changes.~~

~~*c.* The licensee shall mail the documents required in this subrule to the Iowa Department of Public Health, Des Moines, Iowa.~~

~~*d.* Exemptions regarding Type A specific licenses of broad scope. A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:~~

~~(1) The provision of 41.2(4)*"b"*;~~

~~(2) The provisions of 41.2(4)*"e"* regarding additions to or changes in the areas of use only at the addresses specified in the license;~~

~~(3) The provision of 41.2(5)*"a"*;~~

~~(4) The provisions of 41.2(5)*"b"*(1) for authorized user or an authorized nuclear pharmacist.~~

*a.* A licensee shall notify the agency no later than 30 days after:

(1) An authorized user, an authorized nuclear pharmacist, a radiation safety officer, an associate radiation safety officer, an authorized medical physicist, or an ophthalmic physicist permanently discontinues performance of duties under the license or has a name change;

(2) The licensee permits an individual qualified to be a radiation safety officer under 41.2(65) and 41.2(77) to function as a temporary radiation safety officer and to perform the functions of a radiation safety officer in accordance with 41.2(10)*"c"*;

(3) The licensee's mailing address changes;

(4) The licensee's name changes but the name change does not constitute a transfer of control of the license as described in 641—paragraph 39.4(32)*"b"*; or

(5) The licensee has added to or changed the areas of use identified in the application or on the license where byproduct material is used.

*b.* Notifications requiring agency approval prior to implementation for remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units include:

(1) Revisions to procedures required by 41.2(52), 41.2(59)*"a,"* 41.2(59)*"b,"* and 41.2(59)*"c"* as applicable, where such revision reduces radiation safety;

(2) Changes that could impact radiation levels in adjacent spaces, such as shielding or location of device.

*c.* The licensee shall mail the documents required in this subrule to the agency in accordance with 641—38.7(136C).

*d.* Notification exemptions regarding Type A specific licenses of broad scope. A licensee possessing a Type A specific license of broad scope for medical use is exempt from the following:

(1) The provisions of 41.2(5)*"a"*(1) for an authorized user, an authorized nuclear pharmacist, an authorized medical physicist, or an ophthalmic physicist.

(2) The provisions of 41.2(5)*"a"*(5).

ITEM 31. Amend paragraphs **41.2(10)"b"** and **"c"** as follows:

*b.* A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety officer, shall ensure that the radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements. A licensee's management may appoint, in writing, one or more associate radiation safety officers to support the radiation safety officer. The radiation safety officer, with written agreement of the licensee's management, must assign the specific duties and tasks to each associate radiation safety officer. These duties and tasks are restricted to the types of use for which the associate radiation safety officer is listed on the license. The radiation safety officer may delegate duties and tasks to the associate radiation safety officer but shall not delegate the authority or responsibilities for implementing the radiation protection program.

*c.* For up to 60 days each year, a licensee may permit ~~an authorized user or~~ an individual qualified to be a radiation safety officer under 41.2(65) or 41.2(75) to function as a temporary radiation safety officer to perform the functions of radiation safety officer, as provided in 41.2(10)*"g,"* if the licensee takes the actions required in 41.2(10)*"b," "e," "g,"* and *"h"* and notifies this agency in accordance with 41.2(5).

ITEM 32. Amend subrule 41.2(12) as follows:

**41.2(12)** *Visiting authorized user, visiting authorized medical physicist, visiting ophthalmic physicist, and visiting authorized nuclear pharmacist.*

*a.* A licensee may permit any visiting authorized user, visiting authorized medical physicist, visiting ophthalmic physicist, or visiting authorized nuclear pharmacist to use licensed material for medical use under the terms of the licensee's license for 60 days each year if:

(1) The visiting authorized user, visiting authorized medical physicist, visiting ophthalmic physicist, or visiting authorized nuclear pharmacist has the prior written permission of the licensee's management and, if the use occurs on behalf of an institution, the institution's radiation safety committee;

(2) The licensee has a copy of ~~an agency, agreement state, licensing state or U.S. Nuclear Regulatory Commission~~ the NRC or agreement state license that identifies the visiting authorized user, visiting authorized medical physicist, visiting ophthalmic physicist, or visiting authorized nuclear pharmacist by name ~~as an authorized user~~ for the medical use being utilized by the licensee; and

(3) Only those procedures for which the visiting authorized user, visiting authorized medical physicist, visiting ophthalmic physicist, or visiting authorized nuclear pharmacist is specifically authorized by an ~~agency (~~ NRC or agreement state~~, licensing state or U.S. Nuclear Regulatory Commission)~~ license are performed by that individual.

*b.* A licensee need not apply for a license amendment in order to permit a visiting authorized user, visiting authorized medical physicist, visiting ophthalmic physicist, or visiting authorized nuclear pharmacist to use licensed material as described in 41.2(12)*"a."*

*c.* A licensee shall retain copies of the records specified in 41.2(12)*"a"* for five years from the date of the last visit.

ITEM 33. Amend subrule 41.2(14) as follows:

**41.2(14)** *Records and reports of ~~misadministrations and~~ reportable medical events.*

*a.* When a ~~misadministration or~~ reportable medical event, as defined in 641—38.2(136C), occurs, the licensee shall notify the agency by telephone. The licensee shall also notify the referring physician of the affected patient or human research subject and the patient or human research subject or a responsible relative or guardian, unless the referring physician agrees to inform the patient or human research subject or believes, based on medical judgment, that telling the patient or human research subject or the patient's or human research subject's responsible relative or guardian would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the ~~misadministration or~~ reportable medical event. If the referring physician, patient or human research subject, or the patient's or human research subject's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or human research subject or the patient's or human research subject's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient or human research subject because of this notification requirement including remedial care as a result of the ~~misadministration or~~ reportable medical event because of any delay in notification.

*b.* Written reports.

(1) The licensee shall submit a written report to the agency within 15 days after discovery of the ~~misadministration or~~ reportable medical event. The written report must include the licensee's name, the prescribing physician's name, a brief description of the event, why the event occurred, the effect on the patient or the human research subject, what improvements are needed to prevent recurrence, actions taken to prevent recurrence, whether the licensee notified the patient or the human research subject or the patient's or the human research subject's responsible relative or guardian (this individual will subsequently be referred to as "the patient or the human research subject"), and if not, why not, and if the patient or the human research subject was notified, what information was provided to that individual. The report must not include the patient's or the human research subject's name or other information that could lead to identification of the patient or the human research subject.

(2) If the patient or the human research subject was notified, the licensee shall also furnish, within 15 days after discovery of the ~~misadministration or~~ reportable medical event, a written report to the patient or the human research subject and the referring physician by sending either:

1. and 2. No change.

*c.* Rescinded IAB 4/4/01, effective 5/9/01.

*d.* Each licensee shall retain a record of ~~each misadministration for ten years and~~ each reportable medical event for three years. The record shall contain the names of all individuals involved in the event, including the physician, allied health personnel, the patient or human research subject, and the patient's or human research subject's referring physician, the patient's or human research subject's social security number or identification number if one has been assigned, a brief description of the event, why it occurred, the effect on the patient or human research subject, what improvements are needed to prevent recurrence, and the action taken, if any, to prevent recurrence.

*e.* and *f.* No change.

ITEM 34. Amend paragraph **41.2(17)"e"** as follows:

*e.* A licensee shall retain a record of each check and test required by 41.2(17) for three years, except the geometry dependence test which shall be retained in accordance with 41.2(17)*"b"*(4). The records required by 41.2(17)*"b"* shall include:

(1) to (4) No change.

ITEM 35. Amend subrule 41.2(20) as follows:

**41.2(20)** *Authorization for calibration and reference sources.*

*a.* Any person authorized by 41.2(3) for medical use of ~~radioactive~~ byproduct material may receive, possess, and use the following ~~radioactive~~ byproduct material for check, calibration and reference use:

~~*a.*~~ (1) Sealed sources manufactured and distributed by persons specifically licensed pursuant to 641—Chapter 39 or equivalent provisions of the ~~U.S. Nuclear Regulatory Commission~~ NRC, agreement state or licensing state and that do not exceed 30 millicuries (1.11 GBq) each;

~~*b.*~~ (2) Any ~~radioactive~~ byproduct material listed in 41.2(31) or 41.2(33) with a half-life of 120 days or less in individual amounts not to exceed 15 millicuries (555 MBq);

~~*c.*~~ (3) Any ~~radioactive~~ byproduct material listed in 41.2(31) or 41.2(33) with a half-life greater than 120 days in individual amounts not to exceed 200 microcuries (7.4 MBq) or 1,000 times quantities in Appendix C of 641—Chapter 40 each; and

~~*d.*~~ (4) Technetium-99m amounts as needed.

*b.* Byproduct material in sealed sources authorized by this provision shall not be:

(1) Used for medical use as defined in 641—38.2(136C) except in accordance with the requirements in 41.2(41); or

(2) Combined (i.e., bundled or aggregated) to create an activity greater than the maximum activity of any single sealed source authorized under this subrule.

*c.* A licensee using calibration, transmission, and reference sources in accordance with the requirements in 41.2(20)*"a"* or *"b"* need not list these sources on a specific medical use license.

ITEM 36. Rescind and reserve subrule **41.2(32)**.

ITEM 37. Amend subrule 41.2(34) as follows:

**41.2(34)** *Permissible molybdenum-99, strontium-82, and strontium-85 concentrations.*

*a.* A licensee shall not administer to humans a radiopharmaceutical that contains:

(1) More than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m); or

(2) More than 0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride injection (0.02 kilobecquerel strontium-82 per megabecquerel rubidium-82 chloride); or more than 0.2 microcurie of strontium-85 per millicurie of rubidium-82 chloride injection (0.2 kilobecquerel strontium-85 per megabecquerel rubidium-82 chloride).

*b.* A licensee ~~preparing:~~ that uses molybdenum-99/technetium-99m generators for preparing a technetium-99m radiopharmaceutical shall measure the molybdenum-99 concentration in each eluate from a generator to demonstrate compliance with 41.2(34)*"a."*

~~(1) Technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each eluate or extract; or~~

~~(2) Rubidium-82 radiopharmaceuticals from strontium-82/rubidium-82 generators shall measure the strontium-82 and strontium-85 concentration before the first patient use of the day.~~

*c.* A licensee that uses a strontium-82/rubidium-82 generator for preparing a rubidium-82 radiopharmaceutical shall, before the first patient use of the day, measure the concentration of radionuclides strontium-82 and strontium-85 to demonstrate compliance with 41.2(34)*"a."*

~~*c.*~~ *d.* A licensee who must measure molybdenum-99, strontium-82, or strontium-85 concentration shall retain a record of each measurement for three years. The record shall include:

(1) For each elution or extraction of technetium-99m, the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium (kilobecquerels of molybdenum per megabecquerel of technetium), the date of the test, and the initials of the individual who performed the test.

(2) For each elution or extraction of rubidium-82, the ratio of the measures expressed as microcuries of strontium-82 per millicurie of rubidium-82 (kilobecquerels of strontium-82 per megabecquerel of rubidium-82), microcuries of strontium-85 per millicurie of rubidium-82 (kilobecquerels of strontium-85 per millicurie of rubidium-82), the date of the test, and the initials of the individual who performed the test.

~~*d.*~~ *e.* A licensee shall report ~~immediately to the agency each occurrence of molybdenum-99 concentration exceeding the limits specified in 41.2(34)*"a"*(1) and strontium-82 or strontium-85 concentration exceeding the limits specified in 41.2(34)*"a"*(2).~~ any measurement that exceeds the limits in 41.2(34)*"a"* at the time of generator elution, in accordance with the following:

(1) The licensee shall notify by telephone the agency and the distributor of the generator within seven calendar days after discovery that an eluate exceeded the permissible concentration listed in 41.2(34)*"a"* at the time of generator elution. The telephone report to the agency must include the manufacturer, model number, and serial number (or lot number) of the generator; the results of the measurement; the date of the measurement; whether dosages were administered to patients or human research subjects; when the distributor was notified; and the action taken.

(2) By an appropriate method listed in 641—38.7(136C), the licensee shall submit a written report to the agency within 30 calendar days after discovery of an eluate exceeding the permissible concentration at the time of generator elution. The written report must include the action taken by the licensee; the patient dose assessment; the methodology used to make this dose assessment if the eluate was administered to patients or human research subjects; and the probable cause and an assessment of failure in the licensee's equipment, procedures or training that contributed to the excessive readings if an error occurred in the licensee's breakthrough determination; and the information in the telephone report as required by 41.2(34)*"a."*

ITEM 38. Rescind and reserve subrule **41.2(36)**.

ITEM 39. Amend subrule 41.2(37), introductory paragraph, as follows:

**41.2(37)** *Use of unsealed ~~by-product~~ byproduct material for which a written directive is required.* A licensee may use any unsealed ~~by-product~~ byproduct material identified in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph, prepared for medical use and for which a written directive is required that:

ITEM 40. Amend subrule 41.2(38) as follows:

**41.2(38)** *Safety instruction for radiopharmaceutical therapy and hospitalization.*

*a.* A licensee shall provide oral and written radiation safety instruction for all personnel caring for patients or human research subjects undergoing radiopharmaceutical therapy and hospitalized for compliance with 41.2(27). Refresher training shall be provided initially and at 12-month intervals or as required for patient care.

*b.* To satisfy 41.2(38)*"a,"* the instruction shall describe the licensee's procedures for:

(1) Patient or human research subject control;

(2) Visitor control;

(3) Contamination control;

(4) Waste control;

(5) Notification of the radiation safety officer, radiation safety officer designee, or authorized user in case of the patient's or human research subject's death or medical emergency; and

(6) Training requirements specified in 641—40.110(136C) and 641—40.116(136C) and adopted by reference and included herein.

*c.* A licensee shall ~~keep~~ maintain a record of ~~individuals receiving instruction required by 41.2(38)*"a,"*~~ safety instructions required by 41.2(38) for three years. The records must include a description of the instruction, the date of instruction, and the name of the individual who gave the instruction. Such record shall be maintained for inspection by the agency for three years.

ITEM 41. Amend subrule 41.2(39), catchwords, as follows:

**41.2(39)** *Safety precautions for radiopharmaceutical therapy and hospitalization.*

ITEM 42. Rescind and reserve subrule **41.2(40)**.

ITEM 43. Amend subrule 41.2(41) as follows:

**41.2(41)** *Use of sealed sources for diagnosis.* ~~A licensee shall use only sealed sources for diagnostic medical uses as approved in the Sealed Source and Device Registry.~~

*a.* A licensee must use only sealed sources that are not in medical devices for diagnostic medical uses if the sealed sources are approved in the Sealed Source and Device Registry for diagnostic medicine.

The sealed sources may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

*b.* A licensee must only use medical devices containing sealed sources for diagnostic medical uses if both the sealed sources and medical devices are approved in the Sealed Source and Device Registry for diagnostic medical uses. The diagnostic medical devices may be used for diagnostic medical uses that are not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry.

*c.* Sealed sources and devices for diagnostic medical uses may be used in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements in 41.2(15)*"a"* are met.

ITEM 44. Rescind and reserve subrule **41.2(42)**.

ITEM 45. Amend subrules 41.2(43) to 41.2(45) as follows:

**41.2(43)** *Use of sources for manual brachytherapy.* A licensee shall use only brachytherapy sources ~~for therapeutic medical uses~~:

*a.* As approved in the Sealed Source and Device Registry for manual brachytherapy medical use. The manual brachytherapy sources may be used for manual brachytherapy uses that are not explicitly listed in the Sealed Source and Device Registry but must be used in accordance with the radiation safety conditions and limitations described in the Sealed Source and Device Registry; or

*b.* In research to deliver therapeutic doses for medical use in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of 41.2(15) are met.

**41.2(44)** *Safety instruction for manual brachytherapy.*

*a.* The licensee shall provide oral and written radiation safety instruction to all personnel caring for a patient or human research subject receiving ~~implant therapy~~ manual brachytherapy and cannot be released under 41.2(27). Refresher training shall be provided initially and at 12-month intervals or as required for patient care.

*b.* To satisfy 41.2(44)*"a,"* the instruction shall describe:

(1) Size and appearance of the brachytherapy sources;

(2) Safe handling and shielding instructions in case of a dislodged source;

(3) Procedures for patient or human research subject control;

(4) Procedures for visitor control, to include routine visitation of hospitalized individuals in accordance with 641—40.26(136C) and visitation authorized in accordance with 641—40.26(136C);

(5) Procedures for notification of the radiation safety officer, radiation safety officer designee, or authorized user if the patient or human research subject dies or has a medical emergency; and

(6) Training requirements specified in 641—40.110(136C) and 40.116(136C) as adopted by reference and included herein.

*c.* A licensee shall maintain a record of ~~individuals receiving instruction required by 41.2(44)*"a,"*~~ safety instructions required by 41.2(44) for three years. The records must include a description of the instruction, the date of instruction, the name of the attendee(s), and the name of the individual who gave the instruction for three years.

**41.2(45)** *Safety precautions for manual brachytherapy.*

*a.* For each patient or human research subject receiving ~~implant therapy~~ manual brachytherapy a licensee shall:

(1) to (6) No change.

*b.* No change.

ITEM 46. Rescind and reserve subrule **41.2(48)**.

ITEM 47. Amend subrule 41.2(49) as follows:

**41.2(49)** *Use of a sealed source in a remote afterloader unit, teletherapy unit, or gamma stereotactic radiosurgery unit.* ~~A licensee shall use sealed sources in photon-emitting remote afterloader units,~~

~~teletherapy units, or gamma stereotactic radiosurgery units for therapeutic medical uses as approved in the Sealed Source and Device Registry or in research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of 41.2(15) are met.~~

*a.* A licensee must only use sealed sources:

(1) Approved and as provided for in the Sealed Source and Device Registry in photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units to deliver therapeutic doses for medical uses; or

(2) In research involving photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of 41.2(15)*"a"* are met.

*b.* A licensee must use photon emitting remote afterloader units, teletherapy units, or gamma stereotactic radiosurgery units:

(1) Approved in the Sealed Source and Device Registry to deliver a therapeutic dose for medical use. These devices may be used for therapeutic medical treatments that are not explicitly provided for in the Sealed Source and Device Registry but must be used in accordance with radiation safety conditions and limitations described in the Sealed Source and Device Registry; or

(2) In research in accordance with an active Investigational Device Exemption (IDE) application accepted by the FDA provided the requirements of 41.2(15)*"a"* are met.

ITEM 48. Amend subrule 41.2(52) as follows:

**41.2(52)** *Safety procedures and instructions for remote afterloader units, teletherapy units, and gamma ~~sterotactic~~ stereotactic radiosurgery units.*

*a.* to *c.* No change.

*d.* A licensee shall ~~provide~~:

(1) Ensure that vendor operational and safety training is provided to all individuals who will operate the unit prior to the first use for patient treatment of a new unit or an existing unit with a manufacturer upgrade that affects the operation and safety of the unit. The vendor operational and safety training must be provided by the device manufacturer or by an individual certified by the device manufacturer to provide the operational and safety training.

(2) Provide operational and safety instruction, initially and at least annually, to all individuals who operate the unit, appropriate to the individual's assigned duties, in:

~~(1)~~ 1. The procedures identified in 41.2(52)*"a"*(4); and

~~(2)~~ 2. The operating procedures for the unit.

*e.* The licensee shall ensure that operators, authorized medical physicists, and authorized users participate in drills of emergency procedures, initially and at least annually.

*f.* A licensee shall retain a record for three years of individuals receiving instruction required by ~~41.2(52)*"d,"*~~ 41.2(52), a description of the instruction, the date of instruction, the name of the attendee(s), and the name of the individual who gave the instruction.

*g.* A copy of the procedures required in ~~41.2(52)*"a"*(4) and~~ 41.2(52)*"d"*(2) shall be retained for three years.

ITEM 49. Amend subrule 41.2(53), catchwords, as follows:

**41.2(53)** *Safety precautions for remote afterloader units, teletherapy units, and gamma ~~sterotactic~~ stereotactic radiosurgery units.*

ITEM 50. Rescind and reserve subrule **41.2(54)**.

ITEM 51. Amend subrules 41.2(64) to 41.2(75) as follows:

**41.2(64)** ~~*Five-year inspection*~~ *Full-inspection servicing for teletherapy and gamma stereotactic radiosurgery units.*

*a.* A licensee shall have each teletherapy unit and gamma stereotactic radiosurgery unit fully inspected and serviced during ~~teletherapy~~ each source replacement ~~or at intervals not to exceed five years, whichever comes first,~~ to ~~ensure~~ assure proper functioning of the source exposure mechanism and

other safety components. The interval between each full inspection shall not exceed five years for each teletherapy unit and shall not exceed seven years for each gamma stereotactic radiosurgery unit.

*b.* This inspection and servicing shall be performed only by persons specifically licensed to do so by the ~~agency,~~ NRC or an agreement state~~, or the U.S. Nuclear Regulatory Commission~~.

*c.* A licensee shall maintain a record of the full inspection and servicing for the duration of the ~~license~~ use of the unit. The record shall contain the inspector's name, the inspector's license number, the date of inspection, the manufacturer's name and model number and serial number for both the teletherapy unit and gamma stereotactic radiosurgery unit and source, a list of components inspected, a list of components serviced and the type of service, a list of components replaced, and the signature of the inspector.

**41.2(65)** *Training for radiation safety officer.* Except as provided in 41.2(75), the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer or an individual assigned duties and tasks as an associate radiation safety officer as provided in 41.2(8) to be an individual who:

*a.* Is certified by a specialty board whose certification process has been recognized by ~~this agency,~~ the NRC~~,~~ or an agreement state and who meets the requirements in 41.2(65)*"d."* ~~and *"e."* (~~The names of the ~~specialty boards~~ board certifications that have been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state ~~must be~~ are posted on the NRC's Medical Use Toolkit web page.~~)~~ To have its certification process recognized, a specialty board shall:

(1) Require all candidates for certification to:

1. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

2. Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

3. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(2) Require all candidates for certification to:

1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

2. Have two years of either full-time practical training or supervised experience in medical physics under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the ~~agency,~~ NRC~~,~~ or an agreement state, or in clinical nuclear medicine facilities providing either diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in 41.2(68), 41.2(69), or 41.2(75); and

3. Pass an examination administered by diplomats of the specialty board that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

*b.* Has ~~completed~~:

(1) Completed a structured educational program consisting of both:

~~(1)~~ 1. 200 hours of classroom and laboratory training in the following areas:

~~1. Radiation physics and instrumentation;~~

~~2. Radiation protection;~~

~~3. Mathematics pertaining to the use and measurement of radioactivity;~~

~~4. Radiation biology; and~~

~~5. Radiation dosimetry; and~~

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity;
- Radiation biology; and
- Radiation dosimetry; and

~~(2)~~ 2. One year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on an ~~agency,~~ NRC~~,~~ or agreement state license or permit issued by the NRC master material licensee that authorizes similar types of use of ~~radioactive~~ byproduct material ~~involving~~. An associate radiation safety officer may provide supervision for those areas for which the associate radiation safety officer is authorized on an NRC or agreement state license or permit issued by an NRC master material licensee. The full-time radiation safety experience must involve the following:

~~1. Shipping, receiving, and performing related radiation surveys;~~

~~2. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;~~

~~3. Securing and controlling radioactive material;~~

~~4. Using administrative controls to avoid mistakes in the administration of radioactive material;~~

~~5. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;~~

~~6. Using emergency procedures to control radioactive material; and~~

~~7. Disposing of radioactive material; or~~

- Shipping, receiving, and performing related radiation surveys;
- Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;
- Securing and controlling byproduct material;
- Using administrative controls to avoid mistakes in the administration of byproduct material;
- Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;
- Using emergency procedures to control byproduct material; and
- Disposing of byproduct material; and

(2) This individual must obtain a written attestation signed by a preceptor radiation safety officer or associate radiation safety officer who has experience with the radiation safety aspects of similar types of use of byproduct material for which the individual is seeking approval as a radiation safety officer or an associate radiation safety officer. The written attestation must state that the individual has satisfactorily completed the requirements in 41.2(65)*"b"*(1) and 41.2(65)*"d"* and is able to independently fulfill the radiation safety-related duties as a radiation safety officer or as an associate radiation safety officer for a medical use license; or

*c.* (1) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state under ~~41.2(74) and~~ 41.2(74)*"a,"* has experience in radiation safety ~~for~~ aspects of similar types of use of ~~radioactive~~ byproduct material for which the licensee is seeking the approval of the individual as a radiation safety officer or an associate radiation safety officer, and ~~who~~ meets the requirements in 41.2(65)*"d"*~~and "e"~~; or

(2) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on ~~the licensee's~~ an NRC or agreement state license ~~and~~, a permit issued by an NRC master material licensee, a permit issued by an NRC or agreement state licensee of broad scope, or a permit issued by an NRC master material license broad scope permittee, has experience with the radiation safety aspects of similar types of use of ~~radioactive~~ byproduct material for which the licensee seeks the approval of the individual ~~has~~ as the radiation safety officer ~~responsibilities~~ or associate radiation safety officer and meets the requirements in 41.2(65)*"d"*; ~~and~~ or

(3) Has experience with the radiation safety aspects of the types of use of byproduct material for which the individual is seeking simultaneous approval both as the radiation safety officer and the authorized user on the same new medical use license or new medical use permit issued by an NRC master material licensee. The individual must also meet the requirements in 41.2(65)*"d"*; and

~~*d.* Has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in 41.2(65)*"c"* and 41.2(65)*"a"*(1)"1" and "2" or 41.2(65)*"a"*(2)"1" and "2" or 41.2(65)*"b"*(1) or 41.2(65)*"c"*(1), and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and~~

~~*e.*~~ *d.* Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which the licensee ~~is seeking~~ seeks approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, associate radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type of use for which the licensee is seeking approval.

**41.2(66)** *Training for experienced radiation safety officer.* Rescinded IAB 3/29/06, effective 5/3/06.

**41.2(67)** *Training for uptake, dilution, and excretion studies.* Except as provided in 41.2(75), the licensee shall require an authorized user of unsealed ~~radioactive~~ byproduct material for the uses authorized under 41.2(31) to be a physician who:

*a.* Is certified by a medical specialty board whose certification process has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state ~~and who meets the requirements in 41.2(67)"c."~~ (. The names of ~~specialty boards~~ board certifications that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state ~~must be~~ are posted on the NRC's Medical Uses Licensee Toolkit web page.~~)~~ To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies as described in 41.2(67)*"c"*(1)"1" and "2"; and

(2) Pass an examination administered by diplomats of the specialty board that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

*b.* Is an authorized user under 41.2(68) or 41.2(69) or meets equivalent NRC or agreement state requirements; or

*c.* (1) Has completed 60 hours of training and experience, including a minimum of 8 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:

1. Classroom and laboratory training in radiation physics and instrumentation; radiation protection; mathematics pertaining to the use and measurement of radioactivity, chemistry of radioactive material for medical use, and radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(67), 41.2(68), 41.2(69) or 41.2(75) or equivalent NRC or agreement state requirements, involving:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- Calculating, measuring, and safely preparing patient or human research subject dosages;
- Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- Administering dosages of radioactive drugs to patients or human research subjects; and

(2) Has obtained written attestation~~, signed by a preceptor authorized user who meets the requirements in 41.2(67), 41.2(68), 41.2(69) or 41.2(75) or equivalent NRC or agreement state requirements,~~ that the individual has satisfactorily completed the requirements in ~~41.2(67)*"a"*(1) or~~ 41.2(67)*"c"*(1) and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized user ~~for the medical uses authorized in~~ under 41.2(31). The attestation must be obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(67), 41.2(68), 41.2(69), or 41.2(75) or equivalent NRC or agreement state requirements; or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(67), 41.2(68), 41.2(69), or 41.2(75), or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency

training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(67)*"c"*(1).

**41.2(68)** *Training for imaging and localization studies.* Except as provided in 41.2(75), the licensee shall require the authorized user of unsealed ~~radioactive~~ byproduct material for the uses authorized under 41.2(33) to be a physician who:

*a.* Is certified by a medical specialty board whose certification process has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state ~~and who meets the requirements in 41.2(68)*"c."* (~~. The names of ~~specialty boards~~ board certifications that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state ~~must be~~ are posted on the NRC's Medical Uses Licensee Toolkit web page.~~)~~ To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed radioactive material for imaging and localization studies as described in 41.2(68)*"c"*(1)"1" and "2"; and

(2) Pass an examination administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

*b.* Is an authorized user under 41.2(69) and meets the requirements in 41.2(68)*"c"*(1)"2," seventh bulleted paragraph, or equivalent NRC or agreement state requirements; or

*c.* (1) Has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum:

1. Classroom and laboratory training in the following areas:

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity;
- Chemistry of radioactive material for medical use;
- Radiation biology, and

2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(68); 41.2(69) and 41.2(68)*"c"*(1)"2," seventh bulleted paragraph~~, and 41.2(69)~~; 41.2(75); or equivalent NRC or agreement state requirements~~, involving~~:. An authorized nuclear pharmacist who meets the requirements in 41.2(75) or 41.2(78) may provide the supervised work experience for the seventh bulleted paragraph of 41.2(68)*"c"*(1)"2." Work experience must involve:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- Calculating, measuring, and safely preparing patient or human research subject dosages;
- Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- Administering dosages of radioactive drugs to patients or human research subjects; and
- Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

(2) Has obtained written attestation~~, signed by a preceptor authorized user who meets the requirements in 41.2(68); 41.2(69) and 41.2(68)*"c"*(1)"2," seventh bulleted paragraph; 41.2(75); or equivalent NRC or agreement state requirements,~~ that the individual has satisfactorily completed the requirements in ~~41.2(68)*"a"*(1) or~~ 41.2(68)*"c"*(1) and ~~has achieved a level of competency sufficient to~~

~~function~~ is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under 41.2(31) and 41.2(33). The attestation must be obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(68); 41.2(69) and 41.2(68)*"c"*(1)"2," seventh bulleted paragraph; or 41.2(75), or equivalent NRC or agreement state requirements; or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(68); 41.2(69) and 41.2(68)*"c"*(1)"2," seventh bulleted paragraph; or 41.2(75); or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(68)*"c"*(1).

**41.2(69)** *Training for use of unsealed ~~by product~~ byproduct material for which a written directive is required.* Except as provided in 41.2(75), the licensee shall require an authorized user of unsealed ~~radioactive~~ byproduct material for the uses authorized under 41.2(37) to be a physician who:

*a.* Is certified by a medical specialty board whose certification process has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state and who meets the requirements in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph~~, and 41.2(69)*"b"*(2)~~. ~~(~~The names of the ~~specialty boards~~ board certificates that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state ~~must be~~ are posted on the NRC's Medical Uses Licensee Toolkit web page.~~)~~ To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in 41.2(69)*"b"*(1)"1" through 41.2(69)*"b"*(1)"2," fifth bulleted paragraph. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed radioactive material for which a written directive is required; or

*b.* (1) Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:

1. Classroom and laboratory training in the following areas:
- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity;
- Chemistry of radioactive material for medical use; and
- Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(69) or 41.2(75) or equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements in 41.2(69)*"b"* must also have experience in administering dosages in the same dosage category or categories (i.e., 41.2(69)*"b"*(1)"2," seventh bulleted paragraph) as the individual requesting authorized user status. The work experience must involve:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- Calculating, measuring, and safely preparing patient or human research subject dosages;

- Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- Reserved.
- Administering dosages of radioactive drugs to patients or human research subjects ~~involving~~ from the three categories in this bulleted paragraph. Radioactive drugs containing radionuclides in categories not included are regulated under 41.2(88). This work experience must involve a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

– Oral administration of less than or equal to 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131, for which a written directive is required;

– Oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131 (experience with at least three cases in this category also satisfies the requirement in the above category);

– Parenteral administration of ~~either~~ any ~~beta emitter or a photon-emitting radionuclide with a~~ radioactive drug that contains a radionuclide that is primarily used for its electron emissions, beta radiation characteristics, alpha radiation characteristics, or photon energy less than 150 keV for which a written directive is required; ~~or~~ and

~~– Parenteral administration of any other radionuclide for which a written directive is required; and~~

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in ~~41.2(69)*"a"*(1) and 41.2(69)*"b"*(1)"2," seventh bulleted paragraph, or~~ 41.2(69)*"b"*(1)~~,~~ and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized user for the medical uses authorized under 41.2(37) for which the individual is requesting authorized user status. ~~The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69) or 41.2(75) or equivalent NRC or agreement state requirements. The preceptor authorized user who meets the requirements in 41.2(69)*"b"* must have experience in administering dosages in the same dosage category or categories (i.e., 41.2(69)*"b"*(1)"2," seventh bulleted paragraph) as the individual requesting authorized user status.~~ The attestation must be obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(69), 41.2(75) or equivalent NRC or agreement state requirements and has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status; or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(69), 41.2(75) or equivalent NRC or agreement state requirements, has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(69)*"b"*(1).

*c.* For training only for oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 gigabecquerels) or quantities greater than 33 millicuries (1.22 gigabecquerels), see 41.2(81) or 41.2(82).

**41.2(70)** *Training for use of manual brachytherapy sources.* Except as provided in 41.2(75), the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized under 41.2(43) to be a physician who:

*a.* Is certified by a medical specialty board whose certification process has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state~~, and who meets the requirements in 41.2(70)*"b"*(3)~~. (The names of the ~~specialty boards~~ board certifications that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state must be posted on the NRC's Medical Uses Licensee Toolkit web page.)~~ To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

*b.* (1) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

1. 200 hours of classroom and laboratory training in the following areas:

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity; and
- Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in 41.2(70) or 41.2(75) or equivalent NRC or agreement state requirements at a medical ~~institution~~ facility authorized to use byproduct materials under 41.2(43), involving:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Checking survey meters for proper operation;
- Preparing, implanting, and removing brachytherapy sources;
- Maintaining running inventories of material on hand;
- Using administrative controls to prevent a medical event involving the use of radioactive material; and
- Using emergency procedures to control radioactive material; and

(2) Has completed three years of supervised clinical experience in radiation oncology under an authorized user who meets the requirements in 41.2(70) or 41.2(75) or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in 41.2(70)*"b"*(1)"2"; and

(3) Has obtained written attestation~~, signed by a preceptor authorized user who meets the requirements in 41.2(70) or 41.2(75) or equivalent NRC or agreement state requirements,~~ that the individual has satisfactorily completed the requirements in ~~41.2(70)*"a"*(1) or~~ 41.2(70)*"b"*(1) and (2)~~,~~ and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized user of manual brachytherapy sources for the medical uses authorized under 41.2(43). The attestation must be obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(70), 41.2(75), or equivalent NRC or agreement state requirements; or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(70), 41.2(75), or equivalent NRC or agreement state requirements, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(70)*"b"*(1) and (2).

**41.2(71)** *Training for ophthalmic use of strontium-90.* Except as provided in 41.2(75), the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

*a.* Is an authorized user under 41.2(70) or equivalent NRC or agreement state requirements; or

*b.* (1) Has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training must include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology; and

(2) Has completed supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve:

1. Examination of each individual to be treated;
2. Calculation of the dose to be administered;
3. Administration of the dose; and
4. Follow-up and review of each individual's case history; and

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(70), 41.2(71) or 41.2(75) or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(71)*"b"*(1) and (2) and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized user of strontium-90 for ophthalmic use.

**41.2(72)** *Training for use of sealed sources for diagnosis.* Except as provided in 41.2(75), the licensee shall require the authorized user of a diagnostic sealed source ~~for use in~~ or a device authorized under 41.2(41) to be a physician, dentist, or podiatrist who:

*a.* Is certified by a specialty board whose certification process includes all of the requirements in ~~41.2(72)*"b"* and~~ 41.2(72)*"c"* and *"d"* and whose certification has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state. ~~(~~The names of the ~~specialty boards~~ board certificates that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state must be posted on the NRC's Medical Uses Licensee Toolkit web page.~~)~~; or

*b.* Is an authorized user for uses listed in 41.2(33) or equivalent NRC or agreement state requirements; or

~~*b.*~~ *c.* Has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:

(1) Radiation physics and instrumentation;
(2) Radiation protection;
(3) Mathematics pertaining to the use and measurement of radioactivity; and
(4) Radiation biology; and

~~*c.*~~ *d.* Has completed training in the use of the device for the uses requested.

**41.2(73)** *Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.* Except as provided in 41.2(75), the licensee shall require an authorized user of a sealed source for a use authorized under 41.2(49) to be a physician who:

*a.* Is certified by a medical specialty board whose certification process has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state~~,~~ and who meets the requirements in ~~41.2(73)*"b"*(3) and~~ 41.2(73)*"c."* ~~(~~The names of ~~the specialty boards~~ board certification that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state ~~must be~~ are posted on the NRC's Medical Uses License Toolkit web page.~~)~~ To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders, and external beam therapy; or

*b.* (1) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

1. 200 hours of classroom and laboratory training in the following areas:

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity; and
- Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in 41.2(73) or 41.2(75) or equivalent NRC or agreement state requirements at a medical ~~institution~~ facility that is authorized to use byproduct material in 41.2(49), involving:

- Reviewing full calibration measurements and periodic spot checks;
- Preparing treatment plans and calculating treatment doses and times;
- Using administrative controls to prevent a medical event involving the use of radioactive material;
- Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
- Checking and using survey meters; and
- Selecting the proper dose and how it is to be administered; and

(2) Has completed three years of supervised clinical experience in radiation therapy under an authorized user who meets the requirements in 41.2(73) or 41.2(75) or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by 41.2(73)*"b"*(1)"2"; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in ~~41.2(73)*"a"*(1) or~~ 41.2(73)*"b"*(1) and (2)~~,~~ and 41.2(73)*"c,"* and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The ~~written~~ attestation must be ~~signed by a~~ obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(73) or 41.2(75) or equivalent NRC or agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; ~~and~~ or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(73), 41.2(75), or equivalent NRC or agreement state requirements, for the type(s) of therapeutic medical unit for which the individual is requesting authorized user status, and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(73)*"b"*(1) and (2); and

*c.* Has received training in device operation, safety procedures, and clinical use for the type of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type of use for which the individual is seeking authorization.

**41.2(74)** *Training for an authorized medical physicist.* Except as provided in 41.2(75), the licensee shall require the authorized medical physicist to be an individual who:

*a.* Is certified by a specialty board whose certification process has been recognized by the agency, NRC, or an agreement state and who meets the requirements in ~~41.2(74)*"b"*(2) and~~ 41.2(74)*"c."* ~~(~~The names of the ~~specialty boards~~ board certifications that have been recognized by the ~~agency,~~ NRC~~,~~ or

agreement state ~~must be~~ are posted on the NRC's Medical Uses Licensee Toolkit web page.~~)~~ To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

(2) Have two years of either full-time practical training or supervised experience in medical physics:

1. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized under this rule by the ~~agency,~~ NRC~~,~~ or an agreement state; or

2. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in 41.2(70), 41.2(73), or 41.2(75); and

(3) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

*b.* (1) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:

1. Performing sealed source leak tests and inventories;

2. Performing decay corrections;

3. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units, as applicable; and

4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units, as applicable; and

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in ~~41.2(74)*"a"*(1) and (2) and 41.2(74)*"c"* or~~ 41.2(74)*"b"*(1) and ~~41.2(74)*"c,"*~~ *"c"* and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in 41.2(74) or 41.2(75) or equivalent NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status~~; and~~.

*c.* Has training for the type of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist who is authorized for the type of use for which the individual is seeking authorization.

**41.2(75)** *Training for experienced radiation safety officer, authorized medical physicist, nuclear pharmacist, authorized nuclear pharmacist, authorized users and teletherapy or medical physicists.*

*a.* (1) ~~An individual identified as a radiation safety officer, teletherapy or medical physicist, or nuclear pharmacist on an agency, NRC or agreement state license or a permit issued by an NRC or agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before January 1, 2003, does not need to comply with the training requirements of 41.2(65), 41.2(74), or 41.2(78).~~ An individual identified on an NRC or agreement state license, on a permit issued by the NRC or agreement state broad scope licensee, on a master material license permit, or by a master material license permittee of broad scope as a radiation safety officer, a teletherapy or medical physicist, an authorized medical physicist, a nuclear pharmacist or

an authorized nuclear pharmacist on or before [effective date of these amendments] need not comply with the training requirements of 41.2(65), 41.2(74), or 41.2(78), respectively, except the radiation safety officers and authorized medical physicists identified in this paragraph must meet the training requirements in 41.2(65)*"d"* or 41.2(74)*"c,"* as appropriate, for any material or uses for which they were not authorized prior to this date.

(2) ~~An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on the agency, NRC, or agreement state license or permit issued by the agency, NRC, or agreement state broad scope licensee or issued by master material license permit or issued by a master material license permittee of broad scope between January 1, 2003, and May 3, 2006, need not comply with the training requirements of 41.2(65), 41.2(74), or 41.2(78).~~ Any individual certified by the American Board of Health Physics in comprehensive health physics; American Board of Radiology; American Board of Nuclear Medicine; American Board of Science in Nuclear Medicine; Board of Pharmaceutical Specialties in Nuclear Pharmacy; American Board of Medical Physics in radiation oncology physics; Royal College of Physicians and Surgeons of Canada in nuclear medicine; American Osteopathic Board of Radiology; or American Osteopathic Board of Nuclear Medicine on or before October 24, 2005, need not comply with the training requirements of 41.2(65) to be identified as a radiation safety officer or as an associate radiation safety officer on an NRC or an agreement state license or NRC master material license permit for those materials and uses that these individuals performed on or before October 24, 2005.

(3) Any individual certified by the American Board of Radiology in therapeutic radiological physics, roentgen ray and gamma ray physics, X-ray and radium physics, or radiological physics, or certified by the American Board of Medical Physics in radiation oncology physics, on or before October 24, 2005, need not comply with the training requirements for an authorized medical physicist described in 41.2(74), for those materials and uses that these individuals performed on or before October 24, 2005.

*b.* (1) Physicians, dentists, or podiatrists identified as authorized users for the medical use of ~~radioactive~~ byproduct material on a license issued by ~~the agency,~~ the NRC~~,~~ or agreement state, a permit issued by an NRC master material licensee, a permit issued by an NRC broad scope licensee, or a permit issued by an NRC master material license broad scope permittee before ~~January 1, 2003~~ [effective date of these amendments], who perform only those medical uses for which they were authorized before that date need not comply with the training requirements of 41.2(67), 41.2(68), 41.2(69), 41.2(70), 41.2(71), 41.2(72), 41.2(73), 41.2(81), 41.2(82), or 41.2(89).

(2) Physicians, dentists, or podiatrists not identified as authorized users for the medical use of ~~radioactive~~ byproduct material issued by ~~the agency,~~ the NRC~~,~~ or agreement state, a permit issued by an NRC master material licensee, a permit issued by an NRC broad scope licensee, or a permit issued by an NRC master material license broad scope permittee who perform only those medical uses for which they were authorized ~~between January 1, 2003, and May 3, 2006~~ on or before October 24, 2005, need not comply with the training requirements of 41.2(67), 41.2(68), 41.2(69), 41.2(70), 41.2(71), 41.2(72), 41.2(73), 41.2(81), 41.2(82), or 41.2(89)~~.~~ for those materials and uses that these individuals performed on or before October 24, 2005, as follows:

1. For uses authorized under 41.2(31) or 41.2(33), or oral administration of sodium iodide I-131 requiring a written directive for imaging and localization purposes, a physician who was certified on or before October 24, 2005, in nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology by the American Board of Radiology; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or American Osteopathic Board of Nuclear Medicine in nuclear medicine;

2. For uses authorized under 41.2(37), a physician who was certified on or before October 24, 2005, by the American Board of Nuclear Medicine; the American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or the American Osteopathic Board of Radiology after 1984;

3. For uses authorized under 41.2(43) or 41.2(49), a physician who was certified on or before October 24, 2005, in radiology, therapeutic radiology or radiation oncology by the American Board of Radiology; radiation oncology by the American Osteopathic Board of Radiology; radiology, with

specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; and

4. For uses authorized under 41.2(41), a physician who was certified on or before October 24, 2005, in radiology, diagnostic radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; nuclear medicine by the American Board of Nuclear Medicine; diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or nuclear medicine by the Royal College of Physicians and Surgeons of Canada.

(3) Physicians, dentists, or podiatrists who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses performed at a government agency or federally recognized Indian tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC, need not comply with the training requirements of 41.2(67), 41.2(68), 41.2(69), 41.2(70), 41.2(71), 41.2(72), 41.2(73), 41.2(81), 41.2(82), or 41.2(89) when performing the same medical uses. A physician, dentist, or podiatrist, who used only accelerator-produced radioactive materials, discrete sources of radium-226, or both, for medical uses at the locations and time period identified in this paragraph, qualifies as an authorized user for those materials and uses performed before these dates, for the purposes of this rule.

*c.* Individuals who need not comply with training requirements as described in this subrule may serve as preceptors for, and supervisors of, applicants seeking authorization on an agency license for the same uses for which these individuals are authorized.

ITEM 52. Amend subrules 41.2(77) and 41.2(78) as follows:

**41.2(77)** *Recentness of training.* The training and experience specified in 41.2(65) to 41.2(78) and 41.2(81), 41.2(82), 41.2(85), and 41.2(89) shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and continuing applicable experience since the required training and experience were completed.

**41.2(78)** *Training for an authorized nuclear pharmacist.* Except as provided in 41.2(75), the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

*a.* Is certified ~~as a nuclear pharmacist by a specialty board whose certification process includes all of the requirements of 41.2(78)*"b."* (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's web page.)~~ by a specialty board whose certification process has been recognized by the NRC or an agreement state. The names of board certifications that have been recognized by the NRC or an agreement state are posted on the NRC's Medical Uses Licensee Toolkit web page. To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) to (4) No change.

*b.* Has completed 700 hours in a structured education program consisting of both:

(1) No change.

(2) Supervised practical experience in a nuclear pharmacy involving:

1. Shipping, receiving, and performing related radiation surveys;

2. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters and, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;

3. Calculating, assaying, and safely preparing dosages for patients or human research subjects;

4. Using administrative controls to avoid medical events in the administration of ~~by-product~~ byproduct material; and

5. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

*c.* Has obtained written attestation, signed by a preceptor authorized nuclear pharmacist, that the individual satisfactorily completed the requirements in ~~41.2(78)*"a"*(1), (2), and (3), or 41.2(78)*"b"*(1)~~ 41.2(78)*"b"* and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized nuclear pharmacist.

ITEM 53. Amend subrules 41.2(81) and 41.2(82) as follows:

**41.2(81)** *Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 gigabecquerels).* Except as provided in 41.2(75), the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 gigabecquerels) to be a physician who:

*a.* Is certified by a medical specialty board whose certification process includes all of the requirements in 41.2(81)*"c"*(1) and (2) and whose certification process has been recognized by the ~~agency,~~ NRC~~,~~ or an agreement state ~~and who meets the requirements in 41.2(81)*"c"*(3)~~. ~~(~~The names of the ~~specialty boards~~ board certifications that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state ~~must be~~ are posted on the NRC's Medical Uses Licensee Toolkit web page~~.)~~; or

*b.* Is an authorized user under 41.2(69)*"a"* or *"b"* for uses in the oral administration of less than or equal to 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131 for which a written directive is required, or oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131 or 41.2(82) or equivalent NRC or agreement state requirements; or

*c.* (1) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology; and

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69)*"a"* or *"b,"*41.2(75), 41.2(81) or 41.2(82) or equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements in 41.2(69)*"b"* must also have experience in administering dosages as follows: oral administration of less than or equal to 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131, for which a written directive is required; or oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131. The work experience must involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of radioactive material;
5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects that include at least three cases involving the oral administration of less than or equal to 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(81)*"c"*(1) and (2)~~,~~ and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized user for medical uses authorized under 41.2(37). The ~~written~~ attestation must be ~~signed by a~~ obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(69), 41.2(75), 41.2(81) or 41.2(82) or equivalent NRC or agreement state requirements~~. A preceptor authorized user who meets the requirements in 41.2(69)*"b"* must also have~~ and has experience in administering dosages as follows: oral administration of less than or equal to 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131, for which a written directive is required; or oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131~~.~~; or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(69), 41.2(75), 41.2(81), 41.2(82), or equivalent NRC or agreement state requirements; has experience in administering dosages orally as specified in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph; and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(81)*"c"* (1) and (2).

**41.2(82)** *Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 millicuries (1.22 gigabecquerels).* Except as provided in 41.2(75), the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 millicuries (1.22 gigabecquerels) to be a physician who:

*a.* Is certified by a medical specialty board whose certification process includes all of the requirements in 41.2(82)*"c"*(1) and (2), and whose certification has been recognized by the ~~agency,~~ NRC~~,~~ or agreement state~~, and who meets the requirements in 41.2(82)"c"(3)~~. ~~(~~The names of the ~~specialty boards~~ board certifications that have been recognized by the ~~agency,~~ NRC~~,~~ or agreement state must be posted on the NRC's Medical Uses Licensee Toolkit web page.~~)~~; or

*b.* Is an authorized user under 41.2(69)*"a"* or *"b"* for oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131 or meets equivalent NRC or agreement state requirements; or

*c.* (1) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology; and

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69)*"a"* or *"b,"*41.2(75) or 41.2(82) or equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements in 41.2(69)*"b"* must also have experience in oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131. The work experience must involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of radioactive material;
5. Using procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects that include at least three cases involving the oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(82)*"c"*(1) and (2)~~,~~ and ~~has achieved a level of competency sufficient to function~~ is able to independently fulfill the radiation safety-related duties as an authorized user for medical uses authorized in 41.2(37). The ~~written~~ attestation must be ~~signed by a~~ obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(69), 41.2(75) or 41.2(82) or equivalent NRC or agreement state requirements~~. A preceptor authorized user who meets the~~

~~requirements in 41.2(69)*"b"* must also have~~ and has experience in oral administration of greater than 33 millicuries (1.22 gigabecquerels) of sodium iodide I-131~~.~~; or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(69), 41.2(75), 41.2(82), or equivalent NRC or agreement state requirements; has experience in administering dosages orally with greater than 33 millicuries of sodium iodide I-131, as specified in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph; and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(82)*"c"* (1) and (2).

ITEM 54. Amend subrule 41.2(85) as follows:

**41.2(85)** ~~*Decay of strontium-90*~~ *Strontium-90 sources for ophthalmic treatment.*

~~*a.* Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under 41.2(84).~~

*a.* Licensees who use strontium-90 for ophthalmic treatments must ensure that certain activities as specified in 41.2(85)*"b"* are performed by either:

(1) An authorized medical physicist; or

(2) An individual who:

1. Is identified as an ophthalmic physicist on a specific medical use license issued by the NRC or an agreement state, permit issued by an NRC or agreement state broad scope medical use licensee, medical use permit issued by an NRC master material licensee, or permit issued by an NRC master material licensee broad scope medical use permittee; and

2. Holds a master's or doctor's degree in physics, medical physics, other physical sciences, engineering, or applied mathematics from an accredited college or university; and

3. Has successfully completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of a medical physicist; and

4. Has documented training in:

- The creation, modification, and completion of written directives;
- Procedures for administrations requiring a written directive; and
- Performing the calibration measurements of brachytherapy sources as detailed in 41.2(84).

*b.* The individuals who are identified in 41.2(85)*"a"* must:

(1) Calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under 41.2(84); and

(2) Assist the licensee in developing, implementing, and maintaining written procedures to provide high confidence that the administration is in accordance with the written directive. These procedures must include the frequencies that the individual meeting the requirements in 41.2(85)*"a"* will observe treatments, review the treatment methodology, calculate treatment time for the prescribed dose, and review records to verify that the administrations were in accordance with the written directives.

~~*b.*~~ *c.* A licensee shall retain a record of the activity of each strontium-90 source ~~in accordance with 41.2(84).~~ for the life of the source. The record must include:

(1) The date and initial activity of the source under 41.2(84); and

(2) For each decay calculation, the date and the source activity as determined under this subrule.

ITEM 55. Amend subrule 41.2(87) as follows:

**41.2(87)** *Written directives.* Each licensee or registrant shall meet the following objectives:

*a.* A written directive must be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 30 microcuries, any therapeutic dosage of unsealed ~~by-product~~ byproduct material or any therapeutic dose of radiation from ~~by-product~~ byproduct material.

(1) If, because of the emergent nature of the patient's condition, a delay in order to provide a written directive would jeopardize the patient's health, an oral directive is acceptable.

(2) The information contained in the oral directive must be documented as soon as possible in writing in the patient's record. A written directive must be prepared within 48 hours of the oral directive.

*b.* Prior to administration, a written directive must contain the patient's or human research subject's name and the following information:

(1) For any administration of quantities greater than 30 microcuries of ~~either~~ sodium iodide ~~I-125 or~~ I-131: the dosage;

(2) For a therapeutic administration of a radiopharmaceutical other than sodium iodide ~~I-125 or~~ I-131: the radiopharmaceutical, dosage, and route of administration;

(3) For gamma stereotactic radiosurgery: the total dose, treatment site, and values for the target coordinate setting per treatment for each anatomically distinct treatment site;

(4) For teletherapy: the total dose, dose per fraction, number of fractions, treatment site, and overall treatment period;

(5) For high-dose-rate remote afterloading brachytherapy: the ~~radioisotope~~ radionuclide, treatment site, dose per fraction, number of fractions and total dose; ~~or~~

(6) For permanent implant brachytherapy:

1. Before implantation: the treatment site, the radionuclide, and the total source strength; and

2. After implantation but before the patient leaves the post-treatment recovery area: the treatment site, the number of sources implanted, the total source strength implanted, and the date; or

~~(6)~~ (7) For all other brachytherapy, including low-, medium-, and pulsed-dose-rate remote afterloaders:

1. Prior to implantation: treatment site, the ~~radioisotope~~ radionuclide, ~~number of sources, and source strengths~~ and dose; and

2. After implantation but prior to completion of the procedure: the ~~radioisotope~~ radionuclide, treatment site, number of sources, ~~and~~ total source strength and exposure time (or, equivalently, the total dose), and date;

~~(7)~~ (8) For therapeutic use of radiation machines, see 41.3(14).

*c.* Prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive.

*d.* The final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives.

*e.* Each administration is in accordance with the written directive through checking both manual and computer-generated dose calculations and verifying that any computer-generated dose calculations are correctly transferred into the consoles of the medical units authorized by 641—Chapter 41.

*f.* ~~Any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken.~~ Determine if a reportable medical event, as described in 641—38.2(136C), has occurred.

*g.* Determine, for a permanent implant brachytherapy, within 60 calendar days from the date the implant was performed, the total source strength administered outside of the treatment site compared to the total source strength documented in the postimplantation portion of the written directive, unless a written justification of patient unavailability is documented.

~~*g.*~~ *h.* A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed ~~by-product~~ byproduct material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(1) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable.

(2) The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user with 48 hours of the oral revision.

~~*h.*~~ *i.* A copy of the written directive in auditable form shall be retained for three years after the date of administration.

ITEM 56. Amend subrule 41.2(89) as follows:

**41.2(89)** *Training for the parenteral administration of unsealed ~~by-product~~ byproduct material requiring a written directive.*

*a.* Except as provided in 41.2(75), the licensee shall require an authorized user for the parenteral administration requiring a written directive to be a physician who:

~~*a.*~~ (1) Is an authorized user under 41.2(69) for parenteral administration ~~of either any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV for which a written directive is required~~ uses listed in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph, or equivalent NRC or agreement state requirements; or

~~*b.*~~ (2) Is an authorized user under 41.2(70) or 41.2(73) or equivalent NRC or agreement state requirements, and who meets the requirements in ~~41.2(89)*"d"*~~ 41.2(89)*"b"*; or

~~*c.*~~ (3) Is certified by a medical specialty board whose certification process has been recognized by the NRC or an agreement state under 41.2(70) or 41.2(73) and who meets the requirements in ~~41.2(89)*"d"*~~ 41.2(89)*"b"*; or

~~*d.*~~ *b.* The physician:

(1) Has successfully completed 80 hours of classroom and laboratory training, applicable to parenteral administrations~~, for which a written directive is required, of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required~~ listed in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph. The training must include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of radioactive material for medical use; and
5. Radiation biology; and

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69), 41.2(75) or 41.2(89) or equivalent NRC or agreement state requirements, in the parenteral administration ~~for which a written directive is required, of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required~~ listed in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph. A supervising authorized user who meets the requirements in 41.2(69), 41.2(89), or equivalent NRC or agreement state requirements must have experience in administering dosages ~~of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required~~ in the same category or categories as the individual requesting authorized user status. The work experience must involve:

1. Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of unsealed ~~radioactive~~ byproduct material;
5. Using procedures to contain spilled ~~radioactive~~ byproduct material safely, and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administration ~~for which a written directive is required, of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or at least three cases involving the parenteral administration of any other radionuclide for which a written directive is required~~ as specified in 41.2(69)*"b"*(1)"2," seventh bulleted paragraph; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(89)*"b"*(1) or ~~*"c,"*~~ (2), and ~~has achieved a level of competency sufficient to~~

~~function~~ is able to independently fulfill the radiation safety-related duties as an authorized user for the parenteral administration of unsealed ~~by-product~~ byproduct material requiring a written directive. The ~~written~~ attestation must be ~~signed by a~~ obtained from either:

1. A preceptor authorized user who meets the requirements in 41.2(69), 41.2(75) or 41.2(89) or equivalent NRC or agreement state requirements. A preceptor authorized user who meets the requirements in 41.2(69), 41.2(89) or equivalent NRC or agreement state requirements must have experience in administering dosages ~~of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or at least three cases involving the parenteral administration of any other radionuclide for which a written directive is required.~~ in the same category or categories as the individual requesting authorized user status; or

2. A residency program director who affirms in writing that the attestation represents the consensus of the residency program faculty where at least one faculty member is an authorized user who meets the requirements in 41.2(59), 41.2(75), 41.2(89), or equivalent agreement state requirements; has experience in administering dosages in the same dosage category or categories as the individual requesting authorized user status; and concurs with the attestation provided by the residency program director. The residency training program must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Council on Postdoctoral Training of the American Osteopathic Association and must include training and experience specified in 41.2(89)*"b"*(1) and (2).

ITEM 57. Amend **641—Chapter 45**, title, as follows:

RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS, PARTICLE ACCELERATORS FOR NONHUMAN USE, ANALYTICAL X-RAY EQUIPMENT, AND WELL-LOGGING

ITEM 58. Amend paragraph **45.1(1)"b"** as follows:

*b.* All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 16, 2018~~ [effective date of these amendments].

ITEM 59. Amend subrule 45.1(18) as follows:

**45.1(18)** ~~*Notification of incidents*~~ *Notifications*.

*a.* The agency shall be notified of thefts or losses of sources of radiation, overexposures, and excessive levels in accordance with 641—40.95(136C) and 641—40.97(136C).

*b.* Each licensee or registrant shall submit a written report within 30 days to the agency whenever one of the following events occurs:

(1) The source assembly cannot be returned to the fully shielded position and properly secured;

(2) The source assembly becomes disconnected from the drive cable;

(3) The failure of any component (critical to safe operation of the radiographic exposure device) to properly perform its intended function; or

(4) An indicator on a radiation-producing machine fails to show that radiation is being produced or an exposure switch fails to terminate production of radiation when turned to the off position.

*c.* The licensee or registrant shall include the following information in each report submitted in accordance with 45.1(18)*"b"*:

(1) A description of the equipment problem;

(2) Cause of each incident, if known;

(3) Manufacturer and model number of equipment involved in the incident;

(4) Location, time, and date of the incident;

(5) Actions taken to establish normal operations;

(6) Corrective actions taken or planned to prevent recurrence; and

(7) Names of personnel involved in the incident.

*d.* Any licensee conducting radiographic operations or storing radioactive material at any location not listed on the license for a period in excess of 180 days in a calendar year shall notify the agency prior to exceeding the 180 days.

**ARC 4859C**

# PUBLIC HEALTH DEPARTMENT[641]

**Notice of Intended Action**

**Proposing rule making related to healthy families Iowa program administration and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 87, "Healthy Families Iowa (HFI)," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 135.106 and 2019 Iowa Acts, House File 766, section 3.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 135.106 and 2019 Iowa Acts, House File 766, section 3.

*Purpose and Summary*

The proposed amendment updates the rules for the Healthy Opportunities for Parents to Experience Success (HOPES)-Healthy Families Iowa (HFI) program administration as required by 2019 Iowa Acts, House File 766, section 3. House File 766 changed the application to a competitive bidding process for HOPES-HFI funding. The proposed amendment also includes technical cleanup based upon the Healthy Families America model.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Marcus Johnson-Miller
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: marcus.johnson-miller@idph.iowa.gov

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend rules 641—87.1(135) to 641—87.5(135) as follows:

**641—87.1(135) Purpose.** These rules are intended to establish standards for the healthy families Iowa (HFI) program, a family support program that provides services to families and children during the prenatal ~~to preschool years~~ period through three years of age through home visitation. This program shall be identified as healthy opportunities for parents to experience success—healthy families Iowa (HOPES-HFI). The HOPES-HFI program is intended to promote optimal child health and development; improve family coping skills and functioning; promote positive parenting skills and ~~intrafamilial~~ parent-child interaction; and prevent child abuse and neglect and infant mortality and morbidity. These rules outline the process by which the department ~~assists the Iowa empowerment board in managing contracting for~~ manages HOPES-HFI funds.

**641—87.2(135) Definitions.** For the purpose of these rules, the following terms shall have the meaning indicated in this rule:

*"Accreditation"* means national recognition of compliance with Healthy Families America standards through a peer review process.

*"Applicant"* means a governmental or nonprofit agency that ~~received grant funds in the previous fiscal year,~~ is fully accredited by Healthy Families America (HFA) or in the process of HFA accreditation, and applies to the department during a competitive year. In any year in which expansion funds are available for the HOPES-HFI program, the department shall award new grants, subject to annual renewal, to selected applicants in a competitive process.

*"At-risk community"* means a county or group of counties that are identified as at risk in the most recently available needs assessment conducted by the department.

*"Competitive grant"* means the competitive grant application process to determine the grant awards for a project period.

*"Contractor"* means a governmental or nonprofit agency that holds a contract with the department to provide HOPES-HFI services.

*"Department"* means the Iowa department of public health.

~~*"Family support"* means community-based services to promote the well-being of children and families.~~

~~1. Family support programs have the following characteristics:~~

~~● Family-driven, meaning there is a true partnership with families.~~

~~● Comprehensive, flexible, and individualized for each family based on the family's culture, needs, values and preferences.~~

~~● Build on strengths to increase the stability of family members and the family unit.~~

~~● Utilize informal and formal support networks.~~

~~2. Family support programs produce the following results:~~

~~● Increased parent confidence and competence in parenting abilities.~~

~~● Safe, stable, and supportive families who are connected to their communities.~~

~~● Enhanced health, growth, and development of children and adults in the family unit.~~

*"Family support program"* includes group-based parent education or home visiting programs that are designed to strengthen protective factors, including parenting skills, increasing parental knowledge of child development, and increasing family functioning and problem solving skills. A family support program may be used as an early intervention strategy to improve birth outcomes, parental knowledge, family economic success, the home learning environment, family and child involvement with others, and coordination with other community resources. A family support program may have a specific focus on preventing child maltreatment or ensuring children are safe, healthy, and ready to succeed in school.

*"Healthy Families America"* or *"HFA"* means ~~a research-based~~ an evidence-based national program model designed to help ~~overburdened~~ at-risk families. HFA is a family support program that provides services to families and children during the prenatal ~~to preschool years~~ period through three years of age through home visitation.

*"Healthy families Iowa"* or *"HFI"* means the state family support program that provides services to families and children during the prenatal ~~to preschool years~~ period through three years of age through home visitation utilizing the Healthy Families America model.

*"Home visitation"* ~~means a face-to-face interaction that occurs between the participant(s) and home visitor. The goals of the home visit are to promote positive parent-child interaction and healthy childhood growth and development and to enhance family functioning. Typically, home visits occur in the home, lasting a minimum of an hour, and the child is present.~~ is a strategy to deliver family support or parent education services. A home visit is a face-to-face visit with a family in their home, or other alternate location, to facilitate meeting the family's goals. Temporary use of an alternate location may happen when meeting in the family home presents safety concerns for the worker or the family or on rare occasions to facilitate meeting the program's outcomes such as medical appointments or school staffing. A home visit typically lasts one hour and is provided in person. The use of telephonic or other media to communicate with the family does not substitute for a home visit.

*"HOPES-HFI"* means the healthy opportunities for parents to experience success—healthy families Iowa program. The HOPES-HFI program is intended to promote optimal child health and development; improve family coping skills and functioning; promote positive parenting skills and ~~intrafamilial~~ parent-child interaction; and prevent child abuse and neglect and infant mortality and morbidity.

*"Nonprofit"* means an entity that meets the requirement for tax-exempt status under Internal Revenue Code Section 501(c)(3) or 501(c)(4).

*"Participant"* means a family voluntarily enrolled in and receiving services from the program.

*"Project period"* means the period of time the department intends to support the project without requiring competition for funds.

**641—87.3(135) Applicant eligibility.** Governmental or nonprofit agencies that ~~received grant funds in the previous fiscal year,~~ are fully accredited by HFA~~, and~~ or in the process of accreditation by HFA are eligible to apply to the department during a competitive year and are eligible applicants for funding. The purpose of the applications is to administer HOPES-HFI services for a specified project period in an at-risk community, as defined in the request for proposals, with an annual continuation application.

**641—87.4(135) Participant eligibility.** Families must meet the following requirements to be eligible to participate in the HOPES-HFI program: (1) A family member is pregnant or the family has a child aged birth ~~to five years~~ through three years; ~~and~~ (2) The family is determined to be eligible for enrollment according to a universal risk assessment as defined by HFA standards; and (3) The family resides within the at-risk community.

**641—87.5(135) Program requirements.** Contractors shall meet the following minimum program requirements:

**87.5(1)** *Accreditation.* Contractors shall comply with Healthy Families America (HFA) standards and maintain HFA ~~or Council on Accreditation (COA)~~ accreditation status. HOPES-HFI contractors will be required to submit evidence of reaccreditation reports to the department within 30 days of receipt. Applicants that are not fully accredited with HFA at the time of application must become accredited within three (3) years of the initial contract initiation.

**87.5(2)** *Participant identification.* Contractors shall collaborate with health care, human services, education, and other partners serving pregnant women and women of childbearing age to identify families who are at risk in order to promote positive birth and parenting outcomes.

**87.5(3)** *Standardized tools.* Contractors shall utilize standardized tools approved by the department to assess and reassess a participant's risk status and achievements and the appropriate level of service.

**87.5(4)** *Quality assessment and improvement.* Contractors shall develop a process for annual program evaluation. The process shall include the following:

*a.* The outcome of the program evaluation shall be reviewed by the program's governing or advisory board with recommendations made for program improvement.

*b.* The evaluation shall demonstrate the effectiveness of the program through program outcomes, including acceptance and retention rates.

## ARC 4853C

# PUBLIC HEALTH DEPARTMENT[641]

**Notice of Intended Action**

**Proposing rule making related to volunteer health care provider program and providing an opportunity for public comment**

The Public Health Department hereby proposes to amend Chapter 88, "Volunteer Health Care Provider Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 135.24.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 135.24.

*Purpose and Summary*

A quality improvement (QI) group was formed to evaluate the Volunteer Health Care Provider Program (VHCPP). The group consists of representatives from the Department, the Boards of Medicine and Nursing, and the Dental Board and representatives from Free Clinics of Iowa. The proposed amendments are an outcome of this QI process.

The proposed amendments streamline the program administration without adding additional risk to the State for its role in providing legal representation for VHCPP participants in the event of a claim. The proposed amendments:

1. Update the definition of "health care facility" to reflect current terminology.
2. Include new definitions for "license," "permanent site" and "temporary site."
3. Change the individual volunteer health care provider eligibility application and agreement. The changes focus on licensing the provider applicant for those practices for which the provider is licensed and which are covered in subrule 88.5(1) as allowable activities. The requirement to identify a particular clinic in the provider agreement is removed since that requirement is not included in the Iowa Code. An individual clinic that will use the individual volunteer health care provider services will have to check the provider VHCPP agreement to ensure that the services align with the clinic's VHCPP-covered services.
4. Change the protected clinic eligibility requirements as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- The clinic shall provide a list of providers only when the Department asks for one. It is anticipated that this request will be made when a claim is filed for a service provided at the clinic.
- The clinic will only be covered for services provided by providers under the categories noted in rule. The Department does not need to have the list, because it changes. It is the responsibility of the clinic to track this for the clinic's own protection.

5. Change the rule for the sponsor entities and protected clinics as follows:

- The requirement that the application include the exact days and times of service provision is removed. The liability coverage will be for one hour prior to the provision of covered services through one hour after the provision of covered services and will be noted in the VHCPP agreement.
- A requirement to identify a site as a permanent site or temporary site is added. This change informs a subsequent rule on the length of agreements and how an acknowledgment and approval process for identified changes in the locations of temporary sites would be handled differently from a change in the location of a permanent site, which would necessitate an agreement amendment.

6. Revise the terms of agreement as follows:

- The length of the agreement is changed from two years to five years to lessen the administrative burden.
- How the Department will handle changes to temporary sites versus how it will handle changes to permanent sites for approvals and amendments to VHCPP agreements is specified.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance procedures contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Susan Dixon
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: susan.dixon@idph.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **641—88.2(135)**, definition of "Health care facility," as follows:

*"Health care facility"* means a residential care facility, a nursing facility, an intermediate care facility for persons with mental illness, or an intermediate care facility for persons with ~~mental retardation~~ an intellectual disability.

ITEM 2. Adopt the following **new** definitions of "License," "Permanent site" and "Temporary site" in rule **641—88.2(135)**:

*"License"* means a license, certification or registration issued to a person by a licensing authority which evidences the granting of authority to engage in a profession or occupation.

*"Permanent site"* means a site at which free health care services will be provided on a continuous basis.

*"Temporary site"* means a site at which free health care services will be provided for a short period of time not to exceed three days. "Temporary site" includes but is not limited to temporary health fairs, flu shot clinics, and temporary sites that provide back-to-school physicals.

ITEM 3. Rescind subparagraphs **88.3(1)"a"(1)** to **(4)**.

ITEM 4. Amend paragraphs **88.3(1)"b"** and **"c"** as follows:

*b.* Application. The applicant shall submit the following information on forms provided by the VHCPP:

(1) The ~~patients to be served~~ individual volunteer health care provider current licensure identification number and expiration date;

~~(2) The health care services to be provided;~~

~~(3) The site where health care services are to be provided;~~

~~(4) The days and maximum number of hours when the free health care services will be provided each week at each site;~~

~~(5)~~ (2) The health care services to be voluntarily provided that ~~will be provided~~ meet all of the following requirements:

1. The services fall under the individual volunteer health care provider's licensed scope of practice;

2. The services are covered health care services listed in paragraph 88.5(1)*"d"*; and

3. The individual volunteer health care provider applicant is willing to voluntarily provide the health care services to those persons who are uninsured and underinsured for the public health purpose of improved health, prevention of illness/injury, and disease management.

*c.* Agreement. The individual volunteer health care provider shall have a signed and current protection agreement with the VHCPP which identifies the covered health care services within the respective scope of practice and conditions of defense and indemnification as provided in rules 641—88.5(135) and 641—88.6(135). ~~The protection agreement shall:~~

~~(1) Provide that the individual volunteer health care provider shall perform only those health care services identified and approved by the VHCPP;~~

~~(2) Identify the health care services to be provided by the sponsor entity or protected clinic which has been approved by the VHCPP through an application process;~~

~~(3) Identify by category the patient groups to be served;~~

~~(4) Identify the sites at which the free health care services will be provided;~~

~~(5) Identify the maximum amount of time the free health care services will be provided by the individual volunteer health care provider at the identified sites each week;~~

~~(6) Provide that the individual volunteer health care provider shall maintain proper records of the health care services;~~

~~(7) Provide that the individual volunteer health care provider shall make no representations concerning eligibility for the VHCPP or eligibility of services for indemnification by the state except as authorized by the department;~~

~~(8) Provide that the individual volunteer health care provider shall cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;~~

~~(9) Provide that the individual volunteer health care provider shall accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the individual volunteer health care provider for the individual volunteer health care provider's expenses or time needed for the defense of the claim or suit;~~

~~(10) Provide that the individual volunteer health care provider shall receive no direct monetary compensation of any kind for services provided in the VHCPP;~~

~~(11) Provide that the individual volunteer health care provider shall comply with the protection agreement with the VHCPP concerning approved health care services.~~

(1) The protection agreement is only valid during the time that the individual volunteer health care provider maintains a current unrestricted license and only for voluntary services provided in conjunction with a sponsor entity or protected clinic which has its own valid VHCPP protection agreement in effect at the time of service provision.

(2) The protection agreement with the VHCPP shall provide that the individual volunteer health care provider shall:

1. Perform only those health care services identified and approved by the VHCPP;
2. Promptly notify the VHCPP of any changes in licensure status;
3. Maintain proper records of the health care services;
4. Make no representations concerning eligibility for the VHCPP or eligibility of services for indemnification by the state except as authorized by the department;
5. Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;
6. Accept financial responsibility for personal expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals, compensation for time and lost practice, and copying costs, and agree that the state will not compensate the individual volunteer health care provider for the individual volunteer health care provider's expenses or time needed for the defense of the claim or suit;
7. Receive no direct monetary compensation of any kind for services provided in the VHCPP;
8. Comply with the protection agreement with the VHCPP concerning approved health care services.

ITEM 5. Amend subrule 88.3(2) as follows:

**88.3(2)** *Protected clinic eligibility.* To be eligible for protection as a state agency under Iowa Code chapter 669 for a claim arising from the provision of covered health care services at a protected clinic, the protected clinic shall satisfy each of the following conditions at the time of the act or omission allegedly resulting in injury:

*a.* The protected clinic shall comply with subrules 88.4(1) through 88.4(5).

*b.* The protected clinic shall ~~have provided~~, upon request from the department, provide to the department a list of all health care providers who ~~provide~~ provided health care services at the protected clinic at the time of a claim made against the individual health care provider or protected clinic which

arises out of the provision of free health care service rendered or which should have been rendered by the individual volunteer health care provider or protected clinic.

*c.* The protected clinic shall ~~have submitted proof to the department that each~~ only be covered under the VHCPP for the provision of covered health care services by a health care provider providing health care services at the protected clinic who either:

(1) Holds a current individual volunteer health care provider protection agreement with the VHCPP, or

(2) Holds current professional liability insurance coverage and an active unrestricted license, registration, or certification to practice in Iowa under Iowa Code chapter 147A, 148, 148A, 148B, 148C, 149, 151, 152, 152B, 152E, 153, 154, 154B, 154C, 154D, 154F, or 155A.

*d.* The protected clinic shall submit a list of the clinic board of directors and contact information for the board of directors, if applicable.

*e.* If the protected clinic is a charitable organization within the meaning of Section 501(c)(3) of the Internal Revenue Code, the protected clinic shall provide proof of Section 501(c)(3) status to the VHCPP.

*f.* A protected clinic may allow health care profession students to volunteer at the protected clinic provided that the following conditions are satisfied:

(1) The college, university, or other health care profession educational institution provides professional liability insurance which covers the students; and

(2) The protected clinic or the health care profession institution provides general liability and professional liability insurance which covers the students; and

(3) The students provide only those services or activities as are authorized by the education agreement, and such services and activities are provided under the on-site supervision of a health care provider.

ITEM 6. Amend paragraph **88.4(3)"d"** as follows:

*d.* ~~The days and times when health care services are to be provided at each site~~ Classification of each site as a permanent site or temporary site;

ITEM 7. Amend subrule 88.4(4) as follows:

**88.4(4)** Agreement. A signed and current sponsor entity agreement or protected clinic agreement shall exist with the VHCPP which shall:

*a.* Provide that the individual volunteer health care provider or health care provider within a protected clinic and the individual volunteer health care provider within a sponsor entity shall perform only those health care services identified and approved by the VHCPP;

*b.* Identify by category the patient groups to be served;

*c.* Identify the sites at which the free health care services will be provided;

*d.* Identify ~~the days and times when health care services are to be provided at each site~~ as a permanent site or temporary site for the provision of free health care services through the VHCPP;

*e.* Provide that the sponsor entity or protected clinic shall maintain proper records of health care services for a period of seven years from the date of service or, in the case of a minor, for a period of one year after the minor has reached the age of majority; and

*f.* Provide that the sponsor entity agrees that only the individual volunteer health care provider or protected clinic covered under a current VHCPP protection agreement at the time of the service provision in a claim is afforded protection under Iowa Code section 135.24 and that the state assumes no obligation to the sponsor entity, its employees, officers, or agents. The sponsor entity or protected clinic shall submit a statement, which shall be submitted on forms provided by the VHCPP, attesting that the sponsor entity or protected clinic and its staff, employees and volunteers agree to:

(1) Cooperate fully with the state in the defense of any claim or suit relating to participation in the VHCPP, including attending hearings, depositions and trials and assisting in securing and giving evidence, responding to discovery and obtaining the attendance of witnesses;

(2) Accept financial responsibility for the sponsor entity's or protected clinic's expenses and costs incurred in the defense of any claim or suit related to participation in the VHCPP, including travel, meals,

compensation for time and lost practice, and copying costs, and agree that the state will not compensate the sponsor entity or protected clinic for expenses or time needed for the defense of the claim or suit;

(3) Receive no direct monetary compensation of any kind for health care services provided in the sponsor entity or protected clinic;

(4) Comply with the sponsor entity agreement or protected clinic agreement with the VHCPP concerning approved health care services.

ITEM 8. Amend subrule 88.6(5) as follows:

**88.6(5)** The health care services are provided to a patient who is a member of a patient group identified in the sponsor entity or protected clinic protection agreement with the VHCPP.

ITEM 9. Amend rule 641—88.7(135) as follows:

**641—88.7(135) Term of agreement.**

**88.7(1)** *Individual volunteer health care provider.* The protection agreement with the VHCPP shall expire ~~two~~ five years from the date of execution. Individual volunteer health care providers may apply for renewal by filing an application at least 30 days prior to expiration of the protection agreement.

**88.7(2)** *Protected clinic.* The protection agreement with the VHCPP shall expire ~~two~~ five years from the date of execution. The protected clinic may apply for renewal by filing an application at least 30 days prior to expiration of the protection agreement. It is anticipated that temporary sites may change over the five-year period. An updated list of temporary site location or service provision changes shall be provided to the department for review and acceptance at least one week prior to service provision at the temporary site. Location or service provision changes to permanent sites shall require a protection agreement amendment.

**88.7(3)** *Sponsor entity.* The sponsor entity agreement with the VHCPP shall expire ~~two~~ five years from the date of execution. Sponsor entities may apply for renewal by filing an application at least 30 days prior to expiration of the sponsor entity agreement. It is anticipated that temporary sites may change over the five-year period. An updated list of temporary site location or service provision changes shall be provided to the department for review and acceptance at least one week prior to service provision at the temporary site. Location or service provision changes to permanent sites shall require a protection agreement amendment.

ITEM 10. Amend rule 641—88.11(135) as follows:

**641—88.11(135) Effect of suspension or revocation.** If the VHCPP suspends or revokes an individual volunteer health care provider's protection agreement, sponsor entity protection agreement, or protected clinic's protection agreement, the action shall suspend or revoke future protection but shall not negate defense and indemnification coverage for covered acts or omissions which occurred during the effective dates of the protection agreement.

## ARC 4857C

# PUBLIC HEALTH DEPARTMENT[641]

### Notice of Intended Action

### Proposing rule making related to emergency medical services and providing an opportunity for public comment

The Public Health Department hereby proposes to rescind Chapter 131, "Emergency Medical Services—Provider Education/Training/Certification," and to adopt a new Chapter 131, "Emergency Medical Services—Providers—Initial Certification—Renewal and Reactivation—Authority—Complaints and Investigations," and new Chapter 139, "Emergency Medical Services—Training Programs—Students—Complaints and Investigations," Iowa Administrative Code.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 147A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 147A and 147D and 2019 Iowa Acts, Senate File 304.

*Purpose and Summary*

Current Chapter 131 provides direction and rules regarding the training, certification, renewal and compliance of emergency medical care providers as well as the regulation of emergency medical services (EMS) training programs. Following an extensive review of the rules with stakeholders, it was suggested that the content of Chapter 131 be divided into two separate chapters: Chapter 131, which would only address the initial certification, renewal, reactivation and compliance of emergency medical care providers, and Chapter 139, which would only address the standards and requirements for the authorization of EMS training programs. This rule making proposes the adoption of those two new chapters. The new chapters also implement 2019 Iowa Acts, House File 694, which created Iowa Code chapter 147D, the Emergency Medical Services Personnel Licensure Interstate Compact, and 2019 Iowa Acts, Senate File 304, which sets limitations on the conditions under which a certification can be suspended or revoked.

New Chapter 131 includes the following updates:

- General rule revisions to the outdated sections that previously updated the current levels of certification following the completion of the transitions from multiple EMS levels to the four levels that are the national standard.
- Clarification of emergency medical care provider certification status to reflect an active or inactive certification, rather than the multiple identifications of active, deceased, denied, dropped, expired, failed, hold, idle, inactive, incomplete, pending, probation, restricted, retired, revoked, surrendered, suspended, or temporary.
- A description of prohibited grounds for discipline as prescribed in 2019 Iowa Acts, Senate File 304.
- Provisions regarding permission to practice and provisions to implement background checks for emergency medical care providers under Iowa Code chapter 147D.
- Updates that clearly state the authority of the emergency medical care provider.
- Adoption by reference of the Iowa Emergency Medical Care Provider Scope of Practice (September 2019). This document has been updated according to the national standards and thoroughly reviewed and edited by stakeholders.
- A significant decrease in the total number of continuing education hours for certification renewal and revisions to clarify that all hours are formal hours and must be documented by topic.
- General revisions and updates to the complaints, investigation and disciplinary sanctions for EMS providers.

New Chapter 139 contains the training portions of current Chapter 131. General revisions to outdated rules have been incorporated in and redundant provisions have been removed from the new chapter.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's waiver and variance provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Rebecca Curtiss
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: rebecca.curtiss@idph.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Rescind 641—Chapter 131 and adopt the following **new** chapter in lieu thereof:

CHAPTER 131
EMERGENCY MEDICAL SERVICES—PROVIDERS—INITIAL CERTIFICATION—RENEWAL AND REACTIVATION—AUTHORITY—COMPLAINTS AND INVESTIGATIONS

**641—131.1(147A) Purpose.** This chapter establishes the regulations and requirements for emergency medical provider initial certification for individuals who have been trained to provide emergency and nonemergency medical care at the EMR, EMT, AEMT, paramedic or other certification level recognized by the department before 2011; describes the authority, permission to practice and scope of practice for certified emergency medical care providers in the state of Iowa; and establishes the regulations and requirements for renewal, extension and reactivation of an emergency medical care provider certification in the state of Iowa.

**641—131.2(147A,147D) Definitions.** For the purpose of these rules, the following definitions shall apply:

*"Advanced emergency medical technician"* or *"AEMT"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Advanced

Emergency Medical Technician Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the AEMT, and is currently certified by the department as an AEMT.

*"Bureau"* or *"BETS"* means the bureau of emergency and trauma services, the bureau designated by the department as the lead agency for coordinating and implementing the provision of emergency medical services in this state.

*"CAPCE"* means the Commission on Accreditation for Prehospital Continuing Education. CAPCE is an accrediting body charged with the review and accreditation of EMS continuing education.

*"CEH"* means continuing education hour, which is based upon a minimum of 50 minutes of training per hour.

*"Certification"* or *"certificate"* means a document issued by the department authorizing a person to practice as an emergency medical care provider in Iowa.

*"Certification period"* means the length of time an emergency medical care provider certificate is valid. The certification period shall be for two years from initial issuance or from renewal, unless otherwise specified on the certificate or unless sooner suspended or revoked.

*"Certification status"* means the status of an individual EMS certificate holder.

1. "Active" means the holder of the certification has the authority to function as an emergency medical care provider at the level certified in accordance with subrule 131.5(1).
2. "Probation," which is an active certification, means the holder of the certification has the authority to function as an emergency medical care provider at the level certified in accordance with subrule 131.5(1) and under the conditions of probation.
3. "Denied" means the certificate is inactive and the holder of the certification has no authority to function as an emergency medical care provider.
4. "Inactive" means the certificate is inactive and the holder of the certification has no authority to function as an emergency medical care provider.
5. "Revoked" means the certification is inactive and the holder of the certification has no authority to function as an emergency medical care provider.
6. "Surrendered" means the certification is inactive and the holder of the certification has no authority to function as an emergency medical care provider.
7. "Suspended" means the certification is inactive and the holder of the certification has no authority to function as an emergency medical care provider.

*"Certified"* means being officially recognized as meeting department-approved testing and training standards and being issued a certificate by the department in accordance with Iowa Code chapters 272C and 147A to practice as an emergency medical care provider in the state of Iowa.

*"Cognitive examination"* or *"written examination"* means the portion of the NREMT certification examination process evaluating the candidate's level of EMS knowledge.

*"Compact"* means the emergency medical services personnel licensure interstate compact according to Iowa Code chapter 147D. The compact facilitates the day-to-day movement of emergency medical services personnel across state boundaries in the performance of emergency medical services duties and authorizes the department to afford immediate permission to practice to emergency medical services personnel licensed in a member state.

*"Core continuing education"* means education obtained during a certification period to renew certification. Core continuing education shall have an assigned sponsor number from CAPCE, an authorized EMS training program, the board of nursing, the board of medicine or the department.

*"Critical care paramedic"* or *"CCP"* means a currently certified paramedic who has successfully completed a critical care course of instruction approved by the department and has received endorsement from the department as a critical care paramedic.

*"Department"* means the Iowa department of public health.

*"Director"* means the director of the Iowa department of public health.

*"Emergency medical care"* means any medical procedure authorized by Iowa Code chapter 147A and these rules.

*"Emergency medical care provider"* means an individual who has been trained to provide emergency and nonemergency medical care at the EMR, EMT, AEMT, paramedic, or other certification

level recognized by the department before 2011 and has been issued a certificate by the department, or a person practicing in accordance with Iowa Code chapter 147D.

*"Emergency medical care student"* means an individual registered with the department and enrolled in an EMS training program with an active EMS student registration.

*"Emergency medical responder"* or *"EMR"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Emergency Medical Responder Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the EMR, and is currently certified by the department as an EMR.

*"Emergency medical services"* or *"EMS"* means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or during out-of-hospital patient transportation in an ambulance.

*"Emergency medical technician"* or *"EMT"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Emergency Medical Technician Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the EMT, and is currently certified by the department as an EMT.

*"Emergency medical technician-defibrillation"* or *"EMT-D"* means an individual who has successfully completed an approved program and is currently certified by the department as an EMT-D.

*"EMS clinical guidelines"* or *"minimum EMS clinical guidelines"* means a minimum clinical standard approved by the department upon which a service program's medical director shall base service program protocols.

*"EMS instructor"* or *"EMS-I"* means an individual who has successfully completed an EMS instructor curriculum approved by the department and is currently endorsed by the department as an EMS-I.

*"Endorsement"* or *"endorsed"* means an approval granted by the department authorizing an individual to serve as an EMS-I or CCP.

*"Fees"* means those fees received pursuant to Iowa Code chapters 147A and 147D.

*"First responder"* or *"FR"* means an individual who has successfully completed an approved program and is currently certified by the department as an FR.

*"First responder-defibrillation"* or *"FR-G"* means an individual who has successfully completed an approved program and is currently certified by the department as a FR-G.

*"NREMT"* means the National Registry of Emergency Medical Technicians. The NREMT provides a valid, uniform process to assess the knowledge and skills required for competent practice by EMS professionals.

*"Paramedic"* or *"PM"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Paramedic Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the paramedic, and is currently certified by the department as a paramedic.

*"Patient"* means an individual who is sick, injured, or otherwise incapacitated and has been evaluated or provided treatment by an emergency medical care provider.

*"Patient abandonment"* means a termination of the provider/patient relationship at a time when a continuous level of care is needed. Patient abandonment does not occur when a scene is unsecured, deteriorates or becomes too dangerous for the emergency medical care provider to safely function. Patient abandonment does not occur when patient care is transferred to another emergency medical care provider following assessment or triage.

*"Physician"* means an individual licensed under Iowa Code chapter 148.

*"Physician assistant"* or *"PA"* means an individual licensed pursuant to Iowa Code chapter 148C.

*"Protocols"* means written directions and orders approved by a service program's medical director utilizing the EMS clinical guidelines.

*"Psychomotor examination"* or *"practical examination"* means the portion of the department-approved or NREMT certification examination process that evaluates the skill and procedure capabilities of the candidate.

*"Registered nurse"* or *"RN"* means an individual licensed pursuant to Iowa Code chapter 152.

*"Service program"* or *"service"* means any transport service or nontransport service, inclusive of associated satellites and service program affiliates, that has received full or conditional authorization from the department.

**641—131.3(147A) Initial certification.**

**131.3(1)** An individual who has successfully completed the training program requirements at the EMR, EMT, AEMT or paramedic level and has a valid certification with NREMT shall submit the following to the department for initial Iowa emergency medical care provider certification:

*a.* A completed EMS certification application.

*b.* An NREMT active certification number.

*c.* Payment of the initial application fee.

*d.* Two completed fingerprint cards for background checks.

*e.* Payment of the background check fee.

**131.3(2)** Once the above items are received and approved, the department may issue an initial emergency medical care provider certification.

**131.3(3)** Initial Iowa certification dates shall be consistent with the NREMT certification dates.

**131.3(4)** The individual seeking an Iowa emergency medical provider care certification shall submit all application materials within two years from the Iowa training program course completion date.

**131.3(5)** If the individual is unable to complete the requirements within two years due to medical reasons or military obligation, an extension may be granted upon submission of a signed statement from an appropriate medical or military authority and approval by the department.

**641—131.4(147A) Background check results.**

**131.4(1)** Negative information on the criminal history will not necessarily preclude an individual from certification. The department will directly communicate with the individual to carefully consider the results of the background check. The following will be taken into consideration during the evaluation and analysis:

*a.* The nature and gravity of the conviction.

*b.* The length of time between the conviction and the application for certification.

*c.* Frequency and severity of the criminal activity and child or dependent adult abuse activity included in the background check results.

*d.* Mitigating factors at the time the activity occurred.

*e.* Cooperation with federal or state officials in the investigation and treatment/rehabilitation plan.

*f.* The maturity of the individual at the time of any criminal activity or child or dependent adult abuse activity.

**131.4(2)** The department will take reasonable steps to ensure the accuracy of the information contained in the background checks. An individual who believes the background checks contain inaccurate information will be informed of the steps the individual may wish to pursue to correct the information.

**131.4(3)** All criminal history records are confidential and will only be used in accordance with this policy to determine eligibility. All background check records will be stored in a secure location. Background check records shall not be redisseminated by the department.

**641—131.5(147A) Authority.**

**131.5(1)** *Authority of emergency medical care provider.* An emergency medical care provider who holds an active Iowa certification issued by the department or has permission to practice in Iowa pursuant to Iowa Code chapter 147D may:

*a.* As a member of a responding authorized service program, render emergency medical care and perform emergency medical care without contacting medical direction if written protocols have been approved by the service program medical director.

*b.* Function in any hospital or any other entity in which health care is ordinarily provided only when:

(1) Employed by or assigned to a hospital or other entity in which health care is ordinarily provided when under the direct supervision of a physician as a member of an authorized service program, or in an individual capacity, by rendering lifesaving services in the facility in which employed or assigned pursuant to the emergency medical care provider's certification and under direct supervision of a physician, physician assistant, or registered nurse. An emergency medical care provider shall not routinely function without the direct supervision of a physician, physician assistant, or registered nurse. However, when the physician, physician assistant, or registered nurse cannot directly assume emergency care of the patient, the emergency medical care provider may perform, without direct supervision, emergency medical care procedures for which certified, if the life of the patient is in immediate danger and such care is required to preserve the patient's life;

(2) Employed by or assigned to a hospital or other entity in which health care is ordinarily provided when under the direct supervision of a physician, as a member of an authorized service program, or in an individual capacity, to perform nonlifesaving procedures for which certified and designated in a written job description. Such procedures may be performed after the patient is observed by and when the emergency medical care provider is under the supervision of the physician, physician assistant, or registered nurse and where the procedure may be immediately abandoned without risk to the patient.

**131.5(2)** *Scope of practice.*

*a.* Emergency medical care providers shall perform only those skills and procedures that are authorized within the scope of practice for which certified.

*b.* The Iowa Emergency Medical Care Provider Scope of Practice (September 2019) is hereby incorporated and adopted by reference for emergency medical care providers. For any differences that may occur between the scope of practice adopted by reference and these rules, the rules shall prevail.

*c.* The Iowa Emergency Medical Care Provider Scope of Practice (September 2019) is available on the BETS website (idph.iowa.gov/BETS/EMS).

*d.* The department may grant a variance for changes to the scope of practice that have not yet been adopted by reference in these rules pursuant to 641—Chapter 178.

**641—131.6(147A) Renewal standards, reactivation procedures, fees, and continuing education.**

**131.6(1)** *Renewal of certification.*

*a.* An emergency medical care provider shall submit an application for renewal of an active Iowa EMS certification within 90 days prior to the certification expiration date.

*b.* The renewal application and process are completed online via an individual Iowa EMS provider account. The electronic portal to access individual accounts is located at: dphregprograms.iowa.gov/PublicPortal/Iowa/IDPH/common/index.jsp.

*c.* Renewal notifications will be sent to Iowa emergency medical care providers who have an active certification set to expire in 90 days. The notification will be sent by email to the address on file in the emergency medical care provider's electronic profile.

*d.* It is the emergency medical care provider's responsibility to ensure the electronic profile information, including the email address, is updated and correct within 30 days of any change.

*e.* A renewal certificate shall be valid for two years from the current expiration date unless sooner surrendered, suspended or revoked.

*f.* A lower-level certificate may be renewed if the individual voluntarily chooses to move from a higher level to a lower level by completing all applicable continuing education requirements for the lower level during the certification period and submitting a change of status request, available on the BETS website (idph.iowa.gov/BETS/EMS).

*g.* A certification status shall become inactive if the certificate has not been renewed by the certification expiration date unless the emergency medical care provider is granted an extension as described in subrule 131.6(3).

*h.* An emergency medical care provider may request an inactive status. The request must be made by submitting a change of status request, available on the BETS website (idph.iowa.gov/BETS/EMS). A

request for inactive status, when accepted in connection with a disciplinary investigation or proceeding, has the same effect as an order of revocation.

**131.6(2)** *Late renewal of certification.*

*a.* An emergency medical care provider who has completed the required continuing education during the certification period but fails to submit the EMS renewal of certification application and applicable fees prior to the certification expiration date is eligible for late renewal of the inactive certification.

*b.* The emergency medical care provider shall complete the EMS renewal of certification application, submit a late fee in addition to the applicable renewal fee and submit an audit report form provided by the department. The fee and audit report form shall be submitted before the last day of the month following the certification expiration date. If the late renewal submission is not completed by the last day of the month following the certification expiration date, the certification remains inactive.

*c.* An emergency medical care provider who has not completed the required continuing education during the certification period is not eligible for late renewal. The certification is inactive.

**131.6(3)** *Extension of certification.*

*a.* An emergency medical care provider who is unable to attain all continuing education requirements within the certification period may request a 45-day extension. To complete the extension process, the provider shall:

(1) Submit a request for extension application, available on the BETS website (idph.iowa.gov/BETS/EMS), at least 7 days prior to the certification expiration date, but no more than 90 days prior to the certification expiration date, and payment of the extension fee.

(2) Complete the continuing education requirements.

(3) Complete and submit the EMS affirmative renewal of certification application, with all applicable renewal fees, to the department prior to the extended expiration date.

(4) Submit an audit report form provided by the department.

*b.* If an emergency medical care provider fails to submit any of the items required in subparagraphs 131.6(3)*"a"*(2) and (3) by the forty-fifth day of the extended certification period, the certification will be inactive.

*c.* The emergency medical care provider may not use continuing education completed during the extension period in the subsequent renewal period.

**131.6(4)** *Reactivation of an inactive certification.*

*a. Certification inactive up to 24 months.* An emergency medical care provider may apply to reactivate an inactive certification up to 24 months after the certification became inactive.

(1) An individual will submit to the department an EMS certification reactivation application, which is available on the BETS website (idph.iowa.gov/BETS/EMS).

(2) If the department approves the application, the individual must submit an audit report form with 36 core continuing education hours prorated per lapsed year by core topic area and the reactivation fee.

(3) Upon receipt and approval of the items required in subparagraphs 131.6(4)*"a"*(1) and (2), the department may issue a new certification.

(4) An emergency medical care provider who fails to complete the reactivation process within 12 months from the date of application approval must reapply for reactivation of the inactive certification.

*b. Certification inactive from 25 months to 48 months.* An emergency medical care provider may apply to reactivate an inactive certification that has been inactive for 25 months but no more than 48 months.

(1) An individual will submit to the department an EMS certification reactivation application, which is available on the BETS website (idph.iowa.gov/BETS/EMS).

(2) If the department approves the application, the individual must submit documentation of successful completion of an approved EMS refresher course that includes successful completion of psychomotor and cognitive certification examinations. In addition, the individual must:

1. Submit two fingerprint cards.
2. Submit reactivation and background check fees.

3. Upon receipt and approval of the items required in subparagraphs 131.6(4)*"b"*(1) and (2), the department may issue a new certification.

4. An emergency medical care provider who fails to complete the reactivation process within 12 months from the date of application approval must reapply for reactivation of the inactive certification.

*c. Certification inactive for more than 48 months.* An emergency medical care provider may not apply to reactivate a certification that has been inactive for more than 48 months.

**131.6(5)** *Reactivation of revoked or suspended certification.*

*a.* Any person whose certification to practice has been revoked or suspended may apply to the department for reactivation in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the certification is permanently revoked.

*b.* If the order of revocation or suspension did not establish terms and conditions upon which reactivation might occur or if the certification was voluntarily surrendered, an initial application for reactivation may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

*c.* All proceedings for reactivation shall be initiated by the person whose certification has been revoked or suspended in accordance with subrule 131.6(4). An application for reactivation shall allege facts which, if established, will be sufficient to enable the department to determine that the basis for the revocation or suspension of the person's certification no longer exists and that it will be in the public interest for the certification to be reinstated. The burden of proof to establish such facts shall be on the person whose certification has been suspended or revoked.

*d.* An order denying or granting reactivation shall be based upon a decision which incorporates findings of facts and conclusions of law.

**131.6(6)** *Fees.* The nonrefundable fees are as follows:

*a.* Application for initial Iowa certification at all certification levels: $30.

*b.* Reactivation of a certification to practice: $30.

*c.* Renewal of a certification to practice as a first responder, EMR: no fee.

*d.* Renewal of a certification to practice as an emergency medical technician: no fee.

*e.* Renewal of a certification to practice as an advance emergency medical technician: $10.

*f.* Renewal of a certification to practice as a paramedic: $25.

*g.* Late renewal of a certification to practice: $30.

*h.* Returned payment due to insufficient funds: $15.

*i.* Extension of certification: $50.

*j.* Criminal history background checks by the Iowa division of criminal investigation (DCI) and the Federal Bureau of Investigation (FBI) and fingerprint card evaluation: $50.

**131.6(7)** *Continuing education renewal.*

*a.* The table below illustrates the minimum number of core CEHs by topic area for each level of emergency medical care provider to renew an Iowa EMS certification.

| Core Topics | EMR/FR | EMT/EMT-D | AEMT | PM |
|---|---|---|---|---|
| Airway, Respirations, Ventilations | 1 | 1 | 2 | 3 |
| Cardiology | 2 | 6 | 7 | 9 |
| Trauma | 1 | 2 | 3 | 3 |
| Medical | 3 | 6 | 8 | 9 |
| Operations | 1 | 5 | 5 | 6 |
| **Totals** | **8** | **20** | **25** | **30** |

*b.* All core continuing education hours used to renew an Iowa EMS certification must have a sponsor number by an authorized Iowa training program, the department, the board of nursing, the board of medicine, or CAPCE before the emergency medical care provider attends the offering.

*c.* An emergency medical care provider who is registered with the NREMT may renew the provider's Iowa EMS certification by meeting the NREMT's requirements. The emergency medical care provider must submit the Iowa affirmative renewal of certification application and all appropriate fees.

*d.* An emergency medical care provider shall be deemed to have complied with the continuing education requirements during periods in which the provider serves honorably on active duty in the military services or for periods in which the provider is a government employee working as an emergency medical care provider and assigned to duty outside the United States. The emergency medical care provider must submit the Iowa affirmative renewal of certification application, all appropriate fees and documentation of assignment.

*e.* The emergency medical care provider shall maintain a file containing documentation of CEHs accrued during each certification period for four years from the end of each certification period.

*f.* A group of emergency medical care providers will be audited for each certification period. Emergency medical care providers to be audited will be chosen in a random manner or at the discretion of BETS. Falsifying reports or failure to comply with the audit request may result in formal disciplinary action. Those audited will be required to submit a department-provided audit report form within 45 days of the request. If audited, the emergency medical care provider must provide the following information:

(1) Date of program.

(2) Program sponsor number.

(3) Title of program.

(4) Number of approved hours.

**131.6(8)** *Continuing education approval.* The following standards shall be applied for approval of continuing education:

*a.* CEHs shall have an assigned sponsor number from CAPCE, an authorized EMS training program, the board of nursing, the board of medicine or the department.

*b.* Human health-related college courses may be approved in advance by BETS at one quarter credit equal to 10 CEHs, one semester credit equal to 15 CEHs.

**131.6(9)** *Out-of-state continuing education.* Out-of-state continuing education courses shall be accepted for CEHs if all criteria in subrule 131.6(7) are met and if the courses have been approved for emergency medical care personnel in the state in which the courses were held. A copy of course completion certificates (or other verifying documentation) shall, upon request, be submitted to the department.

**641—131.7(147A,272C) Discipline—denial, citation and warning, probation, suspension, or revocation of certificates or renewal.**

**131.7(1)** This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

**131.7(2)** Prohibited grounds for discipline. The department shall not suspend or revoke the certification of a person who is in default or is delinquent on repayment or a service obligation under federal or state postsecondary educational loans or public or private services-conditional postsecondary tuition assistance solely on the basis of such default or delinquency.

**131.7(3)** Methods of discipline.

*a.* The department has the authority to impose the following disciplinary sanctions against an emergency medical care provider:

(1) Issue a citation and warning.

(2) Impose a civil penalty not to exceed $1,000.

(3) Require reexamination.

(4) Require additional education or training.

(5) Impose a period of probation under specific conditions.

(6) Prohibit permanently, until further order of the department, or for a specific period, a provider's ability to engage in specific procedures, methods, acts or activities incident to the practice of the profession.

(7) Suspend a certificate until further order of the department or for a specific period.

(8) Deny an application for certification.

(9) Revoke a certification.

(10) Impose such other sanctions as allowed by law and as may be appropriate.

*b.* A request for inactive status in connection with a disciplinary investigation or proceeding has the same effect as an order of revocation.

*c.* A citation and warning, denial, probation, restriction, suspension revocation, or civil penalty imposed upon an individual certificate holder by the department shall be considered applicable to all certificates and endorsements issued to that individual by the department.

*d.* An emergency medical care provider who has knowledge of an emergency medical care provider, service program or training program that has violated Iowa Code chapter 147A or these rules shall report such information to the department within 30 days.

**131.7(4)** The department may deny an application for issuance or renewal of an emergency medical care provider certificate, including endorsement, or may impose any of the disciplinary sanctions provided in subrule 131.7(3) when it finds that the individual or certificate holder has committed any of the following acts or offenses:

*a.* Negligence in performing emergency medical care.

*b.* Failure to follow the directions of supervising physicians or their designees.

*c.* Rendering treatment not authorized under Iowa Code chapter 147A.

*d.* Patient abandonment.

*e.* Fraud in procuring certification or renewal including, but not limited to:

(1) An intentional perversion of the truth in making application for a certification to practice in this state;

(2) False representations of a material fact, whether by word or by conduct, by false or misleading allegations, or by concealment of that which should have been disclosed when making application for a certification in this state; or

(3) Attempting to file or filing with the department or training program any false or forged diploma or certificate or affidavit or identification or qualification in making an application for a certification in this state.

*f.* Professional incompetency. Professional incompetency includes, but is not limited to:

(1) A substantial lack of knowledge or ability to discharge professional obligations within the scope of practice.

(2) A substantial deviation from the standards of learning or skill ordinarily possessed and applied by other emergency medical care providers in the state of Iowa acting in the same or similar circumstances.

(3) A failure to exercise the degree of care which is ordinarily exercised by the average emergency medical care provider acting in the same or similar circumstances.

(4) Failure to conform to the minimal standard of acceptable and prevailing practice of certified emergency medical care providers in this state.

(5) A substantial lack of knowledge or ability to discharge professional obligations within the minimum clinical standards approved by the department.

*g.* Knowingly making misleading, deceptive, untrue or fraudulent representations in the practice of the profession or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not limited to:

(1) Verbally or physically abusing a patient, coworker or any other individual encountered while a certified emergency medical care provider.

(2) Improper sexual contact with or making suggestive, lewd, lascivious or improper remarks or advances to a patient, coworker or any other individual encountered while certified as an emergency medical care provider in the state of Iowa.

(3) Betrayal of a professional confidence.

(4) Engaging in a professional conflict of interest.

(5) Falsification of medical records, official documents or other writings or records.

*h.* Engaging in any conduct that subverts or attempts to subvert a department investigation.

*i.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

*j.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

*k.* Failure to report another emergency medical care provider to the department for any violations listed in these rules, pursuant to Iowa Code chapter 147A.

*l.* Knowingly aiding, assisting or advising a person to unlawfully practice EMS.

*m.* Representing oneself as an emergency medical care provider when one's certification has been suspended or revoked or when one's certification is lapsed or has been placed on inactive status.

*n.* Permitting the use of a certification by a noncertified person for any purpose.

*o.* Mental or physical inability reasonably related to and adversely affecting the emergency medical care provider's ability to practice in a safe and competent manner as determined by an evaluation from a licensed evaluator of the provider's mental or physical status.

*p.* Being adjudged mentally incompetent by a court of competent jurisdiction.

*q.* Sexual harassment of a patient, student, coworker or any other individual encountered while certified as an emergency medical care provider in the state of Iowa. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature communicated in person, in writing, via a third person or through electronic communication.

*r.* Habitual intoxication or addiction to drugs.

(1) The inability of an emergency medical care provider to practice with reasonable skill and safety by reason of the excessive use of alcohol on a continuing basis.

(2) The excessive use of drugs which may impair an emergency medical care provider's ability to practice with reasonable skill or safety.

(3) Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

*s.* Fraud in representation as to skill, ability or certification.

*t.* Willful or repeated violations of Iowa Code chapter 147A or these rules.

*u.* Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to the provision of emergency medical care, including but not limited to a crime involving dishonesty, fraud, theft, embezzlement, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

*v.* Having certification to practice emergency medical care suspended or revoked or having other disciplinary action taken by a licensing or certifying authority of this state or another state, territory or country. A copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

*w.* Falsifying certification renewal reports or failure to comply with the renewal audit request.

*x.* Acceptance of any fee by fraud or misrepresentation.

*y.* Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

*z.* Violating privacy and confidentiality. An emergency medical care provider shall not disclose or be compelled to disclose patient information unless disclosure is required or authorized by law.

*aa.* Discrimination. An emergency medical care provider shall not practice, condone, or facilitate discrimination against a patient, student, or any other individual encountered while acting as certified as an emergency medical care provider in the state of Iowa on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability, diagnosis, or social or economic status.

*ab.* Practicing emergency medical services or using a designation of certification or otherwise holding oneself out as practicing emergency medical services at a certain level of certification when the emergency medical care provider is not certified at such level.

*ac.* Failure to respond within 30 days of receipt, unless otherwise specified, to communication from the department which was sent by registered or certified mail.

**641—131.8(147A) Certification denial.**

**131.8(1)** An individual who has been denied certification by the department may appeal the denial and request a hearing on the issues related to the licensure denial by serving a notice of appeal and request for hearing upon the department not more than 20 days following the date of mailing of the notification of certification denial to the individual. The request for hearing shall specifically delineate the facts to be contested at hearing.

**131.8(2)** All hearings held pursuant to this rule shall be held pursuant to the process outlined in this chapter.

**641—131.9(147A) Emergency adjudicative proceedings.** To the extent necessary to prevent or avoid immediate danger to the public health, safety or welfare and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend a certificate in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

**131.9(1)** Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

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

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

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

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

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

**131.9(2)** Issuance of order.

*a.* An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

*b.* The written emergency adjudicative order shall be immediately delivered to the individual who is required to comply with the order. Delivery shall be made by one or more of the following procedures:

(1) Personal delivery.

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

(3) Fax. Fax may be used as the sole method of delivery if the individual required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

*c.* To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

*d.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the individual who is required to comply with the order.

*e.* After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

*f.* Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the individual who is required to comply with the order is the party requesting the continuance.

**641—131.10(147A) Complaints, investigations and appeals.**

**131.10(1)** This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

**131.10(2)** All complaints regarding emergency medical care personnel, training programs or continuing education providers, or those purporting to be or operating as the same, shall be reported to the department in writing. The address is Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**131.10(3)** An emergency medical care provider who has knowledge of an emergency medical care provider or service program that has violated Iowa Code chapter 147A, 641—Chapter 132 or these rules shall report such information to the department.

**131.10(4)** Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

**131.10(5)** A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

**131.10(6)** Notice of denial, issuance of a citation and warning, probation, suspension or revocation shall be affected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, probation, suspension or revocation shall be served by certified mail, return receipt requested, or by personal service.

**131.10(7)** Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

**131.10(8)** Upon receipt of a request for hearing, the department shall forward the request within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

**131.10(9)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

**131.10(10)** When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 131.10(11).

**131.10(11)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

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**131.10(12)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

*a.* All pleadings, motions, and rules.

*b.* All evidence received or considered and all other submissions by recording or transcript.

*c.* A statement of all matters officially noticed.

*d.* All questions and offers of proof, objections and rulings on them.

*e.* All proposed findings and exceptions.

*f.* The proposed decision and order of the administrative law judge.

**131.10(13)** The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**131.10(14)** It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**131.10(15)** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**131.10(16)** The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

**131.10(17)** Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, the news media or employer.

These rules are intended to implement Iowa Code chapters 147A and 147D and section 272C.4.

ITEM 2. Adopt the following **new** 641—Chapter 139:

## CHAPTER 139
## EMERGENCY MEDICAL SERVICES—TRAINING PROGRAMS—STUDENTS—COMPLAINTS AND INVESTIGATIONS

**641—139.1(147A) Purpose.** This chapter establishes the standards and requirements for authorization of emergency medical care training programs in the state of Iowa; establishes the requirements of the training program related to preparing students for emergency medical provider certification in the state of Iowa; and describes the authority of the department to impose disciplinary sanctions against a training program.

**641—139.2(147A) Definitions.**

*"Advanced emergency medical technician"* or *"AEMT"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Advanced Emergency Medical Technician Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the AEMT, and is currently certified by the department as an AEMT.

*"Bureau"* or *"BETS"* means the bureau of emergency and trauma services, the bureau designated by the department as the lead agency for coordinating and implementing the provision of emergency medical services in this state.

*"CAAHEP"* means the Commission on Accreditation of Allied Health Education Professionals.

*"CAPCE"* means the Commission on Accreditation for Prehospital Continuing Education. CAPCE is an accrediting body charged with the review and accreditation of EMS continuing education.

*"CEH"* means continuing education hour, which is based upon a minimum of 50 minutes of training per hour.

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*"Certification"* or *"certificate"* means a document issued by the department authorizing a person to practice as an emergency medical care provider in Iowa.

*"Certified"* means being officially recognized as meeting department-approved training and testing standards and being issued a certificate by the department in accordance with Iowa Code chapters 272C and 147A.

*"Cognitive examination"* or *"written examination"* means the portion of the NREMT certification examination process evaluating the candidate's level of EMS knowledge.

*"Core continuing education"* means education obtained during a certification period to renew certification. Core continuing education shall have an assigned sponsor number from CAPCE, an authorized EMS training program, the board of nursing, the board of medicine or the department.

*"Course completion date"* means the date of the final classroom session of an emergency medical care provider course.

*"Course coordinator"* means an individual who has been assigned by the training program to coordinate the activities of an emergency medical care provider course.

*"Critical care paramedic"* or *"CCP"* means a currently certified paramedic who has successfully completed a critical care course of instruction approved by the department and has received endorsement from the department as a critical care paramedic.

*"Department"* means the Iowa department of public health.

*"Director"* means the director of the Iowa department of public health.

*"Emergency medical care"* means any medical procedure authorized by Iowa Code chapter 147A and 641—Chapter 131.

*"Emergency medical care provider"* means an individual who has been trained to provide emergency and nonemergency medical care at the EMR, EMT, AEMT, paramedic, or other certification level recognized by the department before 2011 and has been issued a certificate by the department, or a person practicing in accordance with Iowa Code chapter 147D.

*"Emergency medical care student"* or *"student"* means any individual registered with the department and enrolled in an EMS training program with an active EMS student registration.

*"Emergency medical responder"* or *"EMR"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Emergency Medical Responder Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the EMR, and is currently certified by the department as an EMR.

*"Emergency medical services"* or *"EMS"* means an integrated medical care delivery system to provide emergency and nonemergency medical care.

*"Emergency medical technician"* or *"EMT"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Emergency Medical Technician Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the EMT, and is currently certified by the department as an EMT.

*"EMS evaluator"* or *"EMS-E"* means an individual who has successfully completed an EMS evaluator curriculum approved by the department and is currently endorsed by the department as an EMS-E.

*"EMS instructor"* or *"EMS-I"* means an individual who has successfully completed an EMS instructor curriculum approved by the department and is currently endorsed by the department as an EMS-I.

*"EMS training program"* or *"training program"* means an Iowa college approved by the Higher Learning Commission or an Iowa hospital authorized by the department to conduct emergency medical care training.

*"Endorsement"* or *"endorsed"* means an approval granted by the department authorizing an individual to serve as an EMS-I, EMS-E or CCP.

*"Higher Learning Commission"* means the independent corporation which accredits degree-granting postsecondary institutions in the north central region of the United States.

*"NREMT"* means the National Registry of Emergency Medical Technicians. The NREMT provides a valid, uniform process to assess the knowledge and skills required for competent entrance-level practice by EMS professionals.

*"Out-of-state student"* means any individual participating in clinical or field experience as a student in an approved out-of-state training program.

*"Out-of-state training program"* means an EMS training program located outside the state of Iowa that is approved by the authorizing agency of the program's home state to conduct initial EMS training for EMR, EMT, AEMT, paramedic or other level certified by the department.

*"Outreach course coordinator"* means an individual assigned by the training program to coordinate the activities of an emergency medical care provider course held outside the training program facilities.

*"Paramedic"* or *"PM"* means an individual who has successfully completed a course of study based on the United States Department of Transportation's Paramedic Instructional Guidelines (January 2009), has passed the psychomotor and cognitive examinations for the paramedic, and is currently certified by the department as a paramedic.

*"Physician"* means an individual licensed under Iowa Code chapter 148.

*"Physician assistant"* or *"PA"* means an individual licensed pursuant to Iowa Code chapter 148C.

*"Preceptor"* means an individual assigned by the training program, clinical facility or service program to supervise EMS students while the students are completing their classroom, clinical or field experience. A preceptor shall be an emergency medical care provider certified at the level at which the preceptor is providing supervision or at a higher level or be licensed as a physician, physician assistant or registered nurse.

*"Primary instructor"* means an individual who is responsible for teaching the majority of an emergency medical care provider course.

*"Psychomotor examination"* or *"practical examination"* means the portion of the department-approved or NREMT certification examination process that evaluates the skill and procedure capabilities of the candidate.

*"Registered nurse"* or *"RN"* means an individual licensed pursuant to Iowa Code chapter 152.

*"Service program"* or *"service"* means any transport service or nontransport service, inclusive of associated satellites and service program affiliates, that has received full or conditional authorization from the department.

*"Training program director"* means a health care professional (full-time educator or practitioner of emergency or critical care) assigned by the training program to direct the operation of the training program.

*"Training program medical director"* means a physician licensed under Iowa Code chapter 148 who is responsible for providing medical oversight to an EMS training program.

**641—139.3(147A) Initial application, renewal application, inspection and approval.**

**139.3(1)** *Initial application, inspection and approval.*

*a.* An applicant seeking initial authorization as an EMS training program shall complete and submit to the department an Iowa EMS training program self-assessment application. The application can be downloaded from the BETS website at idph.iowa.gov/BETS/EMS.

*b.* An applicant seeking initial authorization shall submit, along with the Iowa EMS training program self-assessment application, a needs assessment that justifies the need for the training program.

*c.* The department shall perform an on-site inspection of the applicant's facilities and clinical resources. The purpose of the inspection is to examine educational objectives, patient care practices, facilities and administrative practices.

*d.* Following the on-site inspection, the department will provide the applicant an application report detailing the status of the application.

*e.* The department will approve the application and authorize the training program, determine timelines for the correction of deficiencies in the application, or deny the application. If the deficiencies are not corrected within the time period established by the department, the application will be denied.

*f.* A training program's initial authorization shall not exceed one year.

*g.* No person shall interfere with the inspection activities of the department or its agents. Interference with or failure to allow an inspection may be cause for denial of authorization.

**139.3(2)** *Renewal application, inspection and approval.*

*a.* A training program seeking renewal as an EMS training program shall complete and submit to the department the Iowa EMS training program self-assessment renewal application. The application can be downloaded from the BETS website at idph.iowa.gov/BETS/EMS.

*b.* EMS training program renewal applications will be submitted at least 90 days before the end of the current authorization period.

*c.* The department will complete an on-site inspection and review the self-assessment prior to the end of the current authorization period.

*d.* Following the on-site inspection, the department will provide the training program a renewal application report detailing the status of the application.

*e.* The department will authorize the training program or determine timelines for the correction of deficiencies in the renewal application.

*f.* If the deficiencies are not corrected within the time period established by the department, the training program is subject to disciplinary action as described in rule 641—139.9(147A).

*g.* A training program's approved renewal authorization shall not exceed four years.

*h.* No person shall interfere with the inspection activities of the department or its agents. Interference with or failure to allow an inspection may be cause for denial of authorization.

**641—139.4(147A) Training program standards, student requirements and variances.**

**139.4(1)** *Education standards.* A training program shall:

*a.* Have a sponsoring institution that is accredited by the Higher Learning Commission or its equivalent, that is recognized by the United States Department of Education as an approved Iowa college, or that is an Iowa licensed hospital that is approved by the department.

*b.* Use the United States Department of Transportation's Instructional Guidelines (January 2009) for any courses leading to Iowa certification.

*c.* Use the Iowa CCP curriculum (January 2016) for courses leading to the CCP endorsement.

*d.* Be accredited by, or have submitted a self-study application to, the CAAHEP if graduating students at the paramedic certification level.

*e.* Document equivalent training and what portions of any course waived for equivalency. A training program may waive portions of the required emergency medical care provider training for students currently certified as emergency medical care providers or licensed in other health care professions, including but not limited to nursing, physician assistant, respiratory therapist, dentistry, and military.

**139.4(2)** *Clinical or field experience resources.* Training programs shall:

*a.* Have a mechanism to clearly identify students in the clinical or field setting, or both.

*b.* Have sufficient equipment and supplies to be used in the provision of instruction. The equipment and supplies shall be available and consistent with the needs of the curriculum and adequate for the number of students enrolled.

*c.* Ensure that clinical experiences available are consistent with the needs of the curriculum and adequate for the number of students enrolled.

*d.* Ensure that clinical affiliations that are outside of the sponsoring training program are established and confirmed in written agreements with institutions or agencies that provide clinical experience under appropriate medical direction and clinical supervision.

*e.* Only allow students to perform skills and procedures in the classroom, clinical or field setting for which the students have received training with direct supervision by a preceptor designated and approved by the training program.

*f.* Have sufficient classrooms, laboratories, and administrative offices and facility design to accommodate the number of students in the program and the supporting faculty.

*g.* Have current approved curriculum and library resources related to the curriculum readily accessible to all enrolled students (on campus and off campus) and shall include current EMS and

medical periodicals, scientific texts, audiovisual and self-instructional resources, and other appropriate references.

**139.4(3)** *Staff.* Training programs shall:

*a.* Have a training program director who is a health care professional (full-time educator or practitioner of emergency or critical care) assigned by the training program to direct the operation of the training program.

*b.* Have a training program medical director who shall, at a minimum, review the educational content of each training program curriculum, evaluate the quality of medical instruction, and supervise delivery of the curriculum by the faculty members.

*c.* Have qualified faculty through academic preparation, training, and experience to teach and evaluate the courses or topics to which they are assigned. At a minimum, each course coordinator, outreach course coordinator, and primary instructor utilized by the training program shall be endorsed as an Iowa EMS instructor.

*d.* Be allowed to conduct the NREMT psychomotor examination according to the policies and procedures of the department and the NREMT.

**139.4(4)** *Student eligibility.* Training programs shall ensure that emergency medical care students meet the following requirements.

*a.* Be at least 17 years of age on the date of enrollment.

*b.* Have a high school diploma or its equivalent if enrolling in an AEMT or paramedic course.

*c.* Be able to speak, write and read English.

*d.* Be able to meet the minimum requirements for the cognitive and psychomotor components of the examination with reasonable and appropriate accommodations for those persons with documented disabilities, as required by the Americans with Disabilities Act (ADA).

*e.* Be currently certified, at a minimum, as an EMT if enrolling in an AEMT or paramedic course.

*f.* Be a current emergency medical care provider, RN, PA, or physician and submit a recommendation in writing from an approved EMS training program if enrolling in an EMS instructor course.

**139.4(5)** *Students.* Training programs shall:

*a.* Ensure that each student submits a completed EMS student registration no later than 14 days from the beginning of an emergency medical training program course. The student registration link can be found on the BETS website at idph.iowa.gov/BETS/EMS.

*b.* Have defined processes for review of academic history, criminal history, and health-related issues for the admission of students.

*c.* Have a process to evaluate students on a recurring basis and with sufficient frequency to provide both the student and training program faculty with valid and timely indicators of the student's progress and achievement of the competencies and objectives stated within the program's curriculum.

*d.* Have student guidance procedures that include documentation of regular and timely discussions with qualified faculty or counselors.

*e.* Maintain student records for each student enrolled in each program.

*f.* Notify the NREMT of each student's successful completion of a training course to ensure NREMT cognitive examination eligibility.

*g.* Verify that a student completes all training program requirements before being eligible to attempt the cognitive and psychomotor certification examinations.

*h.* Report to the NREMT successful completion of psychomotor examination of each EMR and EMT student to ensure NREMT registration eligibility.

*i.* Verify that a student completes all training program coursework, the cognitive and psychomotor testing and possesses a current certification with the NREMT before making application to the department for an initial Iowa emergency medical care provider certification.

*j.* Notify the department of the successful or unsuccessful status of each student at the completion of each training course.

*k.* Ensure that students function and only perform skills or procedures learned in the training program until an Iowa emergency medical care provider certification is obtained.

*l.* Ensure that a student is not substituted for the regular personnel of any affiliated medical facility or service program but may be employed while enrolled in the training program.

**139.4(6)** *Financing and administration.* Training programs shall:

*a.* Have adequate financial resources to ensure the continued operation of the educational program(s) in which students are enrolled.

*b.* Have a program evaluation process to gather and analyze data on the effectiveness of the program.

*c.* Notify the department, in writing, of any change in ownership or control of the training program.

*d.* Have liability insurance and offer liability insurance to students while they are enrolled in the training program.

**641—139.5(147A) Out-of-state training programs.**

**139.5(1)** *Application, inspection and approval.*

*a.* An out-of-state training program shall complete and submit to the department for review and approval the out-of-state training program self-assessment application. The application can be downloaded from the BETS website at idph.iowa.gov/BETS/EMS.

*b.* An out-of-state training program's approval by the department shall not exceed four years.

*c.* An out-of-state training program seeking initial or renewal approval and graduating students at the paramedic level must also be accredited by, or must have submitted a self-study application to, the CAAHEP.

*d.* An out-of-state training program shall be limited to utilization of clinical sites or field sites, or both, within Iowa.

*e.* An authorized out-of-state training program shall provide the department with a current roster of students who will be participating in the clinical or field experience within the state of Iowa and, for each program, the sites where the students will be participating. This roster will be provided prior to commencement of any clinical or field experience.

*f.* An out-of-state training program shall provide documentation of liability insurance for each student participating in the clinical or field setting within the state of Iowa.

*g.* Failure to comply with these requirements may lead to disciplinary action or denial of utilization of clinical or field sites in Iowa.

*h.* The department may perform an on-site inspection of the out-of-state training program's facilities and clinical and field resources as part of the initial or renewal review process.

*i.* The department without prior notification may make inspections at times, places and under such circumstances as it deems necessary to ensure compliance with Iowa Code chapter 147A and these rules.

*j.* No person shall interfere with the inspection activities of the department or its agents.

*k.* Interference with or failure to allow an inspection may be cause for disciplinary action regarding training program approval.

*l.* Representatives of the training program may be required to meet with the department at the time the application and inspection report are discussed.

*m.* A written report of department action and the department inspection report shall be sent to the training program.

*n.* A training program shall notify the department, in writing, of any change in ownership or control within 30 days.

**139.5(2)** *Out-of-state students.*

*a.* An out-of-state student shall be registered in good standing in an approved out-of-state training program.

*b.* An out-of-state student may perform any procedures and skills for which the student is receiving training provided that the procedure or skill is within the Iowa scope of practice of a comparable Iowa emergency medical care provider. The student shall be under the direct supervision of a physician or physician designee or under the remote supervision of a physician or physician designee with direct supervision by a preceptor designated and approved by the training program.

*c.* An out-of-state student shall not be substituted for personnel of any affiliated medical facility or service program.

*d.* An out-of-state student is not eligible to continue functioning as a student of the approved out-of-state training program in the clinical or field setting (1) if the student is not in good standing with the approved out-of-state training program, (2) once the student has met the training program's requirements, or (3) once the student has been approved for certification testing.

*e.* Once all training requirements are met and the out-of-state student acquires a valid NREMT certification, the student may apply for initial Iowa EMS certification as described in rule 641—131.3(147A).

**641—139.6(147A) Failure to comply with rules.** Failure of a training program to comply with these rules may result in disciplinary action according to rule 641—139.9(147A).

**641—139.7(147A) Temporary variances.** If during a period of authorization there is some occurrence that temporarily causes a training program to be in noncompliance with these rules, the department may grant a temporary variance.

**139.7(1)** Variances to these rules may be granted by the department to a currently authorized training program.

**139.7(2)** Requests for variances shall apply only to the training program requesting the variance and shall apply only to those requirements and standards for which the department is responsible.

**139.7(3)** A training program shall apply for a variance in accordance with 641—Chapter 178.

**641—139.8(147A) Continuing education providers—approval, record keeping and inspection.**

**139.8(1)** A training program may conduct continuing education courses utilizing training program instructors.

**139.8(2)** Each training program shall assign a sponsor number to each core continuing education course using an assignment system approved by the department.

**139.8(3)** Course approval shall be completed prior to the course's being offered.

**139.8(4)** Each training program shall maintain a participant record that includes, as a minimum:

*a.* Name.

*b.* Address.

*c.* Certification number.

*d.* Course sponsor number.

*e.* Course instructor.

*f.* Date of course.

*g.* CEHs awarded.

**139.8(5)** The department may request additional information or inspect the records of any continuing education provider who is currently approved or who is seeking approval.

**641—139.9(147A) Discipline—denial, citation and warning, probation, suspension, or revocation of training program approval or renewal.**

**139.9(1)** This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

**139.9(2)** Method of discipline. The department has the authority to impose the following disciplinary sanctions against a training program:

*a.* Issue a citation and warning.

*b.* Impose a period of probation under specific conditions.

*c.* Prohibit permanently, until further order of the department, or for a specific period, a program's ability to engage in specific procedures, methods, acts or activities incident to the practice of the profession.

*d.* Suspend an authorization until further order of the department or for a specific period.

*e.* Deny an application for authorization.

*f.* Revoke an authorization.

*g.* Impose such other sanctions as allowed by law and as may be appropriate.

**139.9(3)** The department may impose any of the disciplinary sanctions provided in subrule 139.9(2) when it finds that the training program or applicant has failed to meet the applicable provisions of these rules or has committed any of the following acts or offenses:

*a.* Fraud in procuring approval or renewal.

*b.* Falsification or failure to document training or continuing education records.

*c.* Suspension or revocation of approval to provide emergency medical care training or other disciplinary action taken pursuant to Iowa Code chapter 147A. A certified copy of the record or order of suspension, revocation or disciplinary action is conclusive or prima facie evidence.

*d.* Engaging in any conduct that subverts or attempts to subvert a department investigation.

*e.* Failure to respond within 30 days of receipt of communication from the department which was sent by registered or certified mail.

*f.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

*g.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

*h.* Submission of a false report of continuing education or failure to submit the quarterly report of continuing education.

*i.* Knowingly aiding, assisting or advising a person to unlawfully practice EMS.

*j.* Representing itself as an approved training program or continuing education provider when approval has been suspended or revoked or when approval has lapsed or has been placed on inactive status.

*k.* Using an unqualified individual as an instructor or evaluator.

*l.* Allowing verbal or physical abuse of a student or staff.

*m.* Failing to verify registration of a student with the department within the timeline established by the department or allowing an unregistered student to function in a clinical environment.

*n.* A training program provider or continuing education provider shall not sexually harass a patient, student, or coworker. Sexual harassment includes sexual advances, sexual solicitation, requests for sexual favors, other verbal or physical conduct of a sexual nature communicated in person, in writing, via a third person or through electronic communication.

*o.* Betrayal of a professional confidence.

*p.* Engaging in a professional conflict of interest.

*q.* Discrimination. A training program or continuing education provider shall not practice, condone, or facilitate discrimination against a patient, student, or supervisee on the basis of race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability, diagnosis, or social or economic status.

*r.* Failure to comply with the 2015 Standards and Guidelines for the Accreditation of Educational Programs in the Emergency Medical Services Professions published by the Commission on Accreditation of Allied Health Education Programs.

**641—139.10(147A) Complaints, investigations and appeals.**

**139.10(1)** All complaints regarding an emergency medical student, training programs or continuing education providers or those purporting to be or operating as the same shall be reported to the department in writing. The address is Iowa Department of Public Health, Bureau of Emergency and Trauma Service, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**139.10(2)** Any emergency medical care provider, emergency medical student, training program or continuing education provider who has knowledge of an emergency medical care provider or service program that has violated Iowa Code chapter 147A, 641—Chapter 132 or these rules shall report such information to the department.

**139.10(3)** Complaint investigations may result in the department's issuance of a notice of denial, citation and warning, probation, suspension or revocation.

**139.10(4)** A determination of mental incompetence by a court of competent jurisdiction automatically suspends a certificate for the duration of the certificate unless the department orders otherwise.

**139.10(5)** Notice of denial, issuance of a citation and warning, probation, suspension or revocation shall be effected in accordance with the requirements of Iowa Code section 17A.12. Notice to the alleged violator of denial, probation, suspension or revocation shall be served by certified mail, return receipt requested, or by personal service.

**139.10(6)** Any request for a hearing concerning the denial, citation and warning, probation, suspension or revocation shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice to take action. The address is Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If the request is made within the 20-day time period, the notice to take action shall be deemed to be suspended pending the hearing. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. If no request for a hearing is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

**139.10(7)** Upon receipt of a request for hearing, the department shall forward the request within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

**139.10(8)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

**139.10(9)** When the administrative law judge makes a proposed decision and order, it shall be served by certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in subrule 139.10(10).

**139.10(10)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**139.10(11)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

*a.* All pleadings, motions, and rules.

*b.* All evidence received or considered and all other submissions by recording or transcript.

*c.* A statement of all matters officially noticed.

*d.* All questions and offers of proof, objections and rulings on them.

*e.* All proposed findings and exceptions.

*f.* The proposed decision and order of the administrative law judge.

**139.10(12)** The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by certified mail, return receipt requested, or by personal service.

**139.10(13)** It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**139.10(14)** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is Iowa

Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**139.10(15)** The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

**139.10(16)** Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, the news media or employer.

These rules are intended to implement Iowa Code chapter 147A.

**ARC 4858C**

# PUBLIC HEALTH DEPARTMENT[641]

**Notice of Intended Action**

**Proposing rule making related to emergency medical services and providing an opportunity for public comment**

The Public Health Department hereby proposes to rescind Chapter 132, "Emergency Medical Services—Service Program Authorization," Iowa Administrative Code, and to adopt a new Chapter 132 with the same title.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 147A.4.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 147A.

*Purpose and Summary*

The current Chapter 132 is proposed to be rescinded and replaced with a new chapter. The new chapter has been reorganized for overall readability to provide clarity, a rational structure, and other general updates. The new chapter removes redundancies between other chapters. Below is a listing of the most significant additions to the chapter:

1. Addition of definition and application of "service program affiliate."
2. Addition of definition and application of "service program affiliate agreement."

- In order to develop systems of Emergency Medical Services (EMS) provision, address gaps in service and response challenges, every service program which has submitted to the Department fewer than 100 data reports per year for each of the previous two consecutive calendar years shall only be eligible for renewal of current authorization as an affiliate. The Department will provide technical assistance in developing affiliations and affiliate agreements.
- A service program affiliate is an independently owned service program affiliated with one or more service programs or a separate management entity.
- A service program affiliate agreement is a written agreement between one or more service programs or one or more management entities that clearly defines the responsibilities of an individual service program to ensure compliance with the rules.
- Each service program will have a unique authorization number assigned by the Department.
- An affiliate agreement is a tool to ensure an emergency response and comply with statute and administrative rule.

3. Addition of definition and application of "conditional service level authorization" and "full authorization" status. These additions are being made to ensure a constant level of care to be expected by the public and allow for additional capabilities for advanced level of care if available intermittently.

- An entity that desires to provide emergency medical care services in the out-of-hospital setting shall apply to the Department for service program full authorization and may apply for a conditional

service level authorization if the entity can demonstrate advanced emergency medical care provider availability and medical director approval for conditional authorization at such level.

- A service program which has been granted conditional service level authorization shall only advertise or otherwise hold itself out to the public as an authorized service program at the level of full authorization.
- A service program which has been granted a conditional service level authorization must ensure a response to an initial 911 or emergency call 24 hours per day, seven days per week and shall have an executed transport agreement.
- A service program authorized to operate at a conditional service level shall operate at such level only when an emergency medical care provider certified at the advanced certification level is listed on the service roster, physically present and directly responsible for patient care.

4. Use of research- and science-based national clinical guidelines for the development of prehospital protocols. A service program's medical director shall be responsible for the development of the protocols. The Bureau of Emergency and Trauma Services (BETS) will no longer provide the protocol minimums or framework.

5. Clarification of the overall requirements of EMS programs.

6. Clarification of EMS program service owners, medical director and service director roles.

- Medical director and service director workshops are required within one year of instatement, and a refresher course is required every three years thereafter.

7. Clarification of minimum EMS program staffing.

- Transport services shall provide as a minimum, on initial 911 or emergency calls, the following staff on each primary response ambulance:
  - One currently certified emergency medical care provider certified at the service program full level of authorization.
  - One driver.
- Transport services shall provide as a minimum on each subsequent call or nonemergency call, when responding, the following staff:
  - One currently certified emergency medical technician (EMT).
  - One driver.
- Nontransporting service programs, when responding to 911 or emergency calls, shall provide as a minimum one currently certified emergency medical care provider certified at the service program full level of authorization.
- Nontransport service programs shall have an executed written transport agreement ensuring simultaneous dispatch with an authorized transport service program for all 911 or emergency calls.
- Nontransport service programs may transport patients in an ambulance only in an emergency situation when lack of transporting resources would cause an unnecessary delay in patient care.

8. To ensure timely access to data and to enhance quality improvement initiatives and quality assurance, a service program shall submit reportable data to the Department no later than the last day of the month following the month services were provided.

9. A requirement that service programs shall annually inspect, repair, and maintain all ambulances operated by the service program. Vehicles shall have the exterior clean and the interior clean and disinfected.

10. A requirement that a service program shall maintain first response and rescue vehicles in safe operating condition and provide regular maintenance.

11. A requirement that new ambulances manufactured and placed into service shall meet at a minimum either the Commission on Accreditation of Ambulance Services (CAAS) Ground Vehicle Standard for Ambulances or the National Fire Protection Association (NFPA) Standard for Automotive Ambulance (NFPA 1917) (does not apply to ambulances currently in service or remounts).

This rule making is proposed because the EMS program authorization rules are outdated and do not allow for system development and authorization that align with current research- and science-based standards and practice.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to the Department's variance and waiver provisions contained in 641—Chapter 178.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Rebecca Curtiss
Department of Public Health
Lucas State Office Building
321 East 12th Street
Des Moines, Iowa 50319
Email: rebecca.curtiss@idph.iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Rescind 641—Chapter 132 and adopt the following **new** chapter in lieu thereof:

CHAPTER 132
EMERGENCY MEDICAL SERVICES—SERVICE PROGRAM AUTHORIZATION

**641—132.1(147A) Definitions.** For the purpose of these rules, the following definitions shall apply:

*"Advanced emergency medical technician level service"* or *"AEMT level service"* means a service program that provides emergency medical care that does not exceed the scope of practice of a certified AEMT provider as outlined in 641—subrule 131.5(2).

*"Advanced registered nurse practitioner"* or *"ARNP"* means a nurse licensed pursuant to 655—7.1(152) with current licensure as a registered nurse in Iowa who is registered in Iowa to practice in an advanced role.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*"Ambulance"* means any privately or publicly owned ground vehicle equipped with life-support systems and specifically designed to transport the sick or injured who require emergency medical care.

*"Applicant"* means an owner of a transport or nontransport program or service program that is applying to the department for authorization as a service program or renewal of current authorization as a service program.

*"Biohazardous sharp"* means any object that has the potential to puncture the skin and may be contaminated with a biological material that is an infectious disease transmission risk.

*"Biomedical hazardous waste"* means waste product such as a biohazardous sharp or other material that may be contaminated with a biological material that is an infectious disease transmission risk.

*"Bureau"* or *"BETS"* means the bureau of emergency and trauma services, the bureau designated by the department as the lead agency for coordinating and implementing the provision of emergency medical services in this state.

*"Communication system"* means but is not limited to a telecommunication system, radio communication system, or mobile data communication system.

*"Conditional service level authorization"* means an enhanced service program authorization under which a service program may provide an advanced level of service from that routinely provided under the service program's full authorization level, on an intermittent basis with department and medical director approval.

*"Continuous quality improvement"* or *"CQI"* means a program that is an ongoing process to monitor standards at all EMS operational levels.

*"Credentialing"* means a clinical determination that is the responsibility of a physician medical director. It is the employer or affiliating organization's responsibility to act on the clinical credentialing status of EMS personnel in making employment or deployment decisions.

*"Critical care transport"* or *"CCT"* means a paramedic level service program that has received an endorsement from the department to provide specialty care patient transportation and that is staffed by one or more paramedics with a critical care paramedic endorsement from the department or that is staffed by other health care professionals in an appropriate specialty area.

*"Deficiency"* means noncompliance with Iowa Code chapter 147A or these administrative rules.

*"Department"* means the Iowa department of public health.

*"Director"* means the director of the Iowa department of public health.

*"Emergency medical care"* means any medical procedure authorized by Iowa Code chapter 147A and 641—Chapter 131.

*"Emergency medical care provider"* means an individual who has been trained to provide emergency and nonemergency medical care at the EMR, EMT, AEMT, paramedic, or other certification level recognized by the department before 2011 and has been issued a certificate by the department, or a person practicing in accordance with Iowa Code chapter 147D.

*"Emergency medical responder level service"* or *"EMR level service"* means a nontransport service program that provides emergency medical care that does not exceed the scope of practice of a certified EMR provider as outlined in 641—subrule 131.5(2).

*"Emergency medical services"* or *"EMS"* means an integrated medical care delivery system to provide emergency and nonemergency medical care at the scene or out-of-hospital during patient transportation in an ambulance.

*"Emergency medical technician level service"* or *"EMT level service"* means a service program that provides emergency medical care that does not exceed the scope of practice of a certified EMT provider as outlined in 641—131.5(2).

*"Emergency medical transportation"* means transportation of a patient by an ambulance.

*"EMS clinical guidelines"* or *"minimum EMS clinical guidelines"* means a minimum clinical standard approved by the department upon which a service program's medical director shall base service program protocols.

*"Emergency vehicle driver"* or *"driver"* means a currently licensed driver rostered with the service program or other emergency response personnel with emergency vehicle driving training.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

*"Endorsement"* means an approval granted by the department authorizing a paramedic level service program to provide critical care transport (CCT).

*"First response vehicle"* means any privately or publicly owned vehicle that is not an ambulance and that is used solely for the transportation of personnel and equipment to and from the scene of an emergency.

*"Full authorization"* means a service program authorization under which a service is authorized to provide and routinely provides a specific level of emergency medical care for initial 911 or emergency calls 24 hours per day, seven days per week.

*"Hospital"* means any hospital licensed under the provisions of Iowa Code chapter 135B.

*"Iowa EMS Registry Data Dictionary"* means reportable EMS data elements and definitions determined by the department and adopted by reference.

*"Medical direction"* means direction, advice, or orders provided by a medical director, supervising physician, PA, or ARNP to emergency medical care personnel.

*"Medical director"* means a physician designated by the service program and responsible for providing medical direction and overall supervision of the medical aspects of the service program.

*"Nontransport service"* means any privately or publicly owned service program which does not provide patient transportation and provides emergency medical care at the scene of an emergency.

*"Paramedic level service"* or *"PM level service"* means a service program that provides emergency medical care that does not exceed the scope of practice of a certified paramedic provider as outlined in 641—subrule 131.5(2).

*"Patient care report"* or *"PCR"* means a report that documents the assessment and management of the patient by the emergency care provider.

*"Physician"* means an individual licensed under Iowa Code chapter 148.

*"Physician assistant"* or *"PA"* means an individual licensed pursuant to Iowa Code chapter 148C.

*"Primary response ambulance"* means any ambulance utilized by a service program and dispatched as the initial ambulance response to a 911 or emergency call.

*"Protocols"* means written directions and orders approved by a service program's medical director utilizing the EMS clinical guidelines.

*"Registered nurse"* or *"RN"* means an individual licensed pursuant to Iowa Code chapter 152.

*"Service director"* means an individual designated by the service program who is responsible for the operation and administration of a service program.

*"Service program"* or *"service"* means any transport service or nontransport service, inclusive of associated satellites, that has received full or conditional authorization from the department.

*"Service program affiliate"* or *"affiliate"* means an independently owned service program affiliated with one or more service programs or a separate management entity.

*"Service program affiliate agreement"* or *"affiliate agreement"* means a written agreement executed between one or more service programs or one or more management entities and filed with the department that clearly defines the responsibilities of each service program to ensure compliance with these rules.

*"Service program base of operation"* means the physical location from which a service program responds and at which the service program houses emergency medical care personnel and equipment.

*"Service program ownership"* means the legal owner of the service program responsible for providing emergency medical care and compliance with Iowa Code chapter 147A and these rules.

*"Service program satellite"* or *"satellite"* means one or more additional service program locations owned by the same service program.

*"Tiered response"* means a rendezvous between service programs to allow the transfer, continuation, or enhancement of patient care.

*"Transport agreement"* means a written agreement executed between two or more service programs and filed with the department that ensures response and transportation for initial 911 or emergency calls. A transport agreement may be a component of an affiliate agreement.

*"Transport service"* means any privately or publicly owned service program which utilizes ambulances in order to provide patient transportation.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

**641—132.2(147A) Service program—authorization and renewal procedures and inspections.**

**132.2(1)** *Requirements for initial service program authorization.*

*a.* An entity that desires to provide emergency medical care services in the out-of-hospital setting in this state shall apply to the department for service program full authorization and may apply for a conditional service level authorization if the entity can demonstrate advanced emergency medical care provider availability and medical director approval for conditional authorization at such level.

*b.* Information for initial authorization can be found on the BETS website (www.idph.iowa.gov/BETS).

*c.* Transport service—full authorization. An entity seeking authorization as a transport service program shall apply for full authorization at a minimum of the EMT level or the level of care which will be provided by the service program or through a transport agreement for initial 911 or emergency calls 24 hours per day, seven days per week at the following EMS service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*d.* Transport service—conditional service level authorization. An entity seeking authorization as a transport service which is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) AEMT.
(2) Paramedic.

*e.* Nontransport service—full authorization. An entity seeking authorization as a nontransport service program shall apply for full authorization at a minimum of the EMR level or at the level of care which will be provided for initial 911 or emergency calls 24 hours per day, seven days per week. The nontransport service program shall have an executed written transport agreement ensuring simultaneous dispatch with an authorized transport service program for all 911 or emergency calls. The nontransport service shall apply for full authorization at the following EMS service levels:

(1) EMR.
(2) EMT.
(3) AEMT.
(4) Paramedic.

*f.* Nontransport service—conditional service level authorization. An entity seeking authorization as a nontransport service program that has an executed written transport agreement ensuring simultaneous dispatch with an authorized transport service program for all 911 or emergency calls and is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*g.* Conditional service level authorization restrictions and requirements.

(1) A service program which has been granted conditional service level authorization shall only advertise or otherwise hold itself out to the public as an authorized service program at the level of full authorization.

(2) A service program authorized to operate at a conditional service level shall operate at such level only when an emergency medical care provider certified at the advanced certification level is listed on the service roster, physically present and directly responsible for patient care.

*h.* An applicant should expect a minimum of a 30-day time period for review of the application, completion of an inspection, and response by the department regarding authorization status.

*i.* Deficiencies that are identified during the application review and inspection process by the department shall be corrected prior to service program authorization.

*j.* An applicant may be authorized as a service program when the department is satisfied that the program proposed by the applicant and associated satellites or affiliates will be operated in compliance with Iowa Code chapter 147A and these rules.

*k.* An applicant for authorization as a service program shall be fully operational upon the effective date specified on the certificate of authorization and shall ensure compliance with Iowa Code chapter 147A and these rules.

*l.* Initial service program authorization shall be valid for a period of one year from its effective date unless otherwise specified on the certificate of authorization or unless sooner suspended or revoked or surrendered.

*m.* An applicant shall provide evidence of liability insurance coverage for the service program and emergency medical care provider staff. Any change in insurance status must be reported to the department no later than 30 days from the change.

*n.* An applicant seeking endorsement as a CCT must provide verification that the service program will be staffed by one or more paramedics with a critical care paramedic endorsement from the department or by other health care professionals when providing specialty care and transport.

**132.2(2)** *Requirements for renewal of service program authorization.*

*a.* A service program seeking renewal of current authorization shall complete a process initiated by the department for renewal of the service program that includes the service program base of operations and all associated satellites and affiliates.

*b.* A service program seeking renewal of current authorization shall submit all required documentation to the department at least 90 days prior to the current authorization expiration date.

*c.* Transport service—full authorization. An entity seeking renewal authorization as a transport service program shall apply for full authorization at a minimum of the EMT level or the level of care which will be provided by the service program or through a transport agreement for initial 911 or emergency calls 24 hours per day, seven days per week at the following EMS service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*d.* Transport service—conditional service level authorization. An entity seeking renewal authorization as a transport service which is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) AEMT.
(2) Paramedic.

*e.* Nontransport service—full authorization. An entity seeking renewal authorization as a nontransport service program shall apply for full authorization at a minimum of the EMR level or at the level of care which will be provided for initial 911 or emergency calls 24 hours per day, seven days per week at the following EMS service levels:

(1) EMR.
(2) EMT.
(3) AEMT.
(4) Paramedic.

*f.* Nontransport service—conditional service level authorization. An entity seeking renewal authorization as a nontransport service program which is capable of providing emergency medical care beyond the full authorization level on an intermittent basis may apply for conditional service level authorization at one or more of the following conditional service levels:

(1) EMT.
(2) AEMT.
(3) Paramedic.

*g.* Conditional service level authorization restrictions and requirements.

(1) A service program which has been granted conditional service level authorization shall only advertise or otherwise hold itself out to the public as an authorized service program at the level of full authorization.

(2) A service program authorized to operate at a conditional service level shall operate at such level only when an emergency medical care provider certified at the advanced certification level is listed on the service roster, physically present and directly responsible for patient care.

*h.* Effective January 1, 2022, a service program which has submitted to the department fewer than 100 data reports per year for each of the previous two consecutive calendar years shall only be eligible for renewal of current authorization as an affiliate. The department will provide technical assistance in developing affiliations.

*i.* The department shall review the application and complete an inspection of the service program base of operations and all associated satellites and affiliates prior to renewal of current authorization.

*j.* A service program shall receive a renewal of authorization only when the department is satisfied that the service program and all associated satellites and affiliates will be operated in compliance with Iowa Code chapter 147A and these rules.

*k.* A service program shall be fully operational upon the effective date specified on the certificate of authorization and shall ensure compliance with Iowa Code chapter 147A and these rules.

*l.* A service program renewal authorization shall be valid for a period not to exceed three years from its effective date unless otherwise specified on the certificate of authorization or unless sooner revoked or suspended or surrendered.

*m.* A certificate of authorization shall be issued to the service program owner listed on the application.

*n.* A service program shall provide evidence of liability insurance coverage for the service program and emergency medical care provider staff. Any change in insurance status must be reported to the department no later than 30 days after the change.

*o.* An applicant seeking endorsement as a CCT must provide verification that the service program will be staffed by one or more paramedics with critical care paramedic endorsement by the department or other health care professionals when providing specialty care and transport.

**132.2(3)** *Reinstatement of service program authorization.*

*a.* A service program whose full authorization or conditional service level authorization has been revoked or suspended or surrendered may apply to the department for reinstatement in accordance with the terms and conditions of the order of revocation or suspension, unless the order of revocation provides that the authorization is permanently revoked.

*b.* If the order of revocation or suspension did not establish terms and conditions upon which reinstatement might occur or if the authorization was voluntarily surrendered, an initial application for reinstatement may not be made until one year has elapsed from the date of the order or the date of the voluntary surrender.

*c.* All proceedings for reinstatement shall be initiated by the service program, who shall file with the department an application for reinstatement of the authorization. Such application shall be docketed in the original case in which the authorization was revoked, suspended, or relinquished. All proceedings upon the application for reinstatement shall be subject to the same rules of procedure as other cases before the department.

*d.* An application for reinstatement shall be made in accordance with 132.2(1) and shall contain facts that will be sufficient to enable the department to determine that the basis for the revocation or suspension of the service program's authorization no longer exists and that it will be in the public interest for the authorization to be reinstated. The burden of proof to establish such facts shall be on the service program.

*e.* An order denying or granting reinstatement shall be based upon a decision which incorporates findings of facts and conclusions of law. The order shall be published as provided for in this chapter.

**132.2(4)** *Out-of-state service programs.*

*a.* An emergency medical service program authorized and based in another state shall provide the department with verification of current state authorization upon request and may provide emergency medical care to patients in Iowa to:

(1) Transport from locations outside of Iowa to destinations within Iowa;

(2) Transport to or from locations outside of Iowa that require travel through Iowa;

(3) Transport from locations in Iowa to destinations outside of Iowa;

(4) Respond to a request for mutual aid.

*b.* A service program authorized and based in another state shall meet all requirements of Iowa Code chapter 147A and these rules and must be authorized by the department to respond to 911 requests in Iowa to transport patients in Iowa to locations within Iowa.

**132.2(5)** *Service program inspections.*

*a.* The department at a minimum shall complete an inspection of each base of operations, all associated satellites, and all affiliate locations prior to initial authorization or renewal of current full authorization or conditional service level to ensure compliance with Iowa Code chapter 147A and these rules.

*b.* The department without prior notification may make additional inspections at times, at places and under such circumstances as it deems necessary to ensure compliance with Iowa Code chapter 147A and these rules.

*c.* Service program inspection forms are available on the BETS website (www.idph.iowa.gov/BETS).

*d.* Following a service program inspection, the department shall provide a copy of the completed inspection form and report to the service program.

*e.* A service program shall correct deficiencies identified during a service program inspection within the time period specified by the department on the inspection form. Failure to correct identified deficiencies within the specified time period may result in disciplinary action.

*f.* The department may request additional information from or may inspect the records of any service program or associated satellite or associated affiliate which is currently authorized or which is seeking authorization to ensure continued compliance or to verify the validity of any information presented on the application for initial service program authorization or renewal of current authorization.

*g.* The department may inspect the patient care records of a service program to verify compliance with Iowa Code chapter 147A and these rules.

*h.* No person shall interfere with the inspection activities of the department or its agents pursuant to Iowa Code section 135.36.

*i.* Interference with or failure to allow an inspection by the department or its agents may be cause for disciplinary action.

**641—132.3(147A) Service program operations.**

**132.3(1)** *Ownership.*

*a.* Each service program will have a unique authorization number assigned by the department.

*b.* A service program with satellites will have a single authorization number assigned by the department for all locations.

*c.* A service program owner shall ensure compliance with Iowa Code chapter 147A and these rules.

*d.* A service program shall report any change in ownership to the department at least seven days prior to the change.

*e.* A service program changing ownership shall apply to the department at least seven days prior to the change in ownership for initial authorization in accordance with 132.2(1).

**132.3(2)** *Medical director.*

*a.* Each service program shall have a designated medical director at all times.

*b.* A medical director shall:

(1) Be accessible for medical direction 24 hours per day, seven days per week or ensure accessibility to alternate medical direction.

(2) Ensure that all duties and responsibilities of the medical director are not relinquished before a new or temporary replacement is functioning in that capacity.

(3) Complete a department-sponsored medical director training within one year of assuming duties as a medical director and at a minimum once every three years thereafter.

(4) Develop, approve, and update service program protocols that meet or exceed the minimum EMS clinical guidelines approved by the department.

(5) Ensure that the emergency medical care providers rostered with the service program are credentialed in the emergency medical skills to be provided and the duties of the emergency medical care provider do not exceed the provider's scope of practice as referenced in 641—subrule 131.5(2) and the service program's EMS service level of authorization.

(6) Be available for individual evaluation and consultation with service program personnel.

(7) Have authority to restrict a service program's authorized functional EMS service level.

(8) Have the authority to permanently or temporarily restrict a service program member to function within a lower level scope of practice or prohibit a service program member from providing patient care.

(9) Approve the service program's CQI program.

(10) Perform or complete, or appoint a designee to perform or complete, the medical audits in the service program's established CQI policy.

(11) Randomly audit (on at least a quarterly basis) documentation of calls where emergency medical care was provided.

(12) Randomly review audits performed by the qualified appointee.

*c.* A medical director may:

(1) Make additions to the department-approved EMS clinical guidelines when developing service protocols provided the additions are within the service program's level of authorization, the EMS provider's scope of practice, and acceptable medical practice.

(2) Request that service program providers provide additional emergency medical care skills on a limited pilot project basis. The pilot project applications are available on the BETS website (www.idph.iowa.gov/BETS). The department will issue written notice of an approved or rejected pilot project.

(3) Approve the PA and RN exception form identifying the level of EMS provider equivalency not to exceed the service program's EMS service level authorization for each PA and RN who will be providing emergency medical care as part of the service program.

*d.* A medical director who receives no compensation for the performance of the director's volunteer duties under this chapter shall be considered a state volunteer as provided in Iowa Code section 669.24 while performing volunteer duties as an emergency medical services medical director. Compensation does not include payments for reimbursement of expenses.

*e.* A medical director, supervising physician, PA, or ARNP who gives orders to an emergency medical care provider is not subject to criminal liability by reason of having issued the orders and is not liable for civil damages for acts or omissions relating to the issuance of the orders unless the acts or omissions constitute recklessness.

*f.* Nothing in these rules requires or obligates a medical director, supervising physician, PA, or ARNP to approve requests for orders received from an emergency medical care provider.

*g.* A service program medical director who fails to comply with Iowa Code chapter 147A or these rules may be referred to the Iowa board of medicine.

**132.3(3)** *Service director.*

*a.* Each service program shall have a designated service director at all times.

*b.* A service director shall:

(1) Be accessible 24 hours per day, seven days per week or ensure accessibility to a service director designee.

(2) Be responsible for providing direction and overall supervision of the administrative and operational aspects of the service program.

(3) Ensure that all duties and responsibilities of the service director are not relinquished before a new or temporary replacement is functioning in that capacity.

(4) Complete a department-sponsored training within one year of assuming duties as a service director and at a minimum once every three years thereafter.

(5) Ensure the service program is in compliance with service program policy, Iowa Code chapter 147A and these rules.

(6) Ensure that duties of the service program's emergency medical care providers do not exceed the providers' scope of practice as referenced in 641—subrule 131.5(2) or the service program's EMS service level of authorization.

**132.3(4)** *Service program requirements.*

*a.* A service program shall:

(1) Not advertise or otherwise imply or hold itself out to the public as a service program unless currently authorized by the department.

(2) Only advertise at or otherwise hold itself out as having the level of full authorization.

(3) Select a new or temporary medical director if the current medical director cannot or no longer wishes to serve in that capacity. Selection shall be made before the current medical director relinquishes the duties and responsibilities of that position.

(4) Notify the department in writing within seven days prior to any change in medical director or any reduction or discontinuance of operations.

(5) Select a new or temporary service director if the current service director cannot or no longer wishes to serve in that capacity. Selection shall be made before the current service director relinquishes the duties and responsibilities of that position.

(6) Notify the department in writing within seven days prior to any change in service director or any reduction or discontinuance of operations.

(7) Notify the department within seven days prior to any change in location of a service program base of operations, administrative office, satellite, or affiliate.

(8) Notify the department within seven days when entering into agreements with one or more service programs or a management entity to form multiservice systems for shared service program management, administration, data submission, or other services to ensure compliance with these rules.

(9) Report the termination or resignation in lieu of termination of an emergency medical care provider due to negligence, professional incompetency, unethical conduct, substance use, or violation of any of these rules to the department in writing within ten days.

(10) Report theft of drugs to the department in writing within 48 hours following the occurrence of the incident.

(11) Develop a notification process for service members in the event of a motor vehicle collision involving a first response vehicle, ambulance, rescue vehicle or personal vehicle when used by a service program member responding as a member of the service program.

(12) Notify the department in writing within 48 hours of a motor vehicle collision resulting in personal injury or death.

(13) Ensure a response to an initial 911 or emergency call request to the service program, 24 hours per day, seven days per week.

(14) Utilize protocols developed and approved by the service program medical director that meet or exceed the minimum EMS clinical guidelines approved by the department.

(15) Ensure alterations to the minimum EMS clinical guidelines by the service program's medical director are approved by and filed with the department.

(16) Maintain a communication system at a minimum between medical direction, receiving facility, and other emergency responders.

(17) Maintain a current personnel roster utilizing a department-approved registry system. Ensure all rostered personnel are currently certified as active EMS providers in the state of Iowa.

(18) Maintain files with medical director and department-approved PA and RN exception forms for appropriate personnel. PA and RN forms are available on the BETS website (www.idph.iowa.gov/BETS).

(19) Ensure all service program members who operate motorized emergency response vehicles, ambulances, and rescue vehicles when used by a service member responding as a member of the service have a valid driver's license and attend driver training prior to driving an emergency vehicle.

(20) Develop, maintain and follow a written driver training policy that includes a review of Iowa laws regarding emergency vehicle operations (Iowa Code section 321.231), frequency of service required driver training, a review of service program policies and criteria for response with lights or sirens or both, speed limits, procedure for approaching intersections, and use of the service program communications equipment.

(21) Ensure the emergency medical care provider with the highest level of certification attends the patient unless otherwise indicated by patient assessment and approved by the service program's protocols.

*b.* A transport service program shall:

(1) Provide as a minimum, on initial 911 or emergency calls, the following staff on each primary response ambulance:

1. One currently certified emergency medical care provider certified at the service program full level of authorization.
2. One driver.

(2) Provide as a minimum on each subsequent call or nonemergency call, when responding, the following staff:

1. One currently certified EMT.
2. One driver.

(3) Establish a transport decision policy that requires a complete assessment of a patient in order to determine transport needs. The service transport decision policy shall include:

1. The Out-of-Hospital Trauma and Triage Destination Decision Protocol as described in 641—Chapter 135.
2. Time critical condition considerations for transport to facilities that specialize in conditions such as cardiac conditions or stroke.
3. A process for a service program provider to determine transportation to a hospital, medical clinic, extended care facility, or other facilities where health care is routinely provided.
4. A process for patient refusal or nontransport if emergency transport is not warranted. The service program provider will obtain a signed transport/treatment refusal document or liability release if transport is not required.
5. A process by which a service program provider may make arrangements for alternate transport if emergency transport is not needed and remain with the patient until alternate transport arrives unless the provider is called to respond to another emergency.

*c.* Nontransport service programs.

(1) Nontransporting service programs, when responding to 911 or emergency calls, shall provide as a minimum one currently certified emergency medical care provider certified at the service program full level of authorization.

(2) Nontransport service programs shall have an executed written transport agreement ensuring simultaneous dispatch with an authorized transport service program for all 911 or emergency calls.

(3) Nontransport service programs may transport patients in an ambulance only in an emergency situation when lack of transporting resources would cause an unnecessary delay in patient care.

**132.3(5)** *Data reporting.*

*a.* "The Iowa Emergency Medical Services Data Dictionary" (September 2019) is incorporated by reference for data to be reported to the EMS data registry. For any differences which may occur between the adopted reference and the rules in this chapter, the rules shall prevail.

*b.* "The Iowa Emergency Medical Services Data Dictionary" is available through the Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075, or the BETS website (www.idph.iowa.gov/BETS).

*c.* A service program shall report data electronically to the department.

*d.* A service program shall submit data in a format approved by the department.

*e.* A service program shall submit reportable data to the department no later than the last day of the month following the month services were provided.

*f.* The department shall prepare compilations for release or dissemination on reportable data entered into the EMS data registry during the reporting period. The compilations shall include, but not be limited to, trends and clinical outcomes for local, regional and statewide evaluations. The compilations shall be made available to all providers submitting reportable patient data to the registry.

*g.* The data collected by the EMS data registry and furnished to the department pursuant to this rule are confidential records of the condition, diagnosis, care, or treatment of patients or former patients including outpatients, pursuant to Iowa Code section 22.7. The compilations prepared for release or dissemination from the data collected are not confidential under Iowa Code section 22.7(2). However, information which individually identifies patients shall not be disclosed, and state and federal law regarding patient confidentiality shall apply.

*h.* The department may approve requests for reportable patient data for special studies and analysis provided:

(1) The request has been reviewed and approved by the department with respect to the scientific merit and confidentiality safeguards.

(2) The department has given administrative approval for the proposal.

(3) The confidentiality of patients and service programs is protected pursuant to Iowa Code section 22.7 and chapter 147A.

(4) The department may require those requesting the data to pay any or all of the reasonable costs associated with furnishing the reportable data.

*i.* For the purpose of ensuring the completeness and quality of reportable data, the department or authorized representative may examine all or part of the data record as necessary to verify or clarify all reportable data submitted by a service program.

*j.* To the extent possible, activities under this subrule shall be coordinated with other health data collection methods.

*k.* A service program will develop, maintain and follow a written data submission policy.

**132.3(6)** *Patient care reporting.*

*a.* Each service program, satellite, and affiliate shall complete and maintain a patient care report documenting the care provided to each patient.

*b.* The patient care report is a confidential document and shall be exempt from disclosure pursuant to Iowa Code section 22.7(2) and shall not be accessible to the general public. Information contained in these reports, however, may be utilized by any of the indicated distribution recipients and may appear in any document or public health record in a manner which prevents the identification of any patient or person named in these reports.

*c.* To facilitate the continuum of care, transport service programs shall provide at a minimum, upon delivery of a patient to a receiving facility, a verbal patient care report that contains details of the assessment and care provided.

*d.* Transport service programs shall provide a final patient care report within 24 hours to the receiving facility. Transport services and receiving facilities must work together to initiate reasonable and realistic mechanisms (including but not limited to paper, secure email, secure links, secure electronic system retrieval, and access to printers at the receiving facility) to ensure the delivery of the patient care report.

*e.* A service program will develop, maintain, and follow a written patient care report policy.

**132.3(7)** *Continuous quality improvement (CQI).*

*a.* A service program shall develop, maintain, and follow a CQI program that follows a written CQI policy.

*b.* The CQI program shall include medical audits that review patient care provided.

*c.* The CQI program shall be utilized to identify deficiencies or potential deficiencies regarding medical knowledge or skill or procedure performance.

*d.* The CQI program shall review at a minimum 911 response and scene times.

*e.* The CQI program shall develop a written plan that monitors, identifies and documents at a minimum continuing education, credentialing of skills and procedures, and personnel performance for the service program's emergency medical care providers, drivers, PA and RN exceptions.

*f.* The CQI program shall establish measurable outcomes that reflect the goals and standards of the service program.

*g.* The CQI program shall ensure completion of loop closure/resolution of identified areas of concern.

**132.3(8)** *Medications in service programs.*

*a.* A service program shall have written pharmacy agreements in accordance with the Iowa board of pharmacy's 657—Chapter 11.

*b.* A service program shall maintain all medications in accordance with the rules of the Iowa board of pharmacy's 657—Chapters 10 and 11.

*c.* A service program shall develop, maintain, and follow a written pharmacy policy.

**132.3(9)** *Vehicle standards, supplies, equipment and maintenance.*

*a.* Effective January 1, 2022, all service programs, regardless of their designation as governmentally owned, not-for-profit, or privately operated, shall annually systematically inspect, repair, and maintain, or cause to be systematically inspected, repaired, and maintained, all ambulances operated by the service program.

*b.* A service program shall utilize a vehicle inspection report approved by the department to record the results of an annual ambulance safety inspection. Annual safety inspection forms which comply with the requirements of 49 CFR 396 shall be approved by the department. A sample annual vehicle inspection form which complies with the reporting requirements of 49 CFR 396 can be found on the BETS website (www.idph.iowa.gov/BETS/EMS).

*c.* A service program shall ensure individuals performing annual safety inspections are qualified and capable of performing an inspection by reason of experience, training, or both.

*d.* A service program shall not use an ambulance that fails to meet or maintain the requirements of this subrule to transport patients.

*e.* A service program shall house primary response ambulances in a garage or other enclosed facility that is maintained in a clean, safe condition, free of debris or other hazards, is temperature controlled, and has an unobstructed exit to the street.

*f.* A service program shall secure all equipment stored in the ambulance patient compartment so the patient and service program personnel are not injured by moving equipment.

*g.* Effective January 1, 2022, new ambulances manufactured and placed into service shall meet at a minimum either the Commission on Accreditation of Ambulance Services (CAAS) Ground Vehicle Standard for Ambulances or the National Fire Protection Association (NFPA) Standard for Automotive Ambulance (NFPA 1917).

*h.* A service program shall maintain first response and rescue vehicles in safe operating condition and provide regular maintenance. Vehicles shall have the exterior clean and the interior clean and disinfected.

*i.* A service program shall ensure medical and patient care supplies are monitored for expiration dates, cleaned, laundered or disinfected. All medical supplies shall be stored in clean environments.

*j.* A service program shall ensure personal protection equipment and supplies are available to ensure emergency medical care responder safety during every response.

*k.* A service program shall ensure supplies to properly dispose of biomedical hazardous waste are available in all response vehicles, and all waste shall be disposed of according to accepted biomedical waste practices.

*l.* A service program shall ensure medical equipment is maintained per manufacturer requirements for safe emergency medical care provider and patient use.

*m.* A service program shall develop, maintain, and follow vehicle standards, supplies, and equipment maintenance policies.

**641—132.4(147A) Variances.** If during a period of authorization, a service program is unable to maintain compliance with Iowa Code chapter 147A and these rules, the department may grant a variance.

**132.4(1)** Variances to these rules may be granted by the department to a currently authorized service program.

**132.4(2)** Requests for variances shall apply only to the service program requesting the variance and shall apply only to those requirements and standards for which the department is responsible.

**132.4(3)** A service program shall apply for a variance in accordance with 641—Chapter 178.

**641—132.5(147A) Complaints and investigations—denial, citation and warning, probation, suspension or revocation of service program authorization or renewal.**

**132.5(1)** All complaints regarding the operation of authorized emergency medical care service programs, or those purporting to be or operating as the same, shall be reported to the department. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**132.5(2)** Complaints and the investigative process will be treated as confidential in accordance with Iowa Code section 22.7 and chapter 272C. An emergency medical care provider who has knowledge of an emergency medical care provider, service program or training program that has violated Iowa Code chapter 147A or these rules shall report such information to the department within 30 days following knowledge of the violation.

**132.5(3)** Service program authorization may be denied, issued a civil penalty not to exceed $1,000, issued a citation and warning, placed on probation, suspended, revoked, or otherwise disciplined by the department in accordance with Iowa Code section 147A.5(3) for any of the following reasons:

*a.* Knowingly allowing the falsifying of a patient care report (PCR).

*b.* Failure to submit required reports and documents.

*c.* Delegating professional responsibility to a person when the service program knows that the person is not qualified by training, education, experience or certification to perform the required duties.

*d.* Practicing, condoning, or facilitating discrimination against a patient, student or employee based on race, ethnicity, national origin, color, sex, sexual orientation, age, marital status, political belief, religion, mental or physical disability diagnosis, or social or economic status.

*e.* Knowingly allowing sexual harassment of a patient, student or employee. Sexual harassment includes sexual advances, sexual solicitations, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

*f.* Failure or repeated failure of the applicant or alleged violator to meet the requirements or standards established pursuant to Iowa Code chapter 147A or the rules adopted pursuant to that chapter.

*g.* Obtaining or attempting to obtain or renew or retain service program authorization by fraudulent means or misrepresentation or by submitting false information.

*h.* Engaging in conduct detrimental to the well-being or safety of the patients receiving or who may be receiving emergency medical care.

*i.* Failure to correct a deficiency within the time frame required by the department.

*j.* Engaging in any conduct that subverts or attempts to subvert a department investigation.

*k.* Failure to comply with a subpoena issued by the department or failure to cooperate with an investigation of the department.

*l.* Failure to comply with the terms of a department order or the terms of a settlement agreement or consent order.

*m.* Knowingly aiding, assisting or advising a person to unlawfully practice EMS.

*n.* Acceptance of any fee by fraud or misrepresentation.

*o.* Repeated failure to comply with standard precautions for preventing transmission of infectious diseases as issued by the Centers for Disease Control and Prevention of the United States Department of Health and Human Services.

*p.* Violating privacy and confidentiality. A service program shall not disclose or be compelled to disclose patient information unless disclosure is required or authorized by law.

*q.* Practicing emergency medical services or using a designation of certification or otherwise holding itself out as practicing emergency medical services at a certain level of authorization when the service program is not authorized at such level.

*r.* Failure to respond within 30 days of receipt, unless otherwise specified, of communication from the department which was sent by registered or certified mail.

**132.5(4)** The department shall notify the applicant of the granting or denial of authorization or renewal, or shall notify the alleged violator of action to issue a citation and warning, place on probation or suspend or revoke authorization or renewal pursuant to Iowa Code sections 17A.12 and 17A.18. Notice of issuance of a denial, citation and warning, probation, suspension or revocation shall be served by restricted certified mail, return receipt requested, or by personal service.

**132.5(5)** Any requests for appeal concerning the denial, citation and warning, probation, suspension or revocation of service program authorization or renewal shall be submitted by the aggrieved party in writing to the department by certified mail, return receipt requested, within 20 days of the receipt of the department's notice. The address is: Iowa Department of Public Health, Bureau of Emergency and Trauma Services, Lucas State Office Building, Des Moines, Iowa 50319-0075. If such a request is made within the 20-day time period, the notice shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, citation and warning, probation, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, citation and warning, probation, suspension or revocation. If no request for appeal is received within the 20-day time period, the department's notice of denial, citation and warning, probation, suspension or revocation shall become the department's final agency action.

**132.5(6)** Upon receipt of an appeal that meets contested case status, the appeal shall be forwarded within five working days to the department of inspections and appeals pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the adverse action is based and any additional information which may be provided by the aggrieved party shall also be provided to the department of inspections and appeals.

**132.5(7)** The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10.

**132.5(8)** When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. That proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in 132.5(9).

**132.5(9)** Any appeal to the director for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for an appeal shall state the reason for appeal.

**132.5(10)** Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

*a.* All pleadings, motions, and rules.

*b.* All evidence received or considered and all other submissions by recording or transcript.

*c.* A statement of all matters officially noticed.

*d.* All questions and offers of proof, objections, and rulings thereon.

*e.* All proposed findings and exceptions.

*f.* The proposed decision and order of the administrative law judge.

**132.5(11)** The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested, or by personal service.

**132.5(12)** It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The

aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

**132.5(13)** Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent to the department by certified mail, return receipt requested, or by personal service. The address is: Bureau of Emergency and Trauma Services, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075.

**132.5(14)** The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

**132.5(15)** Final decisions of the department relating to disciplinary proceedings may be transmitted to the appropriate professional associations, the news media or employer.

**132.5(16)** This rule is not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

**132.5(17)** Emergency adjudicative proceedings.

*a.* Necessary emergency action. To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the department may issue a written order in compliance with Iowa Code section 17A.18 to suspend an authorization in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the department by emergency adjudicative order.

*b.* Before issuing an emergency adjudicative order, the department shall consider factors including, but not limited to, the following:

(1) Whether there has been a sufficient factual investigation to ensure that the department is proceeding on the basis of reliable information;

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

(3) Whether the program required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

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

(5) Whether the specific action contemplated by the department is necessary to avoid the immediate danger.

*c.* Issuance of order.

(1) An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the department's decision to take immediate action. The order is a public record.

(2) The written emergency adjudicative order shall be immediately delivered to the service program that is required to comply with the order by utilizing one or more of the following procedures:

1. Personal delivery.
2. Certified mail, return receipt requested, to the last address on file with the department.
3. Fax. Fax may be used as the sole method of delivery if the service program required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

(3) To the degree practicable, the department shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

(4) Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the department shall make reasonable immediate efforts to contact by telephone the service program that is required to comply with the order.

(5) After the issuance of an emergency adjudicative order, the department shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

(6) Issuance of a written emergency adjudicative order shall include notification of the date on which department proceedings are scheduled for completion. After issuance of an emergency

adjudicative order, continuance of further department proceedings to a later date will be granted only in compelling circumstances upon application in writing unless the service program that is required to comply with the order is the party requesting the continuance.

These rules are intended to implement Iowa Code chapter 147A.

## ARC 4868C

# TRANSPORTATION DEPARTMENT[761]

**Notice of Intended Action**

**Proposing rule making related to regulation of outdoor advertising signs and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 117, "Outdoor Advertising," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 306B.3, 306C.11, 306D.4 and 307.12.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 306B and 306C and section 306D.4, 23 U.S.C. 131 and 23 CFR 750.705(h).

*Purpose and Summary*

This proposed rule making amends Chapter 117 and concerns the regulation of outdoor advertising signs on private property. The proposed amendments ease some placement restrictions for companies that are applying for new sign locations, remove all fees for signs measuring 32 square feet or less, and alter the method used to determine when a sign is destroyed. The following paragraphs explain the amendments in more detail:

**Definitions.** The proposed amendments add definitions of "destroyed" and "widening" due to the changes included within subrule 117.5(5) and new subrule 117.6(10).

The definition of "modification" is amended to exclude situations where the trim on the advertising sign has been reduced or eliminated. Modern industry practice is to use less trim than was used for the advertising signs constructed in the 1970s and 1980s. Provided the actual copy size for the advertisement remains the same, the size of the trim is not a factor that will be used to determine if a sign has been modified. This exclusion will eliminate the cancellation of a permit for a reason which is not of substantial importance.

The definition of "nonconforming sign" is amended to more accurately reflect the definition in the Code of Federal Regulations (CFR). The current definition narrows the eligible situations to only those regarding size and spacing requirements. In contrast, 23 CFR 750.707(b) and 23 CFR 750.707(d)(4) include all legally erected and lawfully maintained signs which subsequently fail to meet state requirements. The Department has followed the more inclusive and traditionally accepted definition of "nonconforming" set forth in the federal regulations.

**Effect of scenic byways.** This rule making amends paragraph 117.3(1)"l" to state that although the erection of advertising signs is prohibited along scenic byways, the signs that already exist at the time a highway is designated as a scenic byway may remain in existence subject to normal permitting requirements. Federal law, 23 U.S.C. 131(s), prohibits the erection of new advertising signs, not the continued maintenance and permitting of signs already in existence along the scenic byways.

**LED sign spacing.** The proposed amendments make changes to subrule 117.5(5) to establish the same spacing requirements for LED signs as standard traditional signs. The Federal Highway

Administration conducted an eye-glance tracking study which found that overall attention to the forward roadway was not decreased when properly regulated LED signs were present in the surrounding environment. Therefore, a more restrictive spacing standard for LED signs is not necessary. LED signs, however, will continue to be regulated by subrule 117.3(1) so that messages do not flash, scroll, move, or change at a rate of less than eight seconds per message in accordance with the federal guidance issued in September 2007.

**Spacing requirements between interchanges.** This rule making amends subrule 117.5(5) concerning areas between interchanges where continuous acceleration and deceleration lanes exist. Rather than having these areas completely blocked out for advertising purposes, this amendment will make these areas eligible for permitting provided that the placement of the sign is not within 250 feet of the point at which lanes join/separate with the mainline. This standard will be more consistent with the rest of the subrule because only 250 feet is protected from the ramp taper in cases where the ramp does taper to a close. Driver attention at places where merging is necessary is likely higher than where merging is not required. Therefore, a more restrictive standard for the latter does not serve a compelling safety interest, and it is not required by federal law. Due to these amendments to subrule 117.5(5), a definition of "widening" is added in rule 761—117.1(306B,306C) to describe the point where the measurement begins for the 250 feet of protection for each scenario.

**Applications required for each face.** This rule making amends subrule 117.6(1) so that, without exception, permits are required for each face of an advertising sign. The original purpose behind allowing owners of smaller signs to obtain just one permit for a sign with a face on each side was to cap the fees (initial fee and annual renewal fee) to one permit only. However, because of the proposed amendments to subrule 117.6(2) to completely exempt owners of small signs from any fees at all, there is less of a need to retain this exception. In addition, the Department's electronic permitting system associates a unique permit number for each sign face for billing and spacing purposes.

**Exempt fees for small signs.** This rule making amends subrule 117.6(2) to exempt fees for applications and renewals for small signs measuring 32 square feet or less. Currently, any sign, regardless of size, is subject to the initial application fee of $100 per face and the annual renewal fees in accordance with the fee and size schedule in subrule 117.6(2). Application and renewal fees are intended to help cover the cost of field reviews and program administration, but the effect of not charging fees for signs of this size will be minimal because so few applications are received. Small business operators who use small signs for advertising will be able to obtain permits in conforming areas at no charge. Local permit fees may vary.

**Outdoor advertising permits—not transferrable and protection of property rights.** The proposed amendments add a sentence to subrule 117.6(3) to make clear that permits are not transferrable to other advertising signs or to other locations. While it is rare, Department staff have found permit plates which have been moved from one sign to another, or signs (with permit plates attached) moved to other locations. The application forms identify a precise location and the subsequent field reviews by Department staff are conducted to ensure that location requirements are met.

Language is also added to subrule 117.6(3) for the protection of property rights (for advertising purposes) when highway improvement projects are pending. Currently, if a highway improvement project is planned and the future design will result in a change in eligibility of an area for the issuance of advertising permits, those issuances cease once the Department completes the plans for the project and appraisers and buyers begin to contact property owners for the acquisition of additional right-of-way. Because this process can occur months or years in advance of the actual construction work, property owners and sign companies are being prevented from what could be construed as a legal use of property at the time the application is made. The language being added narrows the window of time for denials so that permits may be issued for conforming locations up until the time when contact occurs with the property owner for the purposes of acquiring the additional right-of-way at the site of the proposed sign.

**Destroyed sign.** This rule making adds new subrule 117.6(10), which alters the method of handling for signs which have been damaged by storms. The Federal Highway Administration requires states to have a method of determining when a nonconforming sign is destroyed and to have it removed. Existing protocol for Iowa is to assess damage following a storm to see if the repair cost for damaged plywood,

poles, stringers, vinyl wrap, light ballasts, etc., exceeds 60 percent of the replacement cost (see definition of "reconstruction" in Iowa Code section 306C.10). If so, the permit is subject to cancellation and, if the area is not conforming, removal of the sign must follow. Damage assessments are labor intensive, are subjective, and cause delays in repairs, which can frustrate companies, landowners, and advertisers. In recent years, the Federal Highway Administration has worked with state regulators and stakeholders (Scenic America and Outdoor Advertising Association of America) to develop an easy "bright line" to follow instead of using the more common method of having regulators sort through damaged parts to determine whether they are reusable and attempt to assign values to those parts, which may be cause for litigation. This new method involves a simple count of the broken support poles to determine if a given percentage of the total is reached. If so, the sign is considered destroyed. A definition of "destroyed" (60 percent of supports broken) is added in rule 761—117.1(306B,306C), which falls within the Federal Highway Administration's recommended guidelines. New subrule 117.6(10) is added to replace the existing method of determining when a permit needs to be revoked and a sign needs to be removed.

Finally, the proposed amendments amend the chapter's implementation sentence to include references to Iowa Code section 306D.4, 23 U.S.C. 131, and 23 CFR 750.705(h).

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa. Although applications for advertising signs measuring 32 square feet or less in size will no longer be subject to fees, the average annual number of new advertising signs erected for this size has been fewer than five for the last eight years. Therefore, the effect to the Highway Beautification Fund will be minimal.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy Bureau
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

February 6, 2020
2 p.m.

Department of Transportation
Administration Building
First Floor South Conference Room
800 Lincoln Way
Ames, Iowa

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

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

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Adopt the following **new** definitions of "Destroyed" and "Widening" in rule **761—117.1(306B,306C)**:

*"Destroyed"* means that at least 60 percent of the supports are broken, if wooden, or broken, bent or twisted, if metal, such that normal repair practices would call for the replacement of the damaged supports.

*"Widening"* means the point at which it is detectable that a deceleration or exit ramp is beginning to form alongside the main traveled way, or an acceleration or merging ramp has tapered to a close alongside the main traveled way. In the case where an entrance ramp becomes an auxiliary lane and the auxiliary lane becomes an exit ramp at the adjacent interchange, the widening shall be the point at which a deceleration ramp completely separates from the main traveled way as evidenced by the inside lane marking of such ramp, or an acceleration ramp joins with the main traveled way as evidenced by the inside lane marking of the ramp intersecting with the outside lane marking of the main traveled way.

ITEM 2. Amend rule **761—117.1(306B,306C)**, definitions of "Modification" and "Nonconforming sign," as follows:

*"Modification"* means any addition to or change in dimensions, lighting, structure or advertising face, except as incidental to the customary maintenance of an advertising device.

1. A change in the number or type of support posts is a modification. A change in dimensions is a modification. However, the addition of extensions or cutouts, including forward projecting, is not a modification if the extensions or cutouts are added for a period of 90 days or less and if they are illuminated only by existing sign lighting and do not contain internal lighting.

2. A lawful change in advertising message is not a modification. The use of a vinyl overlay or wrap on either a poster panel or paint unit is a change in advertising message, not a modification.

3. On an advertising device that conforms to all current requirements, the replacement of one metal-framed face with another metal-framed face of the same size, using dissimilar component parts or assembly methods, or both, is not a modification.

4. The addition of LED display capabilities to an advertising device is a modification.

5. The elimination of trim surrounding the area used for advertising copy is not a modification, provided the advertising copy retains the same dimensions as the original advertising copy.

*"Nonconforming sign"* means an advertising device that was lawfully erected and continues to be lawfully maintained, but that does not comply ~~fully~~ with current ~~size and spacing~~ requirements due to changed conditions, such as a change in zoning, establishment of a new highway, or a similar change that affects compliance.

ITEM 3. Amend subrule 117.2(2) as follows:

**117.2(2)** *Contact information.* Inquiries, requests for forms, and applications regarding this chapter shall be directed to the Advertising Management Section, ~~Office of~~ Traffic and Safety Bureau, Department of Transportation, 800 Lincoln Way, Ames, Iowa 50010.

ITEM 4. Amend rule **761—117.3(306B,306C)**, parenthetical implementation statute, as follows:

**761—117.3(306B,306C,306D) General criteria.**

ITEM 5. Amend paragraph **117.3(1)"l"** as follows:

*l.* No off-premises advertising device may be erected within the adjacent area of any primary highway that has been designated a scenic highway or scenic byway if the advertising device will be visible from the highway. However, if the off-premises advertising device was in existence at the time of the designation, subsequent permitting may occur in accordance with Iowa Code section 306C.18.

ITEM 6. Amend subrule 117.5(5) as follows:

**117.5(5)** *Advertising devices erected after July 1, 1972.* Except as otherwise provided in this chapter, an advertising device which is visible from the main traveled way of any primary highway shall not be erected after July 1, 1972, or subsequently maintained within the adjacent area unless the advertising device complies with the following:

*a.* and *b.* No change.

*c. Spacing within city—interstate and freeway-primary highway.* Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) The advertising device shall not be located within 250 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 500 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured ~~along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite~~ from the nearest point of widening for a lane constructed for the purpose of acceleration or deceleration of traffic movement to or from the main traveled way to the advertising device. The measurement shall be taken parallel to the centerline of the main traveled way and shall be taken from whichever point of widening extends the furthest from the interchange.

~~(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.~~

*d. Spacing outside city—interstate and freeway-primary highway.* Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from an interstate or a freeway-primary highway:

(1) The advertising device shall not be located within 500 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 1000 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) The advertising device shall not be located within the adjacent area on either side of the highway in, or within 250 feet of an interchange or rest area. The 250 feet shall be measured ~~along a line parallel to the centerline from a point opposite the end or beginning of whichever acceleration or deceleration ramp extends the farthest from the interchange or rest area to a point opposite~~ from the nearest point of widening for a lane constructed for the purpose of acceleration or deceleration of traffic movement to or from the main traveled way to the advertising device. The measurement shall be taken parallel to the centerline of the main traveled way and shall be taken from whichever point of widening extends the furthest from the interchange.

~~(3) In an area where two interchanges are in such close proximity that the acceleration or deceleration lanes or ramps merge or overlap or where there are continuous acceleration or deceleration lanes between interchanges, the area will be treated as one continuous interchange.~~

*e. Spacing within city—nonfreeway-primary highway.* Within the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 100 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 500 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) No change.

*f. Spacing outside city—nonfreeway-primary highway.* Outside the corporate limits of a municipality, the following provisions apply to an advertising device which is visible from a nonfreeway-primary highway:

(1) The advertising device shall not be located within 300 feet of another advertising device when both are visible to traffic proceeding in any one direction. ~~If the advertising device has an LED display, the advertising device shall not be located within 1000 feet of another advertising device that has an LED display when both are visible to traffic proceeding in any one direction.~~

(2) No change.

*g.* to *l.* No change.

ITEM 7. Amend paragraph **117.6(1)"a"** as follows:

*a.* A permit is required for each face of an advertising device; thus, a permit application must be submitted for each face. Three permits are required for a tri-face device if all three faces are visible from the main traveled way of a primary highway. ~~However, only one application and permit are required for a back-to-back advertising device that identifies the same business or service on each face if each face is no larger than 8 feet in width or height and 32 square feet in area.~~

ITEM 8. Amend subrule 117.6(2) as follows:

**117.6(2)** *Fees.* Fees are applicable to all advertising devices measuring over 32 square feet in size.

*a.* No change.

*b.* The annual renewal fee for each permit, due on or before June 30 of each year, is as follows:

| Area of Sign | Annual Renewal Fee |
|---|---|
| ~~Up~~ 33 to 375 square feet | $15 |
| 376 to 999 square feet | $25 |
| 1000 square feet or more | $50 |

For tri-vision signs, the area shall be calculated by multiplying the area of the face by three.

(1) and (2) No change.

*c.* and *d.* No change.

ITEM 9. Amend subrule 117.6(3) as follows:

**117.6(3)** *Permits to be issued.*

*a.* The department shall issue an outdoor advertising permit in accordance with Iowa Code section 306C.18. Permits shall not be transferrable to other advertising devices or to other locations.

*b.* No change.

*c.* The department shall not prevent nor unnecessarily delay the issuance of a permit for the reason of a proposed future highway improvement project, except under any of the following conditions:

(1) The property upon which the advertising device is proposed has been appraised for the purposes of acquisition.

(2) Contact by department staff has been made with the property owner regarding compensation for the affected area.

(3) The placement of the advertising device would fail to meet the requirements of an existing corridor preservation plan in effect for the proposed location.

(4) A construction contract for the project has been initiated by the department.

ITEM 10. Adopt the following **new** subrule 117.6(10):

**117.6(10)** *Destroyed sign.*

*a.* The permit for an advertising device which has been destroyed shall be revoked.

*b.* An advertising device which has been destroyed is in a condition which, if repaired, would meet the definition of reconstruction in Iowa Code section 306C.10 and is subject to subrule 117.6(5).

*c.* An advertising device which has been damaged, but not destroyed, may be repaired. The repair shall not be deemed an act of reconstruction.

ITEM 11. Amend rule 761—117.10(17A,306C) as follows:

**761—117.10(17A,306C) Contested cases.**

**117.10(1)** An applicant who has been denied an outdoor advertising permit by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the ~~office of~~ traffic and safety bureau at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the department's mailing of the letter denying the application.

**117.10(2)** The owner of an outdoor advertising permit which has been revoked or canceled by the department may contest the decision in accordance with 761—Chapter 13. The request for a contested case hearing shall be submitted in writing to the director of the ~~office of~~ traffic and safety bureau at the address in subrule 117.2(2). The request shall be deemed timely submitted if it is delivered or postmarked within 30 days of the owner's receipt of the revocation notice issued by the department.

**117.10(3)** No change.

ITEM 12. Amend **761—Chapter 117**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 306B and 306C and section 306D.4, 23 U.S.C. 131, and 23 CFR 750.705(h).

## ARC 4869C

# TRANSPORTATION DEPARTMENT[761]

**Notice of Intended Action**

**Proposing rule making related to annual raw forest products permit and providing an opportunity for public comment**

The Department of Transportation hereby proposes to amend Chapter 511, "Special Permits for Operation and Movement of Vehicles and Loads of Excess Size and Weight," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code sections 307.12 and 321E.15.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 321.463, 321E.2, 321E.3, 321E.7, 321E.9, 321E.14 and 321E.26, 2019 Iowa Acts, Senate File 629, sections 1 and 3 to 6.

*Purpose and Summary*

This proposed rule making updates Chapter 511 to align the rules with Iowa Code section 321.463 and chapter 321E as amended by 2019 Iowa Acts, Senate File 629, sections 1 and 3 to 6.

The proposed amendments establish the new annual raw forest products permit rule as required by Iowa Code section 321E.26, which was newly enacted by 2019 Iowa Acts, Senate File 629, section 6. Annual raw forest products permits are issued for vehicles transporting divisible loads of raw forest products when the weight of the vehicle exceeds the statutory limits. As provided in the Iowa Code,

a vehicle traveling under this permit is not authorized to travel on the interstate and must contact the appropriate local authority for route approval to use this permit on county roads or city streets.

Additionally, the proposed amendments align the Department's rules with the Iowa Code by adding a new definition of "raw forest products," incorporating the new statutory $175 permit fee for divisible loads of raw forest products, and subjecting a vehicle operating under the annual raw forest products permit to the same maximum axle weights and permitted tandem axle weights as the annual oversize/overweight permit.

*Fiscal Impact*

The Department issued 78 raw forest products permits from July 1, 2019, through October 29, 2019, with a resulting revenue amount of approximately $13,741. Based on the current number of permits issued and the nature of this small industry, the Department does not anticipate a revenue impact that would exceed $100,000 annually or $500,000 over five years.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making or may submit a written request to make an oral presentation at a public hearing. Written comments or requests to present oral comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Tracy George
Department of Transportation
DOT Rules Administrator, Strategic Communications and Policy Bureau
800 Lincoln Way
Ames, Iowa 50010
Email: tracy.george@iowadot.us

*Public Hearing*

A public hearing to hear requested oral presentations will be held as follows:

| | |
|---|---|
| February 6, 2020<br>10 a.m. | Department of Transportation<br>Motor Vehicle Division<br>6310 SE Convenience Boulevard<br>Ankeny, Iowa |

Persons who wish to make oral comments at the public hearing may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the public hearing and have special requirements, such as those related to hearing or mobility impairments, should contact Tracy George, the Department's rules administrator, and advise of specific needs.

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

TRANSPORTATION DEPARTMENT[761](cont'd)

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making actions are proposed:

ITEM 1. Amend rule **761—511.1(321E)**, definition of "Permit-issuing authority," as follows:

*"Permit-issuing authority"* means the:

1. Department's ~~office of~~ vehicle and motor carrier services bureau for permits for movement on the primary road system.

2. Authority responsible for the maintenance of a nonprimary system of highways or streets for permits for movement on that system. However, the ~~office of~~ vehicle and motor carrier services bureau may issue single-trip permits on primary road extensions in cities in conjunction with movement on the rural primary road system.

ITEM 2. Adopt the following **new** definition of "Raw forest products" in rule **761—511.1(321E)**:

*"Raw forest products"* means the same as defined in Iowa Code section 321E.26.

ITEM 3. Amend rule **761—511.1(321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321E.9, 321E.15, 321E.26, 321E.29, 321E.30 and 321E.34.

ITEM 4. Amend subrule 511.2(1) as follows:

**511.2(1)** Applications, forms, instructions and restrictions are available on the department's website at www.iowadot.gov and by mail from the ~~Office of~~ Vehicle and Motor Carrier Services Bureau, Iowa Department of Transportation, P.O. Box 10382, Des Moines, Iowa 50306-0382; in person at 6310 SE Convenience Blvd., Ankeny, Iowa; by telephone at (515)237-3264; or by facsimile at (515)237-3257. Permits may be obtained electronically upon making application to the ~~office of~~ vehicle and motor carrier services bureau.

ITEM 5. Amend subrule 511.2(4), introductory paragraph, as follows:

**511.2(4)** Except as provided in subrule 511.7(6) and rule ~~761—511.14(321,321E)~~ 761—511.15(321,321E), permits may be issued only for the transporting of a single article which exceeds statutory size or weight limits or both, and which cannot reasonably be divided or reduced to statutory size and weight limits. However, permits may be issued for the transporting of property consisting of more than one article when:

ITEM 6. Amend rule 761—511.4(321E), introductory paragraph, as follows:

**761—511.4(321E) Permits.** Permits issued shall be in writing or in electronic format and may be either single-trip, multitrip, annual, annual oversize/overweight, annual raw forest products, compacted rubbish or all-systems permits.

ITEM 7. Amend paragraph **511.4(3)"a"** as follows:

*a.* Annual, annual oversize/overweight, annual raw forest products, compacted rubbish, and all-systems permits shall expire one year from the date of issuance.

ITEM 8. Amend rule 761—511.5(321,321E) as follows:

**761—511.5(321,321E) Fees and charges.**

**511.5(1)** and **511.5(2)** No change.

**511.5(3)** *Annual raw forest products permit.* A fee of $175 shall be charged for each annual permit issued pursuant to Iowa Code section 321E.26 for divisible loads of raw forest products, payable prior to the issuance of the permit.

~~**511.5(3)**~~ **511.5(4)** *Annual oversize/overweight permit.* A fee of $400 shall be charged for each annual oversize/overweight permit, payable prior to the issuance of the permit. Transfer of current annual oversize/overweight permit to a replacement vehicle may be allowed when the original vehicle has been damaged in an accident, junked or sold.

~~**511.5(4)**~~ **511.5(5)** *All-systems permit.* A fee of $160 shall be charged for each annual all-systems permit, payable prior to the issuance of the permit.

~~**511.5(5)**~~ **511.5(6)** *Bridge-exempt permit.* A fee of $25 shall be charged for each bridge-exempt permit issued pursuant to Iowa Code section 321E.7, payable prior to the issuance of the permit.

~~**511.5(6)**~~ **511.5(7)** *Multitrip permit.* A fee of $200 shall be charged for each multitrip permit, payable prior to the issuance of the permit.

~~**511.5(7)**~~ **511.5(8)** *Raw milk permit.* A fee of $25 shall be charged for each raw milk permit issued pursuant to Iowa Code section 321E.29A, payable prior to the issuance of the permit.

~~**511.5(8)**~~ **511.5(9)** *Single-trip permit.* A fee of $35 shall be charged for each single-trip permit, payable prior to the issuance of the permit.

~~**511.5(9)**~~ **511.5(10)** *Compacted rubbish permit.* A fee of $100 shall be charged for each compacted rubbish permit, payable prior to the issuance of the permit.

~~**511.5(10)**~~ **511.5(11)** *Duplicate permit.* A fee of $2 shall be charged for each duplicate permit, payable prior to the issuance of the permit.

~~**511.5(11)**~~ **511.5(12)** *Registration fee.* A registration fee shall be charged for vehicles transporting buildings, except mobile homes and factory-built structures, on a single-trip basis. The vehicle shall be registered for the combined gross weight of the vehicle and load. The fee shall be 5 cents per ton exceeding the weight registered under Iowa Code section 321.122 per mile of travel and shall be payable prior to the issuance of the permit. Fees shall not be prorated for fractions of miles.

~~**511.5(12)**~~ **511.5(13)** *Fair and reasonable costs.* Permit-issuing authorities may charge any permit applicant:

*a.* A fair and reasonable cost for the removal and replacement of natural obstructions or official signs and signals.

*b.* A fair and reasonable cost for measures necessary to avoid damage to public property including structures and bridges.

~~**511.5(13)**~~ **511.5(14)** *Methods of payment.* Fees and costs required under this chapter shall normally be paid by credit card, certified check, cashier's check, traveler's check, bank draft or cash. Personal checks may be accepted at the discretion of the permit-issuing authority.

This rule is intended to implement Iowa Code sections 321.12, 321.122, 321E.14, 321E.29, 321E.29A and 321E.30.

ITEM 9. Amend paragraph **511.6(1)"a"** as follows:

*a.* Public liability insurance in the amounts of $100,000 bodily injury each person, $200,000 bodily injury each occurrence, and $50,000 property damage with an expiration date to cover the tenure of the annual, annual oversize/overweight, annual raw forest products, all-systems, multitrip or single-trip permit shall be required. In lieu of filing with the permit-issuing authority, a copy of the current certificate of public liability insurance in these amounts shall be carried in the vehicle for which the permit has been issued. Proof of liability insurance may be either in writing or in electronic format.

ITEM 10. Amend rule 761—511.7(321,321E) as follows:

**761—511.7(321,321E) Annual permits.** Annual permits are issued for indivisible vehicles or indivisible loads for travel when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The owner or operator shall select a route using the vertical clearance map and road construction and travel restrictions map provided by the department. Detour and road embargo information may also be found online at: www.511ia.org. Prior to making the move, the owner or operator shall contact the department by telephone at (515)237-3264 between 8 a.m. and 4:30 p.m., Monday through Friday,

except for legal holidays, to verify that the owner or operator is using the most recent information. Annual permits are issued for the following:

**511.7(1)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Distance.* Movement is allowed for unlimited distance; routing through the ~~office of~~ vehicle and motor carrier services bureau is not required.

**511.7(2)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Distance.* Movement is restricted to 50 miles unless trip routes are obtained from the ~~office of~~ vehicle and motor carrier services bureau or the route continues on at least four-lane roads. Trip routes are valid for five days.

**511.7(3)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Distance.* Trip routes must be obtained from the ~~office of~~ vehicle and motor carrier services bureau.

**511.7(4)** No change.

**511.7(5)** Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* to *g.* No change.

**511.7(6)** Vehicles with divisible loads of hay, straw, stover, or bagged livestock bedding provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* No change.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8, 321E.10, 321E.29 and 321E.29A.

ITEM 11. Amend subrule 511.8(1) as follows:

**511.8(1)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Routing.* The owner or operator shall select a route using a vertical clearance map, ~~kip map,~~ bridge embargo map, pavement restrictions map, and ~~detour and road embargo~~ construction and travel restrictions map provided by the department. Detour and road embargo information may ~~also~~ be found online at www.511ia.org. The owner or operator shall contact the department by telephone at (515)237-3264 between 8 a.m. and 4:30 p.m., Monday through Friday, except for legal holidays, prior to making the move to verify that the owner or operator is using the most recent information.

ITEM 12. Amend rule **761—511.8(321,321E)**, implementation sentence, as follows:

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, ~~and~~ 321E.8 and 321E.9.

ITEM 13. Amend rule 761—511.9(321,321E) as follows:

**761—511.9(321,321E) All-systems permits.** All-systems permits are issued by the ~~office of~~ vehicle and motor carrier services bureau for indivisible vehicles or indivisible loads for travel on the primary road system and specified city streets and county roads when the dimensions of the vehicle or load exceed statutory limits but the weight is within statutory limits. Routing is subject to embargoed bridges and roads and posted speed limits. The ~~office of~~ vehicle and motor carrier services bureau will provide a list of the authorized city streets and county roads. Permit holders shall consult with local officials when traveling on county roads or city streets for bridge embargo, vertical clearance, detour, and road construction information. These permits are issued for the following:

**511.9(1)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Distance.* Movement is allowed for unlimited distance; routing through the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions is not required.

**511.9(2)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Distance.* Movement is restricted to 50 miles unless trip routes are obtained from the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions or the route continues on at least four-lane roads. Trip routes are valid for five days.

**511.9(3)** Vehicles with indivisible loads, including special mobile equipment, mobile homes and factory-built structures, provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Distance.* Trip routes must be obtained from the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions.

**511.9(4)** No change.

**511.9(5)** Truck trailers manufactured or assembled in the state of Iowa provided the following are met:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* to *g.* No change.

**511.9(6)** Vehicles with divisible loads of hay, straw, stover, or bagged livestock bedding provided the following are not exceeded:

*a.* to *c.* No change.

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

*e.* *Distance.* Movement is allowed for unlimited distance; routing through the ~~office of~~ vehicle and motor carrier services bureau and city and county jurisdictions is not required.

**511.9(7)** No change.

This rule is intended to implement Iowa Code sections 321.454, 321.456, 321.457, 321.463, 321E.2, 321E.3, 321E.8, 321E.10 and 321E.29.

ITEM 14. Amend paragraph **511.12(1)"d"** as follows:

*d.* *Weight.* See rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

ITEM 15. Renumber rules **761—511.13(321,321E)** to **761—511.18(321)** as **761—511.14(321,321E)** to **761—511.19(321)**.

ITEM 16. Adopt the following **new** rule 761—511.13(321,321E):

**761—511.13(321,321E) Annual raw forest products permits.** Annual raw forest products permits are issued for vehicles transporting divisible loads of raw forest products when the weight exceeds statutory limits. Travel is not allowed on the interstate. The owner or operator shall select a route using the vertical clearance map, bridge embargo map, pavement restrictions map, and construction and travel restrictions map provided by the department. The owner or operator must contact the appropriate local authority for route approval to use this permit on county roads or city streets. Detour and road embargo information may be found online at: www.511ia.org. Routing is subject to embargoed bridges and roads and posted speed limits. Annual raw forest products permits are issued for the following:

**511.13(1)** Vehicles with divisible loads of raw forest products provided the following are not exceeded:

*a.* Width. Statutory: 8 feet 6 inches.

*b.* Length. Limited to the maximum dimensions in Iowa Code section 321.457.

*c.* Height. Statutory: 13 feet 6 inches.

*d.* Weight. See rule 761—511.14(321,321E).

*e.* Distance. Unlimited.

**511.13(2)** Reserved.

This rule is intended to implement Iowa Code sections 321.463, 321E.2, 321E.3 and 321E.26.

ITEM 17. Amend renumbered rule 761—511.14(321,321E) as follows:

**761—511.14(321,321E) Maximum axle weights and maximum gross weights for vehicles and loads moved under permit.**

**511.14(1)** *Annual and all-systems permits.*

*a.* No change.

*b.* See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

**511.14(2)** *Annual oversize/overweight permits or annual raw forest products permits.*

*a.* For movement under an annual oversize/overweight permit or an annual raw forest products permit, the gross weight on any axle shall not exceed 20,000 pounds, with a maximum of 156,000 pounds total gross weight.

*b.* See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

**511.14(3)** *Multitrip permits.*

*a.* No change.

*b.* See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

**511.14(4)** *Single-trip permits.*

*a.* to *c.* No change.

*d.* See subrule ~~511.13(5)~~ 511.14(5) for exceptions for special mobile equipment.

**511.14(5)** No change.

**511.14(6)** *Permitted tandem axle weights.*

*a.* Vehicles operating under an annual oversize permit, annual oversize/overweight permit, annual raw forest products permit, single-trip permit, or multitrip permit may have a gross weight not to exceed 46,000 pounds on a single-tandem axle of the truck tractor and a gross weight not to exceed 46,000 pounds on a single-tandem axle of the trailer or semitrailer if each axle of each tandem group has at least four tires.

*b.* and *c.* No change.

This rule is intended to implement Iowa Code sections 321.463, 321E.7, 321E.8, 321E.9, 321E.9A, 321E.26 and 321E.32.

ITEM 18. Amend renumbered subrule 511.15(2) as follows:

**511.15(2)** At the discretion of the permit-issuing authority, the combined gross weight may exceed the statutory weight, but the axle weights shall be subject to rule ~~761—511.13(321,321E)~~ 761—511.14(321,321E).

ITEM 19. Amend renumbered rule 761—511.18(321,321E) as follows:

**761—511.18(321,321E) Permit violations.**

Permit violations are to be reported to the permit-issuing authority by the arresting officer and the permit holder. If a permit holder is found to have willfully violated permit provisions, the ~~office of~~ vehicle and motor carrier services bureau may, after notice and hearing, suspend, modify or revoke the permit privileges of the permit holder consistent with Iowa Code section 321E.20.

This rule is intended to implement Iowa Code sections 321.492, 321E.16 and 321E.20.

ITEM 20. Amend renumbered paragraph **511.19(1)"c"** as follows:

*c.* The department shall exercise due regard for the safety of the traveling public and the protection of the highway surfaces and structures when establishing an economic export corridor. Factors to be considered include ability of the proposed economic export corridor to safely accommodate combinations of vehicles described in subrule ~~511.18(2)~~ 511.19(2), taking into account physical configurations and restrictions and traffic demands and capacity, as well as connection to markets that will benefit from the established economic export corridor.

ITEM 21. Amend renumbered paragraph **511.19(2)"a"** as follows:

*a.* In addition to combinations of vehicles lawful for operation on roads or road segments not designated as an economic export corridor, the following combinations of vehicles may be operated on an economic export corridor designated under subrule ~~511.18(1)~~ 511.19(1) if the combinations of vehicles meet the requirements in paragraph ~~511.18(2)*"b"*~~ 511.19(2)*"b"*:

(1) to (3) No change.

## ARC 4865C

# UTILITIES DIVISION[199]

**Notice of Intended Action**

**Proposing rule making related to ratemaking principles proceeding and providing an opportunity for public comment**

The Utilities Board hereby proposes to adopt new Chapter 41, "Ratemaking Principles Proceeding," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code sections 476.53 and 476.84.

*Purpose and Summary*

This rule making is intended to establish initial filing requirements which apply to applications by rate-regulated public utilities for advance ratemaking principles (ARPs) associated with the construction of certain electric power generating facilities or the acquisition of certain water, sanitary sewage, and storm water systems. The Board issued an order commencing rule making on December 26, 2019. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2019-0041.

UTILITIES DIVISION[199](cont'd)

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 199—1.3(17A,474,476).

*Public Comment*

Any interested person may submit written or oral comments concerning this proposed rule making. Written or oral comments in response to this rule making must be received by the Board no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Iowa Utilities Board
Electronic Filing System (EFS) at efs.iowa.gov
Phone: 515.725.7337
Email: efshelpdesk@iub.iowa.gov

*Public Hearing*

An oral presentation at which persons may present their views orally or in writing will be held as follows:

| | |
|---|---|
| March 12, 2020<br>9 to 11 a.m. | Board Hearing Room<br>1375 East Court Avenue<br>Des Moines, Iowa |

Persons who wish to make oral comments at the oral presentation may be asked to state their names for the record and to confine their remarks to the subject of this proposed rule making.

Any persons who intend to attend the oral presentation and have special requirements, such as those related to hearing or mobility impairments, should contact the Board and advise of specific needs.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Adopt the following **new** 199—Chapter 41:

CHAPTER 41
RATEMAKING PRINCIPLES PROCEEDING

**199—41.1(476) Definitions.**

*"Affiliate"* means a party that directly, or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with a rate-regulated public utility.

*"AFUDC"* means allowance for funds used during construction.

*"Alternate energy production facility"* means any or all of the following:

1. A solar, wind turbine, waste management, resource recovery, refuse-derived fuel, agricultural crops or residues, or woodburning facility.

2. Land, systems, buildings, or improvements that are located at the project site and are necessary or convenient to the construction, completion, or operation of the facility.

3. Transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

A facility which is a qualifying facility under 18 CFR Part 292, Subpart B, is not precluded from being an alternate energy production facility under this chapter.

*"Baseload generation"* refers to generating units designed for normal operation to serve all or part of the minimum load of the system on an around-the-clock basis. These units are operated to maximize system mechanical and thermal efficiency and minimize system operating costs.

*"Combined-cycle combustion turbine"* means an electric generating technology in which the efficiency of electric generation is increased by using otherwise lost waste heat exiting from one or more combustion turbines. The exiting heat is routed to a boiler or to a heat recovery steam generator for utilization by a steam turbine in the production of electricity.

*"Control"* means the possession, direct or indirect, of the power to direct or cause the direction of the management and policies of an enterprise through ownership, by contract or otherwise.

*"CWIP"* means construction work in progress.

*"Emission allowance"* means an authorization, allocated by the federal Environmental Protection Agency under the Acid Rain Program, to emit up to one ton of sulfur dioxide during or after a specified calendar year.

*"Facility"* means a facility for which advance ratemaking principles may be sought pursuant to Iowa Code section 476.53(3)*"a."* The term includes energy storage systems.

*"kWh"* means kilowatt-hour.

*"Opportunity sales"* means sales of electricity from a particular facility at market price after all contracted and firm transactions have been met.

*"Repowering"* means either the complete dismantling and replacement of generation equipment at an existing project site or the installation of new parts and equipment to an existing alternate energy production facility in order to increase energy production, reduce load, increase service capacity, improve project reliability, or extend the useful life of the facility.

*"Utility"* means either a rate-regulated electric public utility selling to retail customers in Iowa or a rate-regulated public utility acquiring a water, sanitary sewage, or storm water utility.

**199—41.2(476) Applicability and purpose.**

**41.2(1)** Rules 199—41.3(476) and 199—41.4(476) apply to any rate-regulated public electric utility proposing to build or lease in Iowa, either in whole or in part, a new baseload generating facility with a nameplate generating capacity equal to or greater than 300 megawatts, a new combined-cycle combustion turbine of any size, a new or repowered alternate energy production facility of any size, or any combination of the above, and desiring predetermination of ratemaking principles to be used in establishing the retail cost recovery of such a facility. These rules set the initial filing requirements in a ratemaking principles proceeding depending on the specific circumstances of a filing.

**41.2(2)** Rule 199—41.5(476) applies to any rate-regulated public utility acquiring a water, sanitary sewage, or storm water system with a fair market value of $500,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(4). Rule 199—41.5(476) sets the initial filing requirements in a ratemaking principles proceeding related to the acquisition.

**199—41.3(476) Application for predetermined ratemaking principles; contents.** Each person or group of persons proposing to construct, repower, or lease a facility and desiring predetermination of ratemaking principles for costing that facility shall file an application with the board. An application may be for one facility or a combination of facilities necessary to meet the current and future resource needs

of the utility. An application for ratemaking principles must demonstrate that the utility has considered other sources for long-term electric supply and that the facility or lease is reasonable when compared to other feasible alternative sources of supply. At a minimum, an application shall substantially comply with the following informational requirements to the extent such information is reasonably available.

**41.3(1)** *General information.* An application shall include the following general information:

*a.* The purpose of the proposed facility.

*b.* A complete description of the current and proposed rights of ownership in the proposed facility and current or planned purchased power contracts with respect to the proposed facility.

*c.* For a baseload electric power generating facility with a nameplate generating capacity equal to or greater than 300 megawatts, a combined-cycle electric power generating facility, or repowering of a facility, a general site description including a legal description of the site; a map showing the coordinates of the site and its location with respect to state, county, and other political subdivisions; and prominent features such as cities, lakes, rivers, and parks within the site impact area. For an alternative energy production facility, to the extent feasible, a general site description including a description of the site location or locations; map(s) showing the coordinates of the site(s) and location(s) with respect to state, county, and other political subdivisions; and prominent features such as cities, lakes, rivers and parks within the site impact area(s).

*d.* A general description of the proposed facility, including a description of the principal characteristics of the facility such as the capacity of the proposed facility in megawatts expressed by the contract maximum generator megawatt rating, the net facility addition to the system in megawatts by net to the busbar rating, and the portion of the design capacity, in megawatts, of the proposed facility which is proposed to be available for use by each participant; the number and type of generating units; the primary fuel source for each such unit; the total hours of operation anticipated seasonally and annually and output during these hours; the expected capacity factors; a description of the general arrangement of major structures and equipment to provide the board with an understanding of the general layout of the facility; and a schedule for the facility's construction and utilization, including the projected date when a significant site alteration is proposed to begin and the projected in-service date of the facility. For this purpose, a group of several similar generating units operated together at the same location such that segregated records of energy output are not available shall be considered a single unit.

*e.* A general description of all raw materials, including fuel, used by the proposed facility in producing electricity and of all wastes created in the production process. In addition to describing the wastes created in the production process, the applicant shall determine annual expected emissions from the facility and provide a plan for acquiring allowances sufficient to offset these emissions. The applicant shall describe all transportation facilities currently operating that will be available to serve the proposed facility, and any additional transportation facilities needed to deliver raw materials and to remove wastes.

*f.* An identification, general description, and chronology of all material financial and other contractual commitments undertaken or planned to be undertaken with respect to the proposed facility.

*g.* A general map and description of the primary transportation corridors and the approximate routing of the rights-of-way in the vicinity of the settled areas, parks, recreational areas, and scenic areas.

*h.* An analysis of the existing transmission system's capability to reliably support the proposed additional generation interconnection to the system. The analysis must also show that the proposed interconnection to the transmission system is consistent with standard utility practices and that the proposed interconnection does not degrade the adequacy, reliability, or operating flexibility of the existing transmission system in the area.

*i.* Identification of the general contractor for the proposed facility and the method by which the general contractor was selected. If a general contractor has not yet been selected, the utility shall identify the process by which the general contractor will be selected and the anticipated timeline for selecting a general contractor.

*j.* Identification of the plant operator for the proposed facility and the method by which the plant operator was selected. If a plant operator has not yet been selected, the utility shall identify the process by which a plant operator will be selected and the anticipated timeline for selecting a plant operator.

**41.3(2)** *Economic evaluation of proposed facility.* An application shall include an overall economic evaluation of the facility using conventional capital evaluation techniques and the proposed ratemaking principles. The analysis shall include a comparison to other feasible sources of supply using a range of alternative assumptions and scenarios. All assumptions used in the analysis shall be disclosed. At a minimum, the evaluation shall include:

*a.* Net present value calculations. An application shall include annual and total net present value calculations of projected revenue requirements and capital costs over the expected life of the facility. If a traditional revenue requirement analysis does not account for revenue-sharing arrangements, riders, or other mechanisms that impact Iowa retail customer bills, the utility shall also provide annual and total net present value calculations that show the impact on amounts that will actually be paid by Iowa retail customers accounting for such mechanisms. To the extent the utility has projected revenue deficiencies within the period of analysis, the utility shall also provide the estimated effect the proposed facility will have on these calculations. In making these calculations, the utility shall detail the following cost assumptions:

(1) Installed cost. The utility shall provide an itemized statement of the total costs to construct the proposed facility. Such costs shall include, but not be limited to, the cost of all electric power generating units; all electric supply lines within the facility site boundary; all electric supply lines beyond the facility site boundary with a voltage of 69 kilovolts or higher used for transmitting power from the facility to the point of junction with the distribution system or with the interconnected primary transmission system; all appurtenant or miscellaneous structures used and useful in connection with said facility or any part thereof; all rights-of-way, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance or operation of said facility; engineering and development; sales taxes; and AFUDC (if applicable). The costs of all electric power generating units shall include all costs of transmission and gas interconnection (if applicable). Facility costs shall be expressed in absolute terms and in dollars per kilowatt. The absolute and per-kilowatt construction costs shall be adjusted by the expected rate of inflation from the time the construction costs are calculated to the time the facility is scheduled for operation.

(2) Fixed expenses. For each year of the facility's expected life from the time of application to the end of the facility's expected life, the utility shall file expense factors for fixed operation and maintenance costs; property, income, and other taxes; and straight-line and tax depreciation rights.

(3) Variable expenses. For each year of the facility's expected life from the scheduled time of operation to the end of the facility's expected life, the utility shall file expected variable operation and maintenance costs including the cost of fuel and emission allowances. These costs shall be reported in absolute terms and on a kWh basis assuming expected annual capacity factors for the facility.

*b.* Cost of capital. The utility shall provide its projected costs of capital for the proposed facility for each year of the facility's expected life from the time of application to the end of the facility's expected life. All assumptions used in the projections shall be provided, including but not limited to capital structure, cost of preferred stock, cost of debt, and cost of equity.

*c.* Cash flows. The utility shall provide the estimated maximum, minimum and expected cash inflows and outflows associated with the facility in each year from the date of the application throughout the facility's expected life.

**41.3(3)** *Risk mitigation factors.* At a minimum, the following information regarding contractual risk mitigation factors shall be included in an application:

*a.* Construction risk mitigation factors. The utility shall provide a general description of the contractual standards that the general contractor, if not the utility, must comply with to mitigate construction risks, including but not limited to cost overruns, labor shortages, failure to meet deadlines, and the need for replacement power if operational deadlines are not met. If the facility will be leased by the utility, the utility shall identify the above factors for both the lessor and the general contractor constructing the facility. The general description shall include all remedies, financial and otherwise, available to the utility for noncompliance with the construction standards and schedules.

*b.* Operational risk mitigation factors. The utility shall provide a general description of the contractual standards that the general contractor or the plant operator, if not the utility, must comply

with to mitigate operational risks of the facility, including but not limited to low-availability factor and higher-than-expected operation and maintenance costs. The general description shall include a list of all contractual inspections the general contractor must meet before the utility leases or takes ownership of the facility and all remedies, financial and otherwise, available to the utility for noncompliance with the operating standards. If the utility leases the facility from an affiliate, the lease shall contain specific performance standards that the affiliate must meet to avoid financial consequences.

**41.3(4)** *Noncost factors.* The utility shall include in its application a comparison of the proposed facility with other feasible sources of supply related to the following noncost factors:

*a.* Economic impact to the state and community where the facility is proposed to be located, including job creation, taxes, and use of state resources.

*b.* Environmental impact to the state and community where the facility is proposed to be located.

*c.* Electric supply reliability and security in the state.

*d.* Fuel diversity and use of nontraditional supply sources such as alternate energy and conservation.

*e.* Efficiency and control technologies.

**41.3(5)** *Filing requirements for proposed ratemaking principles.* Each ratemaking principle proposed shall be supported as described in this subrule. Proposed ratemaking principles not envisioned by these rules shall be supported by sufficient evidence to justify the use of such principles in costing the facility for regulated retail rate recovery.

*a. Cost of equity.* Proposals for establishing the cost of equity shall be supported with analyses which demonstrate the reasonableness of the proposed equity rate for the proposed facility. If sufficient information is available, the analyses shall include a comparison with similar facilities built in the region in recent years.

*b. Depreciable life.* Proposals for establishing the depreciable life of the facility shall be supported by board precedent for the depreciable lives of similar facilities, the manufacturer's opinion of depreciable life, the applicant's general depreciation study or analysis, or an engineering study of the depreciable life of the type of facility proposed.

*c. Jurisdictional allocations.* Proposals for allocating the cost or output of the proposed facility among jurisdictions shall be supported by jurisdictional allocation studies.

**41.3(6)** *Additional application requirements for leasing arrangements.* The following additional information shall be filed when a utility is proposing an arrangement in which the utility leases a facility from an affiliate or an independent third party:

*a.* Identification of the method used in selecting the affiliate or independent third party to build the facility (i.e., competitive solicitation, sole source, etc.).

*b.* A copy of the lease agreement.

*c.* A detailed description of the lease agreement, including but not limited to the following:

(1) Commitment of capacity from the proposed facility to the utility under the lease agreement.

(2) Description of the final disposition of the leased facility at the end of the lease arrangement, including any options available to the utility and the terms of those options.

(3) Identification of the party responsible for operating, dispatching, and maintaining the facility.

(4) Identification of the party responsible for the cost of capital improvements, renewals and replacements, environmental compliance, taxes, and all other future costs associated with the facility.

(5) Identification of the party responsible for contracting capacity from the proposed facility.

(6) Identification of the party benefitting from revenues received through contracted capacity and opportunity sales.

*d.* If the lessor is an affiliate, a detailed description of the affiliate, including the affiliate's corporate structure and the utility's ownership stake in the affiliate, if any.

*e.* If the lessor is an affiliate, identification of utility assets transferred to the affiliate for use by the proposed facility and the cost at which those assets were transferred.

*f.* If the lessor is an affiliate, identification of any financial benefits and cost savings, including any tax advantages, accruing to the utility from leasing an affiliate-owned facility versus building a facility itself.

**199—41.4(476) Coincident filing.** The utility shall have the option of filing its application for ratemaking principles, as required by this chapter, coincident with the utility's application for a certificate of public convenience, use, and necessity under 199—Chapter 24. Identical information required by both chapters need only be included once in a joint principles and certification application.

**199—41.5(476) Acquisition of a water, sanitary sewage, or storm water utility.** A rate-regulated public utility proposing to acquire, in whole or in part, a water, sanitary sewage, or storm water system with a fair market value of $500,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(4) shall file an application for approval of the acquisition with the board. If the acquisition is approved, ratemaking principles that will apply when the costs of the acquisition are included in regulated rates shall be determined as part of the board's review of the application. At a minimum, an application made under this rule shall substantially comply with the following informational requirements.

**41.5(1)** *General information.* An application shall include the following general information:

*a.* A general description of the system to be acquired, including the total number of customers, a description of the general arrangement of major structures and equipment, maps of the system, and a general description of the scope of the system.

*b.* The identification and general description of all material capital investments and operating expenses associated with the proposed acquisition anticipated within five years of the date of the acquisition.

*c.* A proposed procedural schedule that, at a minimum, provides proposed dates for direct testimony, rebuttal testimony, and a hearing for cross-examination of all testimony. The proposed schedule should generally comply with the board's procedural rules in 199—Chapter 7.

**41.5(2)** *Acquisition information.* An application shall include the following information related to the acquisition:

*a.* The final reports of both appraisals prepared pursuant to Iowa Code section 388.2A(2)*"a"*(2).

*b.* Final fair market value of the system as identified in Iowa Code section 388.2A(2)*"b."*

*c.* The final price for the system as negotiated pursuant to Iowa Code section 388.2A(2)*"c."*

*d.* An inventory of the acquired system's real and personal property as identified in Iowa Code section 388.2A(2)*"d."*

*e.* A financial information sheet prepared pursuant to Iowa Code section 388.2A(2)*"e."*

*f.* An affirmation that the acquiring utility and the acquired system have complied with the applicable components of Iowa Code section 388.2A.

*g.* The proposed acquisition contract.

**41.5(3)** *Impact of acquisition.* An application shall include the following information related to the acquired system and its potential impact on the acquiring utility:

*a.* If the acquired system is not in compliance with applicable local, state, or federal standards, estimates of the approximate cost and time required to put the system in compliance with such standards.

*b.* Any anticipated staffing changes due to the proposed acquisition.

*c.* A description of the proposed accounting to be utilized in any transfer of assets necessary to accomplish the acquisition.

*d.* A description of the anticipated effects of the acquisition, including a cost-benefit analysis which describes the projected benefits and costs of the acquisition, quantified in terms of present value and identifying the sources of such benefits and costs.

*e.* An analysis of the projected financial impact of the acquisition on the ratepayers of each of the affected utilities for each of the first five years after the acquisition.

*f.* Historical and projected fixed expenses for the acquired system, including expense factors for fixed operation and maintenance costs.

*g.* Historical and projected variable expenses for the acquired system, including expected variable operation and maintenance costs.

*h.* The estimated maximum, minimum, and expected cash inflows and outflows for the acquired system.

*i.* A description of the financing components of the acquisition and an analysis of the impacts on the acquiring utility's ability to attract capital on reasonable terms and to maintain a reasonable capital structure.

**41.5(4)** *Ratemaking principles.* Each ratemaking principle proposed shall be supported as described in this subrule. Proposed ratemaking principles not envisioned by these rules shall be supported by sufficient information to justify the use of such principles.

*a. Cost of equity.* The utility shall file financial models demonstrating the proposed equity rate or range of equity rates necessary to attract equity capital for the proposed acquisition. The financial analysis shall include a risk assessment of the proposed acquisition, including a comparison with similar acquisitions.

*b. Ratepayer allocations.* Proposals for allocating the cost of the acquired system to customers of the acquired system and the utility's existing customers shall include information showing that the proposed allocation will result in rates that are just and reasonable for both groups of customers.

*c. Initial depreciable value.* Proposals for establishing the value of the acquired system to be used as the initial gross asset balance for depreciation shall be supported by the fair market value of the system as determined consistent with Iowa Code section 388.2A(2)*"b."* The utility shall also provide the accumulated depreciation balances for the assets.

*d. Depreciable life.* Proposals for establishing rates which will be used to depreciate the acquired system shall be supported by a depreciation study or by depreciation rates applied in the utility's last general rate case.

**199—41.6(476) Waiver.** A utility may seek a waiver of any requirement of this chapter. The request for a waiver shall include the utility's reasons for believing the requirement is not applicable or necessary. A request for a waiver shall also comply with rule 199—1.3(17A,474,476).

These rules are intended to implement Iowa Code sections 476.53 and 476.84.

## ARC 4864C

# VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]

**Notice of Intended Action**

**Proposing rule making related to dental care expenses and providing an opportunity for public comment**

The Department of Veterans Affairs hereby proposes to amend Chapter 14, "Veterans Trust Fund," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is proposed under the authority provided in Iowa Code section 35A.13.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 35A.13.

*Purpose and Summary*

The proposed rule making removes the $2,500 maximum amount paid in a 12-month period for dental care and changes the maximum amount to $10,000.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

*Public Comment*

Any interested person may submit written comments concerning this proposed rule making. Written comments in response to this rule making must be received by the Department no later than 4:30 p.m. on February 4, 2020. Comments should be directed to:

Melissa Miller
Iowa Department of Veterans Affairs
Camp Dodge, Bldg. #3465
7105 NW 70th Avenue
Johnston, Iowa 50131
Email: melissa.miller2@iowa.gov

*Public Hearing*

No public hearing is scheduled at this time. As provided in Iowa Code section 17A.4(1)"b," an oral presentation regarding this rule making may be demanded by 25 interested persons, a governmental subdivision, the Administrative Rules Review Committee, an agency, or an association having 25 or more members.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

The following rule-making action is proposed:

Amend subrule 14.4(4) as follows:

**14.4(4)** *Expenses related to hearing care, dental care, vision care, or prescription drugs.*

*a.* The commission may provide health care aid to a veteran, to the veteran's spouse or dependents, or to the unremarried spouse of a deceased veteran for dental care, including dentures; vision care, including eyeglass frames and lenses; hearing care, including hearing aids; and prescription drugs that are not covered by the veterans affairs medical center.

*b.* The maximum amount that may be paid under this subrule for any consecutive 12-month period may not exceed ~~$2,500~~ $10,000 for dental care, $500 for vision care, $1,500 per ear for hearing care, and $1,500 for prescription drugs. Lifetime maximum benefit: $10,000.

*c.* The commission shall not provide health care aid under this subrule unless the aid recipient's health care provider agrees to accept, as full payment for the health care provided, the amount of the payment; the amount of the recipient's health insurance or other third-party payments, if any; and the amount that the commission determines the veteran is capable of paying. Payment under this subrule will be provided directly to the health care provider. The commission shall not pay health care aid under this subrule if the available liquid assets of the veteran are in excess of $15,000.

VETERANS AFFAIRS, IOWA DEPARTMENT OF[801](cont'd)

*d.* Applicants for assistance under this subrule will be required to provide the commission with an unpaid bill for service or an estimated cost of service from the health care provider and documentation of the need for the service. For prescription drugs, the applicant must produce documentation of the need for the prescribed drug and documentation stating whether a generic drug is available or appropriate. The commission payment will not exceed an estimated cost of service by a health care provider.

**ARC 4874C**

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to definitions**

The Department on Aging hereby amends Chapter 1, "Introduction, Abbreviations and Definitions," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231.4.

*Purpose and Summary*

This amendment implements 2018 Iowa Acts, House File 2451, section 3. The amendment also eliminates the duplication in Chapter 1 of definitions that are currently in Iowa Code section 231.4 and continues movement toward a single and comprehensive rule of definitions applicable to all chapters within the Department's rules.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4545C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making action is adopted:

Rescind the definitions of "Administrative action," "Certified volunteer long-term care ombudsman," "Commission," "Department on aging," "Director," "Legal representative," "Long-term care facility," "Long-term care ombudsman program," "Older individual," "Options counseling" and "Resident" in rule **17—1.5(231)**.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

**ARC 4875C**

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to complaint and appeal procedures**

The Department on Aging hereby amends Chapter 2, "Department on Aging," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231.53.

*Purpose and Summary*

This amendment includes Senior Community Service Employment Program (SCSEP) subgrantees as an aggrieved party in the Department's complaint and appeal procedures as required by federal guidelines. The lack of complaint and appeals procedures for SCSEP subgrantees was identified as an issue in a recent federal review of the SCSEP.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4542C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making action is adopted:

Amend rule 17—2.9(231) as follows:

**17—2.9(231) Department complaint and appeal procedures.**

**2.9(1)** *Aggrieved party identified.* An aggrieved party is any agency, organization, or individual that alleges that the party's rights have been denied or that services provided were not in compliance with regulations or were substandard because of an action of the department, the commission on aging, an AAA, ~~or~~ an AAA subcontractor, or a Senior Community Service Employment Program (SCSEP) subgrantee.

**2.9(2)** *Complaints or appeals to the department from the AAA or SCSEP subgrantee level.*

*a.* Except in cases where an AAA is acting in its capacity as a Medicaid provider, complaints at the AAA or SCSEP subgrantee level by any aggrieved party shall be heard first by the AAA or SCSEP subgrantee using the AAA's or SCSEP subgrantee's procedures.

*b.* Local complaint procedures of an AAA or ~~an~~ AAA subcontractor or SCSEP subgrantee shall be exhausted before the department on aging is contacted.

**2.9(3)** *Requests for an informal review or a contested case hearing.*

*a. Informal review.* An aggrieved party or a party appealing an AAA-level or SCSEP subgrantee-level decision has 30 calendar days from receipt of written notice of action from the AAA, the SCSEP subgrantee, or the department to request an informal review by the department or a contested case hearing.

(1) Any person who desires to pursue an informal settlement of any complaint may request a meeting with appropriate department staff. The request shall be in writing and shall be delivered to the Director, Department on Aging, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319.

(2) The request must contain the subject matter(s) of the complaint and an explanation of all steps taken to resolve the matter prior to requesting an informal review.

(3) Upon receipt of the request for informal review, all formal contested case proceedings, if begun, are stayed.

(4) The department may, as a result of the informal review, negotiate a settlement of the complaint or, if appropriate, may send the matter back to the AAA or SCSEP subgrantee for reconsideration.

(5) to (8) No change.

*b.* No change.
**2.9(4)** and **2.9(5)** No change.

[Filed 12/23/19, effective 2/19/20]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

**ARC 4876C**

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to area agencies on aging**

The Department on Aging hereby amends Chapter 4, "Department Planning Responsibilities," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231.32.

*Purpose and Summary*

These amendments satisfy the requirements of 2018 Iowa Acts, House File 2451, and eliminate unnecessary language from subrule 4.4(3) that currently exists in the federal Older Americans Act and Iowa Code chapter 231 regarding qualifications of an area agency on aging. In subrule 4.4(4), the amendments also update a citation to the Older Americans Act and Iowa Code chapter 231.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4543C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

AGING, DEPARTMENT ON[17](cont'd)

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend subrule 4.4(3) as follows:

**4.4(3)** *Qualifications to serve.* Any entity applying for designation as an area agency on aging must have the capacity to perform all functions of an area agency on aging as outlined in the Older Americans Act and Iowa Code chapter 231. ~~An area agency on aging shall be any one of the following:~~

~~*a.* An established office of aging operating within a planning and service area;~~

~~*b.* Any office or agency of a unit of general purpose local government, which is designated to function only for the purpose of serving as an area agency on aging by the chief elected official of such unit;~~

~~*c.* Any office or agency designated by the appropriate chief elected officials of any combination of units of general purpose local government to act only on behalf of such combination for such purpose;~~

~~*d.* Any public or nonprofit private agency in a planning and service area, or any separate organizational unit within such agency, which for designation purposes is under the supervision or direction of the department and which can and will engage only in the planning or provision of a broad range of supportive services or nutrition services within such planning and service area; or~~

~~*e.* Any other entity authorized by the Older Americans Act.~~

ITEM 2. Amend paragraph **4.4(4)"d"** as follows:

*d.* Any entity meeting the qualification requirements outlined in ~~subrule 4.4(3)~~ the Older Americans Act and Iowa Code chapter 231 may submit an application to serve as an area agency on aging.

[Filed 12/23/19, effective 2/19/20]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

## ARC 4877C

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to contracts and subgrants**

The Department on Aging hereby amends Chapter 6, "Area Agency on Aging Planning and Administration," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231.33.

*Purpose and Summary*

These amendments satisfy the requirements of 2018 Iowa Acts, House File 2451, section 9, which eliminated the use of subgrants in emergency situations, to ensure appropriate use of funds for services and to comply with the Older Americans Act.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4544C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend paragraph **6.9(2)"c"** as follows:

*c.* Include in ~~subgrants or~~ contracts provisions for responding to emergency or disaster situations including, but not limited to, shifting funds from one activity to another or from one contractor to another.

ITEM 2. Amend subrule 6.10(4) as follows:

**6.10(4)** Establishment of a request for proposal process that includes methods of selection of providers and methods for award of grants or contracts under the area plan, including stipulations that all subcontractors ~~or subgrantees~~ comply with all applicable local, state and federal laws, rules or regulations, and, if applicable, all requirements for nonprofit entities;

ITEM 3. Amend rule 17—6.11(231) as follows:

**17—6.11(231) Contracts ~~and subgrants~~.**

**6.11(1)** and **6.11(2)** No change.

**6.11(3)** Contracts with for-profit organizations. An AAA must request prior approval from the department of any proposed service contracts with for-profit organizations under an area plan.

*a.* No change.

*b.* The department may approve the contracts only if the AAA demonstrates that the for-profit organization can provide services that are in compliance with the Older Americans Act and consistent with the goals of the AAA as stated in the area plan.

[Filed 12/23/19, effective 2/19/20]
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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

**ARC 4878C**

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to managed care ombudsman program**

The Department on Aging hereby amends Chapter 8, "Long-Term Care Ombudsman," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.42.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231.44.

*Purpose and Summary*

These amendments are required under 2016 Iowa Acts, House File 2460, which directed the Office of the State Long-Term Care Ombudsman (OSLTCO) to adopt rules that relate to the OSLTCO's managed care ombudsman program.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4547C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend rule 17—8.1(231) as follows:

**17—8.1(231) Purpose.** This chapter establishes procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care ombudsman, which are established in Iowa Code sections 231.42 and 231.45 and in accordance with Section 712 of the Older Americans Act. This chapter also establishes criteria for serving under the certified volunteer long-term care ombudsman program. The long-term care ombudsmen investigate complaints related to the actions or inactions of long-term care providers that may adversely affect the health, safety, welfare, or rights of residents and tenants who reside in long-term care facilities, assisted living programs, and elder group homes. In addition, this chapter establishes the process for representatives of the office of the state long-term care ombudsman who are local long-term care ombudsmen performing managed care ombudsman services to provide assistance and advocacy related to long-term services and supports under the Medicaid program.

ITEM 2. Adopt the following **new** rule 17—8.7(231):

**17—8.7(231) Managed care ombudsman program.**

**8.7(1)** The office of the long-term care ombudsman may provide advocacy and assistance to eligible recipients, or the families or legal representatives of such eligible recipients, of long-term services and supports provided through the Medicaid program who are receiving services in a long-term care facility or under one of the home- and community-based services waivers.

**8.7(2)** Representatives of the office of long-term care ombudsman providing an individual with assistance and advocacy services authorized under Iowa Code section 231.44 shall be provided access to the individual and to the individual's medical, social and administrative records related to the provision of the long-term services and supports to the individual, as authorized by the individual or the individual's legal representative, as necessary to carry out the duties specified by Iowa Code section 231.44.

**8.7(3)** The office of long-term care ombudsman and representatives of the office, when providing assistance and advocacy services under Iowa Code section 231.44, shall be considered a health oversight agency as defined in 45 CFR §164.501 for the purposes of health oversight activities described in 45 CFR §164.512(d). Recipient information available to the office of long-term care ombudsman and representatives of the office under this subrule shall be limited to the recipient's protected health information as defined in 45 CFR §160.103 for the purpose of recipient case resolution.

ITEM 3. Amend **17—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~section~~ sections 231.42 and 231.44.

[Filed 12/23/19, effective 2/19/20]
[Published 1/15/20]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

**ARC 4879C**

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to older American community service employment program**

The Department on Aging hereby rescinds Chapter 10, "Older American Community Service Employment Program," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231.51.

*Purpose and Summary*

This amendment rescinds and reserves Chapter 10, which pertains to the Older American Community Service Employment Program. This program is a federal program, and duplication in the Iowa Administrative Code is unnecessary.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4546C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making action is adopted:

Rescind and reserve **17—Chapter 10**.

[Filed 12/23/19, effective 2/19/20]
[Published 1/15/20]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

**ARC 4880C**

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to office of public guardian**

The Department on Aging hereby amends Chapter 22, "Office of Substitute Decision Maker," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapter 231E.

*Purpose and Summary*

This amendment implements the requirements in 2018 Iowa Acts, House File 2449, which made certain changes to Iowa Code chapter 231E, which governs the Office of Public Guardian. Significant changes include changing the name of the office from Office of Substitute Decision Maker to Office of Public Guardian and the removal of two categories of services—acting as attorney-in-fact under a Power of Attorney and acting as a personal representative in probate estates—from the list of services provided by the Office. These amendments make clarifying changes to conform eligibility criteria to those in the Iowa Code and to refer to the Center for Guardianship Certification instead of the National Guardianship Association certification.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4550C**. No public comments were received. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

AGING, DEPARTMENT ON[17](cont'd)

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend **17—Chapter 22**, title, as follows:
OFFICE OF ~~SUBSTITUTE DECISION MAKER~~ PUBLIC GUARDIAN

ITEM 2. Amend rules 17—22.1(231E,633) to 17—22.8(231E,633) as follows:

**17—22.1(231E,633) Purpose.** This chapter implements the office of ~~substitute decision maker~~ public guardian as created in Iowa Code chapter 231E and establishes standards and procedures for those appointed as ~~substitute decision makers~~ public guardians. It also establishes the qualifications of consumers eligible for services.

**17—22.2(231E,633) Definitions.** Words and phrases used in this chapter are as defined in 17—Chapter 1 unless the context indicates otherwise. The following definitions also apply to this chapter:

~~*"Active"* means assuming the role of attorney-in-fact upon the triggering event specified in a power of attorney document.~~

*"Assessment"* means a comprehensive, in-depth evaluation to identify an individual's current situation, ability to function, strengths, problems, and care needs in the following major functional areas: physical health, medical care utilization, activities of daily living, instrumental activities of daily living, mental and social functioning, financial resources, physical environment, and utilization of services and support.

*"Case opening"* means the internal administrative process used by the ~~state~~ local office in establishing a temporary or ongoing case, including, but not limited to: collecting and reviewing necessary financial, legal, medical or social history information pertaining to the consumer or the consumer's estate; opening bank or other financial accounts on the consumer's behalf; assigning ~~substitute decision makers~~ staff to perform ~~substitute decision-making~~ public guardianship responsibilities for the consumer; collecting and receiving property of the consumer; creating files, summaries and other documents necessary for the management of the consumer or the consumer's estate; and any other activities related to preparing for and assuming the responsibilities as a ~~substitute decision maker~~ public guardian.

*"Consumer"* as used in this chapter means any individual ~~in need of substitute decision-making~~ receiving public guardianship services.

*"Court"* means the probate court having jurisdiction over the consumer.

*"Department"* means the department on aging established in Iowa Code section 231.21.

*"Estate"* means all property owned by the consumer including, but not limited to: all cash, liquid assets, furniture, motor vehicles, and any other tangible personal and real property.

*"Fee"* or *"fees"* means any costs assessed by the state office against a consumer ~~or a consumer's estate~~ for ~~substitute decision-making~~ public guardianship services, including monthly fees or a one-time case-opening fee for establishment of a case.

~~*"Fiduciary"* means the person or entity appointed as the consumer's substitute decision maker and includes a person or entity acting as personal representative, guardian, conservator, representative payee, attorney-in-fact or trustee of any trust.~~

*"Financial hardship"* means a living consumer who has a total value in liquid assets below $6,500; or the consumer's estate proving otherwise inadequate to obtain or provide for physical or mental care or treatment, assistance, education, training, sustenance, housing, or other goods or services vital to the well-being of the consumer or the consumer's dependents.

*"Inventory"* means a detailed list of the estate.

*"Liquid assets"* means the portion of a consumer's estate comprised of cash, negotiable instruments, or other similar property that is readily convertible to cash and has a readily ascertainable fixed value, including but not limited to: savings accounts, checking accounts, certificates of deposit, money market accounts, corporate or municipal bonds, U.S. savings bonds, stocks or other negotiable securities, and mutual fund shares.

*"Local office"* means a local office of public guardian.

*"Local public guardian"* means an individual under contract with the department to act as a guardian, conservator, or representative payee.

*"Net proceeds"* means the value of the property at the time of sale minus taxes, commissions and other necessary expenses.

*"Program"* means the services offered by the office of ~~substitute decision maker~~ public guardian.

*"Public guardian"* means the state public guardian or a local public guardian.

*"Record"* means any information obtained by the state or local office in the performance of its duties.

*"State office"* means the state office of public guardian.

*"State public guardian"* means the administrator of the state office of public guardian.

~~*"Substitute decision maker"* or *"SDM"* means a person providing substitute decision-making services pursuant to Iowa Code chapter 231E.~~

**17—22.3(231E,633) ~~Substitute decision maker~~ Public guardian qualifications.** All ~~SDMs~~ public guardians shall have graduated from an accredited four-year college or university and shall be certified by the ~~National Guardianship Association~~ Center for Guardianship Certification within 12 months of assuming duties as ~~an SDM~~ a public guardian. This certification shall be kept current while the person is serving as ~~an SDM~~ a public guardian.

**17—22.4(231E,633) Ethics and standards of practice.** The state office adopts the National Guardianship Association Standards of Practice adopted in 2000, including any subsequent amendments thereto, as a statement of the best practices and the highest quality of practice for persons serving as guardians or conservators. The adoption of standards of practice in this document is not intended to amend or diminish the statutory scheme, but rather to supplement and enhance the understanding of the statutory obligations to be met by ~~the SDM~~ public guardians when serving as ~~an SDM~~ a public guardian. Subsequent to appointment to serve a consumer, the ~~SDM~~ public guardian shall perform all duties imposed by the court or other entity having jurisdiction and imposed by applicable law and, as appropriate, shall utilize standards found in the most current edition of the National Guardianship Association Standards of Practice.

**17—22.5(231E,633) Staffing ratio.** ~~SDMs~~ Local offices shall be responsible for no more than 40 consumers per full-time equivalent position at any one time. The state office shall notify the state court administrator when the maximum number of appointments is reached by a local office.

**22.5(1)** In its sole discretion, if the state office determines that due to the complexity of current cases ~~SDMs~~ a local office would have significant difficulty meeting the needs of consumers, the state office

may choose to temporarily suspend acceptance of appointments. The state office shall notify the state court administrator of the suspension of services.

**22.5(2)** In the state office's sole discretion, ~~the SDM~~ a local office may exceed staffing ratios under the following circumstances:

*a.* A priority situation exists as defined in subrule 22.7(2), and

*b.* Acceptance of case(s) will not adversely affect services to current consumers.

**17—22.6(231E,633) Conflict of interest—~~state office~~.** A conflict of interest arises when the ~~SDM~~ public guardian has any personal or agency interest that is or may be perceived as self-serving or adverse to the position or best interest of the consumer. When assigning a consumer to ~~an SDM~~ a public guardian, all reasonable efforts shall be made to avoid ~~an actual~~ a conflict of interest or the appearance of a conflict of interest.

**22.6(1)** The assigned ~~SDM~~ public guardian shall not:

*a.* Provide direct services to the consumer receiving ~~substitute decision-making~~ public guardianship services;

*b.* Have an affiliation with or financial interest in the consumer's estate;

*c.* Employ friends or family to provide services to the consumer for a fee; or

*d.* Solicit or accept incentives from service providers.

**22.6(2)** The ~~SDM~~ public guardian shall be independent from all service providers, thus ensuring that the ~~SDM~~ public guardian remains free to challenge inappropriate or poorly delivered services and to advocate on behalf of the consumer.

**17—22.7(231E,633) ~~Consumers~~ Individuals eligible for services.** The state office shall seek to restrict appointments to only those necessary. The state office will not accept an appointment based upon a voluntary petition.

**22.7(1)** In order to qualify for services, the ~~consumer~~ individual shall meet all of the following criteria:

*a.* Is a resident of the state of Iowa;

*b.* Is aged 18 or older;

*c.* Does not have a ~~willing and responsible fiduciary to serve as an SDM~~ suitable individual or appropriate entity willing and able to serve as guardian or conservator;

*d.* Is ~~capable of benefiting from the services of an SDM~~ incompetent; and

*e.* ~~Receipt of SDM services is in the best interest of the consumer; and~~ Is an individual for whom guardianship or conservatorship services are the least restrictive means of meeting the individual's needs.

~~*f.* No alternative SDM resources are available.~~

**22.7(2)** The following cases shall be given priority:

*a.* Those involving abuse, neglect or exploitation;

*b.* Those in which a critical medical decision must be made; or

*c.* Any situation which may cause serious or irreparable harm to the ~~consumer's~~ consumer's mental or physical health or estate.

**17—22.8(231E,633) Application and intake process—guardianship, conservatorship, and representative payee ~~and personal representative~~.**

**22.8(1)** Any person may ~~request~~ submit an application for services on behalf of an individual believed to be in need of public guardianship services. Applications are available through the state office. Completed applications shall be submitted to the Office of ~~Substitute Decision Maker~~ Public Guardian, Jessie M. Parker Building, 510 East 12th Street, Suite 2, Des Moines, Iowa 50319-9025. Incomplete applications will not be considered. Communication with the state office or local office or the submission of an application does not imply an appointment and does not create any type of fiduciary relationship between the state office and the ~~consumer~~ individual on whose behalf the application is submitted.

**22.8(2)** The state office shall make a determination regarding eligibility of the ~~consumer~~ individual and acceptance or denial of the case based on a review of the completed application.

**22.8(3)** The state office shall grant or deny an application for services as soon as practicable, but, in any event, shall do so within 60 days of receipt of the application.

**22.8(4)** Failure of the state office to grant or deny an application within the specified time period shall be deemed a denial of the application by the state office.

ITEM 3. Rescind rule **17—22.9(231E,633)**.

ITEM 4. Renumber rules **17—22.10(231E,633)** to **17—22.16(231E,633)** as **17—22.9(231E,633)** to **17—22.15(231E,633)**.

ITEM 5. Amend renumbered rules 17—22.9(231E,633) to 17—22.13(231E,633) as follows:

**17—22.9(231E,633) Case records.**

**22.9(1)** A case record must be established for each consumer. At a minimum, the case record must contain:

*a.* Copies of the assessments, medical records, and updates, if any;

*b.* A separate financial management folder containing an inventory, an individual financial management plan, a record of all financial transactions made on behalf of the consumer by the ~~SDM~~ public guardian, copies of receipts for all expenditures made by the ~~SDM~~ public guardian on behalf of the consumer, and copies of all other documents pertaining to the ~~consumer's~~ consumer's financial situation as required by the state office;

*c.* Itemized statements of costs incurred in the provision of services for which the ~~SDM~~ public guardian received court-authorized reimbursement directly from the ~~consumer's~~ consumer's estate; and

*d.* Other information as required by the state office.

**22.9(2)** All case records maintained by the ~~SDM~~ public guardian shall be confidential as provided in Iowa Code section 231E.4(6)*"g."*

**17—22.10(231E,633) Confidentiality.** Notwithstanding Iowa Code chapter 22, the following provisions shall apply to records obtained by ~~SDMs~~ public guardians in the course of their duties.

**22.10(1)** Records or information obtained for use by ~~an SDM~~ a public guardian is confidential. All records or information obtained from federal, state or local agencies and health or mental care service providers shall be managed by the state ~~office~~ and local offices with the same degree of confidentiality required by law or the policy utilized by the entity having control of such records or information. Such records or information shall not be disseminated without written permission from the entity having control of such records or information.

**22.10(2)** In its sole discretion, the state or local office may disclose a record obtained in the performance of its duties if release of the record is necessary and in the best interest of the consumer. Disclosure of a record under this rule does not affect the confidential nature of the record.

**22.10(3)** Information may be redacted so that personally identifiable information is kept confidential.

**22.10(4)** Confidential information may be disclosed to employees and agents of the department as needed for the performance of their duties. The state office shall determine what constitutes legitimate need to use confidential records. Individuals affected by this rule may include paid staff and volunteers working under the direction of the department and commission members.

**22.10(5)** Information concerning program expenditures and client eligibility may be released to staff of the state executive and legislative branches who are responsible for ensuring that public funds have been managed correctly. This same information may also be released to auditors from federal agencies when those agencies provide program funds.

**22.10(6)** The state office or a local office may enter into contracts or agreements with public or private entities in order to carry out the state or local office's official duties. Information necessary to carry out these duties may be shared with these entities. The state or local office may disclose protected health information to an entity under contract and may allow an entity to create or receive protected

health information on the state or local office's behalf if the state or local office obtains satisfactory assurance that the entity will appropriately safeguard the information.

**22.10(7)** Release for judicial and administrative proceedings.

*a.* Information shall be released to the court as required by law.

*b.* The state or local office shall disclose protected health information in the course of any judicial or administrative proceeding in response to an order of a court or administrative tribunal. The state or local office shall disclose only the protected health information expressly authorized by the order and when the court makes the order knowing that the information is confidential.

*c.* If a court subpoenas other information that the state or local office is prohibited from releasing, the state or local office shall advise the court of the statutory and regulatory provisions against disclosure of the information and shall disclose the information only on order of the court.

**22.10(8)** Information concerning suspected fraud or misrepresentation in order to obtain ~~SDM~~ public guardianship services or assistance may be disclosed to law enforcement authorities.

**22.10(9)** Information concerning consumers may be shared with service providers under contract.

*a.* Information concerning the consumer's circumstances and need for services may be shared with prospective service providers to obtain placement for the consumer. If the consumer is not accepted for service, all written information released to the service provider shall be returned to the state or local office.

*b.* When the information needed by the service provider is mental health information or substance abuse information, the consumer's specific consent is required.

**22.10(10)** After the state or local office receives a request for access to a confidential record, and before the state or local office releases such a record, the state or local office may make reasonable efforts to promptly notify any person who is a subject of that record, who is identified in that record, or whose address or telephone number is contained in that record. To the extent such a delay is practicable and in the public interest, the custodian may give the subject of such a confidential record to whom notification is transmitted a reasonable opportunity to seek an injunction under Iowa Code section 22.8, and indicate to the subject of the record the specific period of time during which disclosure will be delayed for that purpose.

**17—22.11(231E,633) Termination or limitation.** Either ~~an SDM~~ a local office or the state office may seek the termination or limitation of ~~an SDM's~~ a local office's duties under circumstances including but not limited to the following:

1. ~~The SDM's~~ Public guardianship services are no longer needed or do not benefit the consumer;
2. The consumer's assets allow for hiring a paid ~~substitute decision maker~~ guardianship or conservatorship service provider;
3. A conflict of interest or the appearance of a conflict of interest arises;
4. The state or local office lacks adequate staff or financial resources;
5. The consumer moves outside the state or outside the local office's service area;
6. The state office is no longer the last resort for assistance;
7. The ~~SDM~~ local office withdraws from the service agreement;
8. Termination of the program by law; or
9. Other circumstances which indicate a need for termination or limitation.

**17—22.12(231E,633) Service fees.**

**22.12(1)** The state ~~SDM~~ public guardian and local ~~SDM~~ public guardian shall be entitled to reasonable compensation for their ~~substitute decision-making~~ public guardianship services as determined by using the following criteria:

*a.* Such compensation shall not exceed actual costs.

*b.* Fees may be adjusted or waived based upon the ability of the consumer to pay, upon whether financial hardship to the consumer would result, or upon a finding that collection of such fees is not economically feasible.

*c.* Fees shall be as established in rule ~~17—22.14(231E,633)~~ 17—22.13(231E,633). The state office may collect a fee from the estate of a deceased consumer.

**22.12(2)** Fees shall not be assessed on income or support derived from Medicaid. Income or support derived from Social Security and other federal benefits shall be subject to assessment unless the funds have been expressly designated for another purpose. Written notice shall be given to the consumer prior to the collection of fees. The written notice shall describe the type and amount of fees assessed.

**22.12(3)** Case-opening fees. All consumers, except those receiving representative payee services, with liquid assets valued at $6,500 or more on the date of the ~~SDM's~~ public guardian's appointment shall be assessed a one-time case-opening fee for establishment of the case by the ~~state~~ local office. Case-opening fees shall be assessed for each appointment, including a reappointment more than six months after the termination of a prior appointment as ~~SDM~~ public guardian for the same consumer which involves similar powers and duties.

**22.12(4)** Monthly fees.

*a.* A monthly fee for ~~SDM~~ public guardianship services other than the sale or management of real or personal property shall be assessed against all consumers with liquid assets valued at $6,500 or more on any one day during the month. Monthly fees shall be collected by the state office on a pro rata basis on the first of each month. A monthly fee shall be assessed when ~~an SDM~~ a public guardian is appointed to guardianship, conservatorship, or representative payee duties.

~~*b.* Under a power of attorney, monthly fees shall be assessed once the state office assumes an active role as attorney-in-fact. The state office shall evaluate a consumer's estate annually or as necessary to determine the need for an increase or decrease in the monthly fee.~~

~~*c.*~~ *b.* In all cases where the state office serves as representative payee under programs administered by the Social Security Administration, Railroad Retirement Board, or similar programs, the monthly fee for providing representative payee services shall be as established by the federal governmental agency which appoints the representative payee.

**22.12(5)** Additional fees.

*a.* Fees for the sale of a consumer's real or personal property shall be in addition to case-opening and monthly service fees.

*b.* Fees for the sale of real or personal property shall be 10 percent of the net proceeds resulting from the sale of the property and shall be paid at the time the sale is completed.

*c.* Such further allowances as are just and reasonable may be made by the court to ~~SDMs~~ public guardians for actual, necessary and extraordinary expenses and services.

**22.12(6)** Preparation and filing of state or federal income tax returns. Fees for the preparation and filing of a consumer's state or federal income tax return may be assessed at the time of filing of a return for each tax year in which a return is filed.

**22.12(7)** Settlement of a personal injury cause of action. Fees for the settlement of a consumer's personal injury cause of action may be collected upon court approval of the settlement.

**22.12(8)** Establishment of a recognized trust. Fees for establishing a recognized trust for the purpose of conserving or protecting a consumer's estate and for petitioning the court for the approval of the trust may be collected at the time of court approval of establishment of the trust.

**22.12(9)** Extraordinary expenses and services. The state office may collect fees pursuant to court order for other actual, necessary and extraordinary expenses or services. Necessary and extraordinary services shall be construed to also include services in connection with real estate, tax matters, and litigated matters.

**22.12(10)** Impact on creditors. The state office may collect fees even when claims of creditors of the consumer may be compromised.

**17—22.13(231E,633) Fee schedule.** The following fees are applicable to services provided by ~~an SDM~~ a public guardian unless reduced or waived pursuant to paragraph ~~22.13(1)*"b."*~~ 22.12(1)*"b."*

AGING, DEPARTMENT ON[17](cont'd)

| **Action or Responsibility** | **Fee** |
|---|---|
| One-time case opening:<br>Guardianship<br>Conservatorship<br>Guardianship and conservatorship<br>~~Durable power of attorney for health care~~<br>~~Durable power of attorney for financial matters~~<br>~~Power of attorney for health care and financial matters~~ | <br>$200<br>$300<br>$500<br>~~$ 60~~<br>~~$100~~<br>~~$160~~ |
| Monthly ~~SDM~~ public guardianship services ~~for conservator, durable power of attorney for health care and general power of attorney for financial matters~~ except representative payee.<br>Total value of liquid assets:<br>$6,500 – $9,999<br>$10,000 – $19,999<br>$20,000 – $29,999<br>$30,000 – $39,999<br>$40,000 – $49,999<br>$50,000 – $59,999<br>$60,000 – $69,999<br>$70,000 – $79,999<br>$80,000 – $89,999<br>$90,000 – $99,999<br>$100,000 or above | <br><br><br><br>$100<br>$125<br>$150<br>$175<br>$200<br>$225<br>$250<br>$275<br>$300<br>$325<br>$350 |
| ~~Personal representative~~ | ~~As determined by Iowa Code section 633.197~~ |
| Preparation and filing of income tax returns:<br>Each federal return<br>Each state return | <br>$50<br>$25 |
| Settlement of a personal injury cause of action:<br>Each cause of action approved by the probate court | <br>$250 |
| Establishment of a recognized trust for the consumer's financial estate:<br>Each trust | <br>$250 |
| Representative payee—monthly fee | As determined by the federal governmental agency that appoints the representative payee |

ITEM 6. Rescind rule **17—22.17(231E,633)**.

ITEM 7. Renumber rule **17—22.18(231E,633)** as **17—22.16(231E,633)**.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

**ARC 4881C**

# AGING, DEPARTMENT ON[17]

**Adopted and Filed**

**Rule making related to aging and disability resource center**

The Department on Aging hereby amends Chapter 23, "Aging and Disability Resource Center," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code sections 17A.3 and 231.14.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 231.64.

*Purpose and Summary*

This amendment satisfies the requirements to eliminate outdated language and add new service descriptions pursuant to 2018 Iowa Acts, House File 2451, section 17. It directs aging and disability resource centers (ADRCs) to perform duties mandated by federal and state law and rule in conjunction with the Area Agencies on Aging Area Plan in accordance with 17—Chapter 6 and as described in the Area Agencies on Aging Reporting Manual.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4548C**. No public comments were received. Changes from the Notice have been made to use the defined term "area plan," to correct the name of the reporting manual, and to renumber the existing rules.

*Adoption of Rule Making*

This rule making was adopted by the Commission on Aging on September 12, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 17—Chapter 11.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making actions are adopted:

Amend **17—Chapter 23** as follows:

CHAPTER 23
AGING AND DISABILITY RESOURCE CENTER

~~**17—23.1(231) General.** The aging and disability resource center (ADRC) serves to assist individuals in living healthy, independent, and fulfilled lives in the community. The ADRC will work to ensure that~~

~~individuals accessing the long-term care services and supports system experience the same process and receive the same information about service options wherever they enter the system.~~

~~**17—23.2**~~ **17—23.1(231) Authority.** The department has been given authority to administer ~~the~~ aging and disability resource ~~center~~ centers (ADRCs) by Iowa Code section 231.64.

~~**17—23.3**~~ **17—23.2(231) Aging and disability resource ~~center~~ centers.** The department shall administer ~~the~~ aging and disability resource ~~center~~ centers and shall do all of the following:

1. Perform all duties mandated by federal and state law.
2. Designate ~~ADRC coordination centers~~ ADRCs.
3. Provide technical assistance to ~~ADRC coordination centers~~ ADRCs.
4. Provide oversight of ~~ADRC coordination centers~~ ADRCs to ensure compliance with federal and state law and applicable rules and regulations.

~~**17—23.4**~~ **17—23.3(231) ADRC ~~coordination centers~~.** An ADRC ~~coordination center~~ designated by the department shall ~~do all of the following:~~

~~**23.4(1)** Perform~~ perform all duties mandated by federal and state law and applicable rules and regulations. Services provided under this chapter shall be included in the Area Agencies on Aging Area Plan in accordance with 17—Chapter 6 and as described in the Area Agencies on Aging Reporting Manual.

~~**23.4(2)** Increase the accessibility of community long-term care services and supports by providing comprehensive information, referral, and assistance regarding the full range of available public and private long-term care programs, options, service providers, and resources within a community.~~

~~**23.4(3)** Develop a community long-term care services and supports enrollment system.~~

~~**23.4(4)** Provide options counseling to assist individuals in assessing their existing or anticipated long-term care needs and developing and implementing a plan for long-term care.~~

~~**23.4(5)** Serve as a point of entry for programs that provide consumer access to the range of publicly supported long-term care programs.~~

~~**23.4(6)** Designate ADRC local access points.~~

~~**23.4(7)** Provide technical assistance to ADRC local access points.~~

~~**23.4(8)** Establish an advisory council to advise the ADRC coordination center and to review and comment on ADRC coordination center policies and actions.~~

~~**23.4(9)** Provide oversight of ADRC local access points to ensure compliance with federal and state law, applicable rules and regulations, and policies and mandates as determined by the advisory board.~~

~~**17—23.5(231) ADRC local access points.** An ADRC local access point designated by an ADRC coordination center shall do all of the following:~~

~~1. Perform one or more functions of an ADRC coordination center.~~

~~2. Maintain an agreement with the ADRC coordination center, in the form of a referral agreement, contract, memorandum of understanding, or similar document, which specifies the duties of the ADRC local access point.~~

~~3. Serve on the advisory board of the ADRC coordination center.~~

~~**17—23.6**~~ **17—23.4(231) Population served.** ~~The~~ An aging and disability resource center~~, ADRC coordination centers, and ADRC local access points shall assist the following individuals in seeking long-term care services and supports:~~ shall assist individuals in accordance with Iowa Code section 231.64(2).

~~1. Older individuals;~~

~~2. Individuals with disabilities who are aged 18 or older;~~

~~3. Family caregivers of older individuals;~~

~~4. Family caregivers of individuals with disabilities who are aged 18 or older;~~

~~5. Individuals who inquire about or request assistance on behalf of older individuals; and~~

~~6. Individuals who inquire about or request assistance on behalf of individuals with disabilities who are aged 18 or older.~~

~~17—23.7~~ **17—23.5(231) Options counselors.** An ADRC ~~coordination center~~ shall ensure that options counselors meet the requirements of this chapter and applicable federal and state law.

~~23.7(1)~~ **23.5(1)** *Background checks.* All ~~ADRC coordination centers~~ ADRCs shall establish and maintain background check policies and procedures that include, but are not limited to, the following:

*a.* to *c.* No change.

~~23.7(2)~~ **23.5(2)** *Mandatory reporters.* All options counselors shall be considered mandatory reporters pursuant to Iowa Code chapter 235B and shall adhere to federal and state law and applicable rules and regulations for mandatory reporters.

~~23.7(3)~~ **23.5(3)** *Options counselor duties.* An options counselor shall provide options counseling that is person-directed and interactive and that allows the consumer to make informed choices about long-term living services and community supports based upon the consumer's preferences, strengths and values.

~~23.7(4)~~ **23.5(4)** *Options counselor minimum qualifications.* An options counselor shall possess the following minimum qualifications:

*a.* to *e.* No change.

~~23.7(5)~~ **23.5(5)** *Position-specific training.* The options counselor shall provide to the ADRC ~~coordination center~~ documentation of successful completion of the person-centered counseling core curriculum provided by Elsevier, or an equivalent that is approved by the department, within 30 days of employment as an options counselor. Documentation shall be included in the individual's personnel record.

~~23.7(6)~~ **23.5(6)** *Continuing education requirements for an options counselor.* An options counselor shall:

*a.* and *b.* No change.

These rules are intended to implement Iowa Code section 231.64.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

## ARC 4871C

# ENVIRONMENTAL PROTECTION COMMISSION[567]

**Adopted and Filed**

**Rule making related to definition of "common ownership"**

The Environmental Protection Commission (Commission) hereby amends Chapter 65, "Animal Feeding Operations," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 459.103.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 459.103.

*Purpose and Summary*

Pursuant to Chapter 5 and Iowa Code section 17A.7, the Iowa Pork Producers Association (IPPA) petitioned the Commission to amend the definition of "common ownership" as defined in rule

567—65.1(459,459B). IPPA proposed that the definition of "common ownership" be amended to replace the term "majority" with the phrase "10 percent or more." IPPA contended in its petition that the amendment "is intended to promote continued environmentally responsible livestock production in compliance with all applicable law by ensuring that multiple limited liability companies or other business entity structures with the same owners cannot be used for the purpose of avoiding environmental regulation by having all owners hold less than a majority, and none with a 10 percent or more, ownership interest with each company owning a different confinement feeding operation on the same farm."

The Commission hereby agrees with this proposal and amends the definition of "common ownership" in rule 567—65.1(459,459B) to remove the word "majority" and replace it with "10 percent or more," meaning that a person, business or any other ownership entity subject to Iowa Code chapter 459 would be considered a common owner (and hence a single animal feeding operation) if there is an ownership interest of 10 percent or more of two or more facilities located within the regulated separation distances of one another. The rule making will ensure that the ownership structures of confinement feeding operations are adequately addressed and that operations that should submit manure management plans and construction permits are doing so.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on October 9, 2019, as **ARC 4689C**. A public hearing was held on October 29, 2019, at 1 p.m. in the auditorium of the Wallace State Office Building, Des Moines, Iowa. The meeting was attended by 15 individuals, 11 of whom provided oral comments. The Department of Natural Resources (Department) received approximately 150 written comments prior to the 4:30 p.m. October 29, 2019, deadline for public comments. The majority of the commenters were accepting of the rule, but did not think the rule went far enough. The majority of the comments requested that the rule-making petition either be denied and more extensive rule making be initiated or that the existing rule be expanded.

The Commission notes that this rule making is narrow in scope as a response to a specific rule-making petition. The Commission concurs with the petitioner that the amended definition of "common ownership" will ensure that the rapidly changing ownership structures of confinement feeding operations are adequately addressed and will guarantee that operations that should submit manure management plans and construction permits are doing so. This amended definition balances the interests of producers and the environment to ensure that adequate oversight is taking place at facilities that should have manure management plans or construction permits. A summary of the comments and the responses is available from the Department upon request. No changes from the Notice have been made.

*Adoption of Rule Making*

This rule making was adopted by the Commission on December 17, 2019.

*Fiscal Impact*

This rule making has a fiscal impact to the State of Iowa. It is anticipated there may be a minimal increase in permit fees, indemnity fees, and compliance fees submitted to the Department because there may be more confinement feeding operations that are required to submit a manure management plan, a construction permit application, or both. There is no anticipated increase in costs to the Department associated with implementing the amendment. Department employees who currently oversee manure management plans and construction permits will continue to do so; no additional personnel would be needed. There will be a minimal impact to a few facilities each year that previously would not have been required to submit a manure management plan or construction permit application, but would now be required to do so because of the change in the definition. The increased expenses would include consulting costs, as well as permit, compliance and indemnity fees. A copy of the fiscal impact statement is available from the Department upon request.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found. A copy of the jobs impact statement is available from the Department upon request.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any, pursuant to 561—Chapter 10.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making action is adopted:

Amend rule **567—65.1(459,459B)**, definition of "Common ownership," as follows:

*"Common ownership"* means the ownership of an animal feeding operation as a sole proprietor, or a ~~majority~~ 10 percent or more ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The ~~majority~~ ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both. The following exceptions shall apply to this definition:

1. For an animal feeding operation structure constructed before February 19, 2020, "common ownership" means the ownership of an animal feeding operation as a sole proprietor, or a majority ownership interest held by a person, in each of two or more animal feeding operations as a joint tenant, tenant in common, shareholder, partner, member, beneficiary, or other equity interest holder. The majority ownership interest is a common ownership interest when it is held directly, indirectly through a spouse or dependent child, or both.

2. This definition shall not apply to a dry bedded confinement feeding operation which is subject to the common ownership requirements in Iowa Code section 459B.103(3)*"a"*(3).

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

## ARC 4872C

# STATE PUBLIC DEFENDER[493]

**Adopted and Filed**

**Rule making related to claims submission and review**

The State Public Defender hereby amends Chapter 7, "Definitions," Chapter 12, "Claims for Indigent Defense Services," and Chapter 13, "Claims for Other Professional Services," Iowa Administrative Code.

STATE PUBLIC DEFENDER[493](cont'd)

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 13B.4(8).

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code chapters 13B and 815.

*Purpose and Summary*

These amendments update a number of rules to conform to statutory changes enacted during the 2019 Legislative Session and otherwise add efficiencies to the claims review process for indigent defense services. These amendments clarify that all probation revocation proceedings involving a single client constitute a single case for purposes of the rules and clarify the definition of "date of service" to conform to existing practice. The amendments also update the rates of compensation to conform to the rates enacted during the 2019 Legislative Session by 2019 Iowa Acts, Senate File 615, and to convert the attorney fee case limits to hourly rates rather than dollar limits. The amendments conform the rules to 2019 Iowa Acts, Senate File 590, regarding claims made for services provided to indigent persons and costs incurred by privately retained attorneys representing indigent persons. The amendments also require online submission of miscellaneous claims, effective March 1, 2020. Other technical and corrective changes are made to the rules governing the submission of claims relating to the provision of services to indigent persons, intended to promote efficiency and clarity in the claims review process.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on November 20, 2019, as **ARC 4778C**.

The Iowa State Bar Association (Association) submitted comments, both orally at the meeting of the Administrative Rules Review Committee on December 10, 2019, and in writing.

The Association's major concern at the meeting was the $75 cap on the hourly rate investigators could charge. The Association's representative said there might be instances in which an investigator would not be available at the $75 per hour rate. In response to the comment, the Office of the State Public Defender has added an exception to the $75 per hour cap to allow, in exceptional circumstances and with prior approval of the State Public Defender upon a showing of reasonable necessity, the $75 per hour cap to be exceeded.

In subsequent written comments, the Association did not address the $75 per hour cap but commented that it did not favor the proposed changes in the rule to billing submission deadlines for investigators. In response, the Office explained that the intent of the rule is to give certainty to private investigators as to when they need to submit their claims. The amendment allows a private investigator to bill as often as necessary and when the private investigator determines (based on the private investigator's own invoice) the investigative services are completed. After a billing, if more services are necessary, the private investigator can submit another claim. This can be done without an additional court order as long as the private investigator is under the cap set in the initial order. This action is implementation by agency rule of actual practice, which has been working efficiently.

The Office also received a question in a communication from a Parole Board administrative law judge and a comment from a private contract attorney regarding the "date of service" rule as it applies to parole hearings. The concern in the comment from the private contract attorney was that the rule as amended would not allow for billing after continued disposition hearings. In response, the Office has modified the rule making to allow for billing after a continued disposition hearing in probation, parole and contempt proceedings.

The same private contract attorney expressed concern regarding the proposed elimination of claims in the proposed rules for in-county mileage expense. In response to the concerns expressed in that comment, and similar comments expressed by members of the Administrative Rules Review Committee

at the December 10 meeting, the proposed rule in the Notice eliminating the ability of contract attorneys to claim mileage expense for in-county travel was not adopted.

The Office also received a communication or comment forwarded by a private attorney after the time for filing comments had passed. The comment or concern was related to the merits/constitutionality of 2019 Iowa Acts, Senate File 590. As such, that comment or concern was beyond the scope of the rule implementing 2019 Iowa Acts, Senate File 590, as enacted by the Legislature.

There are three changes from the Notice. First, in Item 2 (paragraph 12.2(3)"a"), there is added an additional date of service in the case of probation, parole or contempt proceeding. The new date of service is the filing of a continued disposition. Also, in a subsequent review or compliance proceeding under the same appointment order, a new date of service may be created even if a new court appearance is not required.

Second, in Item 8 (paragraph 12.8(1)"a"), the language prohibiting contract attorneys from claiming in-county mileage was not adopted. The change was made in response to comments by some Administrative Rules Review Committee members and a similar comment from a private attorney that the prohibition might adversely affect the availability of private attorneys who are willing to accept court appointments. The rule continues the practice of allowing attorneys to charge for in-county and out-of-county mileage in appropriate cases.

Third, the Office added language in Item 9 (subparagraph 13.2(1)"b"(3)), essentially allowing an exception to the $75 per hour cap on an investigator's hourly rate when there are exceptional circumstances and with the prior approval of the State Public Defender upon a showing of reasonable necessity. The exception ensures the availability of an investigator in all appropriate cases. This change was made in response to comments by some Administrative Rules Review Committee members and comments by a representative of the Association at the December 10 meeting.

*Adoption of Rule Making*

This rule making was adopted by the State Public Defender on December 26, 2019.

*Fiscal Impact*

This rule making has no substantial fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Office for a waiver of the discretionary provisions, if any, pursuant to 493—Chapter 6.

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on March 1, 2020.

The following rule-making actions are adopted:

STATE PUBLIC DEFENDER[493](cont'd)

ITEM 1. Amend rule **493—7.1(13B,815)**, definition of "Case," as follows:

*"Case"* means all charges or allegations arising from the same transaction or occurrence or contained in the same trial information or indictment in a criminal proceeding or in the same petition in a civil or juvenile proceeding. A probation violation or contempt proceeding is a case separate from the case out of which the violation or contempt arose and separate from a criminal case alleging new criminal charges. Multiple probation revocation proceedings pending at the same time, involving the same client, and arising from the same transaction or occurrence are a single "case."

ITEM 2. Amend subrule 12.2(3) as follows:

**12.2(3)** *Timely claims required.* Claims submitted prior to the date of service shall be returned to the claimant unpaid and may be resubmitted to the state public defender after the date of service. Claims that are not submitted within 45 days of the date of service as defined in this subrule may be denied, in whole or in part, as untimely unless the delay in submitting the claim is excused by paragraph 12.2(3)*"f."* Attorney fees and expenses that are submitted on a claim denied as untimely under this subrule may be resubmitted on a subsequent claim that is timely submitted with respect to a subsequent date of service in the same case. For purposes of this subrule, a probation, parole, or contempt proceeding is not the "same case" as the underlying proceeding.

*a. Adult claims.* For adult claims, "date of service" means the date of filing of an order indicating that the case was dismissed or the client was acquitted, the date of the expiration of the time for appeal from a judgment of conviction, the date of filing of an order granting a deferred judgment or prosecution, the date of filing of a final order in a postconviction relief case, the date of mistrial, the date on which a warrant was issued for the client, or the date of filing of a court order authorizing the attorney's withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, or mistrial. The filing of a notice of appeal is not a date of service; however, if a notice of appeal is filed after a conviction and the attorney moves to withdraw to have appellate counsel appointed, the date of service is the date of filing of the withdrawal order. If a motion for reconsideration is filed, either the date of filing of the motion or the date on which the court rules on that motion is the date of service. In a probation, parole or contempt proceeding, the date of service is the date of filing of the disposition order or an order granting a continued disposition. In a subsequent review or compliance proceeding under the same appointment, a new date of service is created if the new proceeding generates an order. In a probation revocation proceeding that results in the revocation of a deferred judgment, a judgment of conviction is entered and the date of service is the date of the expiration of the time for appeal. For interim adult claims authorized by subrule 12.3(3) or 12.3(4), the date of service is the last day on which the attorney claimed time on the itemization of services.

*b.* No change.

*c. Appellate claims.* For appellate claims, "date of service" means ~~the date on which the case was dismissed,~~ the date of a court order authorizing the attorney's withdrawal prior to the filing of the proof brief, the date on which the proof brief was filed, or the date on which the procedendo was issued.

*d.* to *f.* No change.

ITEM 3. Amend subrule 12.3(1) as follows:

**12.3(1)** *Juvenile cases.* An initial claim for services in a juvenile case may be submitted after the dispositional hearing, if any. Subsequent claims may be submitted after each court hearing that is a date of service held in the case. A court hearing does not include family drug court, family team meetings, staffings or foster care review board hearings.

ITEM 4. Amend rule 493—12.4(13B,815) as follows:

**493—12.4(13B,815) Rate of compensation.**

**12.4(1)** Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 1999, and before July 1, 2006:

| | | |
|---|---|---|
| Attorney time: | Class A felonies | $60/hour |
| | Class B felonies | $55/hour |
| | All other criminal cases | $50/hour |
| | All other cases | $50/hour |
| Paralegal time: | | $25/hour |

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2006, and before July 1, 2007:

| | | |
|---|---|---|
| Attorney time: | Class A felonies | $65/hour |
| | All other criminal cases | $60/hour |
| | All other cases | $55/hour |
| Paralegal time: | | $25/hour |

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2007, and before July 1, 2019:

| | | |
|---|---|---|
| Attorney time: | Class A felonies | $70/hour |
| | Class B felonies | $65/hour |
| | All other criminal cases | $60/hour |
| | All other cases | $60/hour |
| Paralegal time: | | $25/hour |

Unless the attorney has a contract that provides for a different manner or rate of payment, the following hourly rates shall apply to payment of all claims for cases to which the attorney was appointed after June 30, 2019:

| | | |
|---|---|---|
| Attorney time: | Class A felonies | $73/hour |
| | Class B felonies | $68/hour |
| | All other criminal cases | $63/hour |
| | All other cases | $63/hour |
| Paralegal time: | | $25/hour |

**12.4(2)** Payable paralegal time is limited in rule 493—7.1(13B,815).

~~**12.4(1)** *Applicability to juvenile cases.* In a juvenile case to which the attorney was appointed before July 1, 1999, the state public defender will pay the attorney $50 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 1999. In a juvenile case to which the attorney was appointed after June 30, 1999, but before July 1, 2006, the state public defender will pay the attorney $55 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2006. In a juvenile case to which the attorney was appointed after June 30, 2006, but before July 1, 2007, the state public defender will pay the attorney $60 per hour for all services performed following the dispositional hearing or the first regularly scheduled review hearing occurring after June 30, 2007. However, the attorney must file separate claims for services before and after said hearing. If a claim is submitted with two hourly rates on it, the claim will be paid at the lower applicable rate.~~

~~**12.4(2)** *Appointments before July 1, 1999.* In a case to which the attorney was appointed before July 1, 1999, attorney time shall be paid at a rate that is $5 per hour less than the rates established pursuant~~

~~to 2000 Iowa Acts, chapter 1115, section 10. Claims for compensation in excess of these rates are not payable under the attorney's appointment and will be reduced.~~

~~**12.4(3)** *Applicability to appellate contracts.* Rescinded IAB 6/25/14, effective 7/30/14.~~

~~**12.4(4)**~~ **12.4(3)** ~~*All other cases.*~~ As used in this rule, the term "all other cases" includes appeals, juvenile cases, contempt actions, representation of material witnesses, and probation/parole violation cases, postconviction relief cases, restitution, extradition, and sentence reconsideration proceedings without regard to the level of the underlying charge.

ITEM 5. Amend subrule 12.6(1) as follows:

**12.6(1)** *Adult cases.* The state public defender establishes attorney fee limitations for the number of hours of combined attorney time and paralegal time that may be claimed for the following categories of adult cases:

| | |
|---|---|
| Class A felonies | ~~$18,000~~ 258 |
| Class B felonies | ~~$3,600~~ 56 |
| Class C felonies | ~~$1,800~~ 30 |
| Class D felonies | ~~$1,200~~ 20 |
| Aggravated misdemeanors | ~~$1,200~~ 20 |
| Serious misdemeanors | ~~$600~~ 10 |
| Simple misdemeanors | ~~$300~~ 5 |
| Simple misdemeanor appeals to district court | ~~$300~~ 5 |
| Contempt/show cause proceedings | ~~$300~~ 5 |
| Proceedings under Iowa Code chapter 229A | ~~$10,000~~ 167 |
| Probation/parole violation | ~~$300~~ 5 |
| Extradition | ~~$300~~ 5 |
| Postconviction relief—the greater of ~~$1,000~~ 17 hours or one-half of the fee limitation for the conviction from which relief is sought. | |

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

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815). If more than one charge is included within a case, the charge with the higher fee limitation will apply to the entire case.

For example, in an adult criminal proceeding, if an attorney were appointed to represent a client charged with four counts of forgery arising at four separate times, and if the client were charged in four separate trial informations, the fee limitations for each charge would apply separately. If all four charges were contained in one trial information, the fee limitation would be ~~$1,200~~ 30 hours even if there were more than one separate occurrence. ~~If~~ Similarly, if the attorney were appointed to represent a person charged with a drug offense and failure to possess a tax stamp, the fee limitation would be the limitation for the offense with the higher limitation, not the total of the limitations. As a further example, multiple probation revocation proceedings pending at the same time, involving the same client, and arising from the same transaction or occurrence are still a single "case" for purposes of this rule, and the five-hour fee limitation applies.

If the Iowa Code section listed on the claim form defines multiple levels of crimes and the claimant does not list the specific level of crime on the claim form, the state public defender will use the least serious level of crime in reviewing the claim.

For example, Iowa Code section 321J.2 defines crimes ranging from a serious misdemeanor to a Class D felony. If the attorney does not designate the subsection defining the level of the crime, the state public defender will deem the charge to be a serious misdemeanor.

ITEM 6. Amend subrule 12.6(2) as follows:

**12.6(2)** *Juvenile cases.* The state public defender establishes attorney fee limitations for the number of hours of attorney time that may be claimed for the following categories of juvenile cases:

| | |
|---|---|
| Delinquency (through disposition) | ~~$1,200~~ 20 |
| Child in need of assistance (CINA) (through disposition) | ~~$1,200~~ 20 |
| Termination of parental rights (TPR) (through disposition) | ~~$1,800~~ 30 |
| Juvenile court review and other postdispositional court hearings | ~~$300~~ 5 |
| Judicial bypass hearings | ~~$180~~ 3 |
| Juvenile commitment hearings | ~~$180~~ 3 |
| Juvenile petition on appeal | ~~$600~~ 10 |
| Motion for further review after petition on appeal | ~~$300~~ 5 |

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

The fee limitations are applied separately to each case, as that term is defined in rule 493—7.1(13B,815).

For example, in a juvenile proceeding in which the attorney represents a parent whose four children are the subject of four child in need of assistance petitions, if the court handles all four petitions at the same time or the incident that gave rise to the child in need of assistance action is essentially the same for each child, the fee limitation for the attorney representing the parent is ~~$1,200~~ 20 hours for all four proceedings, not ~~$1,200~~ 20 hours for each one.

For a child in need of assistance case that becomes a termination of parental rights case, the fee limitations shall apply to each case separately. For example, the attorney could claim up to ~~$1,200~~ 20 hours for the child in need of assistance case and up to ~~$1,800~~ 30 hours for the termination of parental rights case.

In a delinquency case, if the child has multiple petitions alleging delinquency and the court handles the petitions at the same time, the fee limitation for the proceeding is the fee limitation for one delinquency.

In a juvenile case in which a petition on appeal is filed, the appointed trial attorney does not need to obtain a new appointment order to pursue a petition on appeal. The claim, through the filing of a petition on appeal, must be submitted on a Juvenile form. If an appellate court orders full briefing, the attorney fee claim for services subsequent to an order requiring full briefing must be submitted on an Appellate form and is subject to the rules governing appeals.

ITEM 7. Amend rule 493—12.7(13B,815) as follows:

**493—12.7(13B,815) Reimbursement for specific expenses.**

**12.7(1)** The state public defender shall reimburse the attorney for the payments made by the attorney for necessary certified shorthand reporters, investigators, foreign language interpreters, evaluations, and experts~~,~~ if the following conditions are met:

*a.* The attorney obtained court approval for a certified shorthand reporter, investigator, foreign language interpreter, evaluation or expert prior to incurring any expenses with regard to each.

*b.* A copy of each of the following documents is attached to the claim:

(1) The application and court order authorizing the expenditure of funds at state expense for the certified shorthand reporter, investigator, foreign language interpreter, evaluation, or expert. If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order and the application and order shall be in compliance with that rule, the other requirements of 493—Chapter 13, and this rule.

(2) If the expenses are for services of investigators, foreign language interpreters, or experts, a court order setting the maximum dollar amount of the claim. If the initial court order authorizing the expenditure sets the maximum amount of the claims, a subsequent order is unnecessary.

(3) An itemization detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) If the expenses are for foreign language interpreters, the court order and itemization required by subparagraphs 12.7(1)*"b"*(2) and (3) shall be submitted on the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services form promulgated by the judicial branch.

(5) If the expenses are for a certified shorthand reporter, any additional documentation required in 493—paragraph 13.2(4)*"b"* when applicable to the services provided.

(6) Documentation that the attorney has already paid the funds to the certified shorthand reporter, investigator, foreign language interpreter, provider of an evaluation, or expert.

*c.* to *e.* No change.

**12.7(2)** Nothing contained in this rule is intended to require the attorney to provide notice to any other party prior to seeking such an order, except the notice to the state public defender expressly required in rule 493—13.7(13B,815) if the reimbursement is for expenses incurred by privately retained counsel representing an indigent person, or to require the attorney to disclose confidential information, work product, or trial strategy in order to obtain the order.

**12.7(3)** In an appeal, the state public defender will pay the cost of obtaining the transcript of the trial records and briefs. In such instance, subrule 12.7(1) shall apply.

**12.7(4)** Claims for expenses that do not meet these conditions are not payable under the attorney's appointment or rule 493—13.7(13B,815) and will be denied.

ITEM 8. Amend rule 493—12.8(13B,815) as follows:

**493—12.8(13B,815) Reimbursement of other expenses.**

**12.8(1)** The state public defender shall reimburse the attorney for the following out-of-pocket expenses incurred by the attorney in the case to the extent that the expenses are reasonable and necessary:

*a.* Mileage for automobile travel at the rate of 39 cents per mile. The number of miles driven each day shall be separately itemized on the itemization of services, specifying the date of the travel, the origination and destination locations, the total number of miles traveled that day and, if it is not otherwise clear from the itemization, the purpose of the travel. If the travel is to perform services for multiple clients on the same trip, the mileage must be split proportionally between each client and the itemization must note the manner in which the mileage is split. The total miles traveled for the case shall also be listed on the claim form. Other forms of transportation costs incurred by the attorney may be reimbursed only with prior approval from the state public defender.

*b.* to *i.* No change.

None of the expenses specified in this rule shall be reimbursed to a privately retained attorney representing an indigent person unless there is prior approval by the state public defender upon a showing of reasonable necessity.

**12.8(2)** If the reimbursement is for expenses incurred by a privately retained counsel representing an indigent person, the procedures and requirements of rule 493—13.7(13B,815) shall apply to the application and issuance of the order, the application and order allowing reimbursement of these expenses shall be in compliance with that rule in addition to the requirements of this rule, and a copy of the application and order entered pursuant to rule 493—13.7(13B,815) shall be attached to the claim.

~~**12.8(2)**~~ **12.8(3)** Claims for expenses other than those listed in this rule or at rates in excess of the rates set forth in this rule are not payable under the attorney's appointment or under rule 493—13.7(13B,815) and will be reduced or denied.

ITEM 9. Amend rule 493—13.2(815) as follows:

**493—13.2(815) Claims for other professional services.** The state public defender shall review and approve claims for necessary and reasonable expenses for investigators, foreign language interpreters, expert witnesses, certified shorthand reporters, and medical/psychological evaluations if the claimant has a form W-9 on file with the department and the claim conforms to the requirements of this rule. Claims that do not comply with this rule will be returned.

**13.2(1)** *Claims for investigative services.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for investigators if the following conditions are met:

~~*a.* The investigator submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~*b.*~~ *a.* Court approval to hire the investigator was obtained before any expenses for the investigator were incurred.

~~*c.*~~ *b.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the investigator.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the necessary investigation~~ and there is an order attached approving payment of the investigative services pursuant to rule 493—13.7(13B,815).

(3) An itemization of the investigator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, the hourly rate, and the manner in which the amount of the claim for services was calculated. Except in exceptional circumstances and with the prior approval of the state public defender upon a showing of reasonable necessity, an investigator's rate shall not exceed $75 per hour. Itemized receipts for expenses must be attached.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the investigator sets a limit for the claim, this court order is unnecessary.

*c.* Reasonable and necessary investigative services include, but are not limited to, locating witnesses, interviewing witnesses, process service, viewing the crime scene, reviewing documents or photographs, meeting with attorneys, meeting with clients, and creating investigative reports. Clerical work or running errands for the attorney or defendant is not considered investigative work.

*d.* Timely claims required. Claims for services are timely if submitted to the state public defender for payment within 45 days of ~~completion of services in~~ the most recent date that investigative services were performed for the case. Claims that are not timely shall be denied.

**13.2(2)** *Claims for foreign language interpreters.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for foreign language interpreters in accordance with the administrative directive of the state court administrator in the matter of court interpreter compensation~~, effective September 1, 2007~~ in effect at the time the claim is made, if the following conditions are met:

~~*a.* The interpreter submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, E-mail address, if any, and telephone number.~~

~~*b.*~~ *a.* Court approval to hire the interpreter was obtained before any expenses for the interpreter were incurred.

~~*c.*~~ *b.* One copy of each of the following documents is attached to the claim:

(1) The application and order appointing the interpreter. This appointment is presumed to continue until the conclusion of the matter, unless limited by the court or modified by a subsequent order.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting the application for the appointment of the interpreter, makes one of the following specific findings:~~ and there is an order attached approving payment of the foreign language interpreter pursuant to rule 493—13.7(13B,815).

~~1. The client is indigent, or~~

~~2. Although the client is able to employ counsel, funds are not available to the client to pay for necessary interpreter services.~~

(3) An itemization of the interpreter's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date including the time services began and ended on each day, and the manner in which the amount of the claim for services was calculated. With regard to expenses and services, the following shall apply:

1. Receipts for parking expenses are reimbursed pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

2. Claims for translating documents will be paid pursuant to the Judicial Branch Administrative Directive on Court Interpreter and Translator Compensation Policies.

(4) A court order setting the maximum dollar amount of the claim.

~~*d.*~~ *c.* Timely claims required. Claims for services are timely if, within 45 days of completion of services, either the claim is submitted to the state public defender for payment or the Fee Itemization Form and Court Order Approving Claim for Court Interpreter Services are filed with the clerk of court in the case. Claims that are not timely submitted shall be denied.

**13.2(3)** *Claims for expert witnesses.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for expert witnesses if the following conditions are met:

~~*a.* The expert witness submits an original and one copy of a signed claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~*b.*~~ *a.* Court approval to hire the expert witness was obtained before any expenses for the expert witness were incurred.

~~*c.*~~ *b.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to hire the expert witness.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting the application noted above, determines that, although the client is able to~~

~~employ counsel, funds are not available to the client to pay for necessary expert witness services~~ and there is an order attached approving payment of the expert witness pursuant to rule 493—13.7(13B,815).

(3) An itemization of the expert witness's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order that authorizes hiring the expert sets a limit for the claim, this court order is unnecessary.

(5) If the expert charges a "minimum" amount for services based on a specific time, a certification by the expert that no other services have been performed or charges made by the expert for any portion of that specific time.

**13.2(4)** *Claims for certified shorthand reporters.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable expenses for depositions and transcripts provided by certified shorthand reporters only in accordance with the requirements of this subrule.

*a. Claim form.* ~~The~~ When a written claim form for certified shorthand reporting is required under these rules, the certified shorthand reporter shall submit a signed original and one copy of a miscellaneous claim form containing the following information:

(1) The case name, case number and county in which the action is pending.

(2) The name of the attorney for whom the services were provided.

(3) The date on which the transcript was ordered.

(4) The date on which the transcript was delivered.

(5) The total amount of the claim.

(6) The claimant's name; address; social security number, federal tax identification number or vendor identification number; ~~e-mail~~ email address, if any; and telephone number.

*b. Required documentation.* One copy of each of the following documents must be attached to the claim:

(1) The court order granting authority to hire the certified shorthand reporter at state expense.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting authority to hire the certified shorthand reporter, determines that, although the client is able to employ counsel, funds are not available to the client to pay for necessary certified shorthand reporter services~~ and there is an order attached approving payment of the certified shorthand reporter pursuant to rule 493—13.7(13B,815).

~~(3) Itemization of services. If the transcript is for a deposition, the itemization must include the date of deposition, persons deposed, arrival and departure time at the deposition, number of pages and the cost per page, travel time and listing of any other charges. If the transcript is for an audio or video recording, the itemization must include a description of the recording being transcribed, the length of the recording transcribed, the number of pages and the cost per page, and a listing of any other charges.~~

~~(4)~~ (3) If expedited transcript rates are claimed under subparagraph 13.2(4)*"d"*(10), an ~~e-mail~~ email or other written statement from the attorney explaining that expedited delivery is required.

~~(5)~~ (4) If a cancellation fee is claimed under subparagraph 13.2(4)*"d"*(6), documentation of the date and time that notice of cancellation was given.

~~(6)~~ (5) If the certified shorthand reporter is a state employee, a certification by the certified shorthand reporter that none of the time for which the claim is being submitted is time for which the certified shorthand reporter was being paid by the state.

*c.* to *e.* No change.

*f. Designation of preferred certified shorthand reporter.* The state public defender may enter into a contract with one or more certified shorthand reporters to provide court reporting services for depositions in one or more counties and may designate such certified shorthand reporters to be the preferred certified shorthand reporters in the respective counties. Such designations shall be provided to the chief judge of the judicial district for the respective counties and shall be summarized on the ~~Web site~~ website of the state public defender, ~~http://spd.iowa.gov~~ spd.iowa.gov. Claims for services provided in a county in which the state public defender has designated a certified shorthand reporter as the preferred certified shorthand reporter shall be denied unless the claims are submitted by the certified shorthand reporter

pursuant to the terms of the contract or are submitted by another certified shorthand reporter and include written documentation that the designated certified shorthand reporter was unavailable to handle the deposition.

**13.2(5)** *Claims for court-ordered evaluations.* The state public defender shall review, approve and forward for payment claims for necessary and reasonable evaluations requested by an appointed attorney only if the purpose of the evaluation is to establish a defense, to determine whether an indigent is competent to stand trial, or to evaluate a defendant at sentencing or resentencing who has been charged as an adult for a felony alleged to have been committed while a juvenile, if the offense has a potential mandatory minimum sentence of imprisonment, and not for any other purpose nor in any other circumstance for sentencing or placement. Additionally, a claim for a court-ordered evaluation will be approved only if the following conditions are met:

~~*a.* The person performing the evaluation submits a signed original and one copy of a claim containing the following information:~~

~~(1) The case name, case number and county in which the action is pending.~~

~~(2) The name of the attorney for whom the services were provided.~~

~~(3) The date on which services commenced.~~

~~(4) The date on which services ended.~~

~~(5) The total number of hours claimed.~~

~~(6) The total amount of the claim.~~

~~(7) The claimant's name, address, social security number or federal tax identification number, and telephone number.~~

~~*b.*~~ *a.* Court approval to conduct the evaluation was obtained before any expenses for the evaluation were incurred.

~~*c.*~~ *b.* One copy of each of the following documents is attached to the claim:

(1) The application and order granting authority to conduct the evaluation. This order must specify that the purpose of the evaluation is for a permissible purpose under this subrule.

(2) The order appointing counsel. This order is unnecessary if the attorney is not court-appointed ~~but the court, in granting the application noted above, determines that, although the client is able to employ counsel, funds are not available to the client to pay for the evaluation~~ and there is an order attached approving payment of the evaluation pursuant to rule 493—13.7(13B,815).

(3) An itemization of the evaluator's services detailing the expenses incurred, the services rendered, the date(s) on which the services were rendered, the time spent on each date, and the manner in which the amount of the claim for services was calculated.

(4) A court order setting the maximum dollar amount of the claim. For purposes of this subrule, if the court order authorizing the evaluation sets a limit for the claim, this court order is unnecessary.

(5) If the evaluator charges a "minimum" amount for services based on a specific time, a certification by the evaluator that no other services have been performed or charges made by the evaluator for any portion of that specific time.

**13.2(6)** The state public defender may reimburse services and expenses not specifically listed in this chapter that are payable pursuant to rules 493—12.7(13B,815) and 493—12.8(13B,815).

~~**13.2(6)**~~ **13.2(7)** *Submission of claims.* ~~Claims for payment for professional services provided to a public defender must be submitted to the local public defender office for which the services were provided.~~

*a.* With the exception of judicial branch certified shorthand reporters, claims submitted on or after March 1, 2020, shall be submitted electronically via the online claims website: spdclaims.iowa.gov. Effective March 1, 2020, with the exception of judicial branch certified shorthand reporter claims, any reference in these rules to forms or to claims submissions shall refer to the respective claims submission page for miscellaneous claims on the online claims website. The state public defender, at the state public defender's sole discretion, may grant limited exceptions to the requirement that claims be submitted electronically via the online claims website. Other claims for professional services must be submitted, on a form promulgated by the state public defender, to the state public defender at the following address:

State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

*b.* Claims for the payment of services to public defenders provided either by judicial branch certified shorthand reporters or by claimants granted an exception to online claim submission, must be submitted to the local public defender office for which the services were provided. Other judicial branch certified shorthand reporter claims, claimants granted an exception to online claim submission, or claims submitted prior to March 1, 2020, must be submitted on a form, promulgated by the state public defender, to the state public defender at the following address: State Public Defender, Claims, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319.

~~**13.2(7)**~~ **13.2(8)** *Claims from state employees.* Claims submitted by state of Iowa employees must be submitted on a form promulgated by the state public defender and on a state travel voucher form.

~~**13.2(8)** *Claim form for other professional services.* Rescinded IAB 1/3/07, effective 2/7/07.~~

ITEM 10. Adopt the following **new** rule 493—13.7(13B,815):

**493—13.7(13B,815) Payment of costs incurred by privately retained attorney representing indigent person.** No payment of state funds for the costs incurred in the legal representation of an indigent person shall be authorized or paid unless the requirements of this rule are satisfied.

**13.7(1)** *Application for payment.* An application or motion for the payment of state funds for the costs incurred in the legal representation of an indigent person that is submitted by the privately retained attorney shall be filed with the court in the county in which the case was filed and include all of the following:

*a.* A copy of the attorney's fee agreement for the representation, including hourly rate, amount of retainer or other moneys received, and number of hours of work completed by the attorney to date.

*b.* A showing that the costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.

*c.* An itemized accounting of all compensation paid to the attorney including the amount of any retainer.

*d.* The amount of compensation earned by the attorney.

*e.* Information on any expected additional costs to be paid or owed by the indigent person to the attorney for the representation.

*f.* A signed financial affidavit completed by the indigent person.

**13.7(2)** *Copy of application to state public defender.* The privately retained attorney shall submit a copy of the application or motion and all attached documents to the state public defender.

**13.7(3)** *Response of state public defender.* If the state public defender resists the motion in whole or in part, the state public defender shall file a response to the application or motion within ten days of the state public defender's receipt of the application or motion.

**13.7(4)** *Requirements for authorization and payment.* The court shall not grant the application or motion authorizing all or a portion of the payment to be made from state funds unless the court determines, after reviewing the application, any supporting documents, and any response from the state public defender pursuant to subrule 13.7(3), that all of the following apply:

*a.* The represented person is indigent and unable to pay for the costs sought to be paid.

*b.* The costs are reasonable and necessary for the representation of the indigent person in a case for which counsel could have been appointed under Iowa Code section 815.10.

*c.* The moneys paid or to be paid to the privately retained attorney by or on behalf of the indigent person are insufficient to pay all or a portion of the costs sought to be paid from state funds.

(1) In determining whether the moneys paid or to be paid to the attorney are insufficient for purposes of this paragraph, the court shall add the hours previously worked to the hours expected to be worked to finish the case and multiply that sum by the hourly rate of compensation specified in rule 493—12.4(13B,815) for the type of case in which the costs are requested.

(2) If the product calculated in subparagraph 13.7(4)*"c"*(1) is greater than the moneys paid or to be paid to the attorney by or on behalf of the indigent person, the moneys shall be considered insufficient to pay all or a portion of the costs sought to be paid from state funds.

(3) If the private attorney is retained on a flat fee agreement and a precise record of hours worked is not available, the attorney shall provide the court a reasonable estimate of the time expended to allow the court to make the calculation pursuant to this paragraph.

**13.7(5)** *Opportunity to request a hearing and hearing on the application.* The state public defender shall be afforded reasonable notice and opportunity to respond to the motion and participate in any hearing on the application or motion. Either the privately retained attorney for the indigent person or a representative from the office of the state public defender may participate in a hearing on the application or motion by telephone.

**13.7(6)** *Protection of defense strategy and work product.* In considering and ruling on the application or motion, the court shall order appropriate procedures to protect against disclosure of defense strategy and defense work product to the prosecution, including but not limited to allowance of information or filings, or portions thereof, to be submitted in camera, ex parte hearings, sealing of any transcript or order to avoid such disclosure, protective orders, or other safeguards to protect defense strategy and work product from disclosure to the prosecution.

**13.7(7)** *Order on the application.* If the court finds the payment of the costs incurred or to be incurred by a privately retained attorney are reasonable and necessary, the order of the court shall specify the maximum amount of costs which the attorney may incur without further court order, and that the actual amount of such costs to be allowed are subject to review by the state public defender for reasonableness.

**13.7(8)** *Submission of claim for payment to state public defender.* Following entry of an order allowing costs to be incurred by a privately retained attorney representing an indigent person, the attorney or the service provider may seek payment or reimbursement for costs. The attorney shall submit a claim in accordance with rules 493—12.7(13B,815) and 493—12.8(13B,815). The service provider shall submit a claim in accordance with 493—Chapter 13.

**13.7(9)** *Denial of application for noncompliance.* If the privately retained attorney or claimant seeking payment or reimbursement for costs pursuant to this rule fails to comply with the requirements of this rule, the state public defender may deny all or a part of the costs requested.

**13.7(10)** *Applicability of rule.* This rule applies to payments to witnesses under Iowa Code section 815.4, evaluators, investigators, and certified shorthand reporters, and to other costs incurred by a privately retained attorney in the legal representation of the indigent person. This rule does not apply to payment of costs on behalf of an indigent person represented on a pro bono basis.

[Filed 12/26/19, effective 3/1/20]
[Published 1/15/20]
EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 1/15/20.

**ARC 4873C**

# UTILITIES DIVISION[199]

**Adopted and Filed**

**Rule making related to water, sanitary sewage, and storm water drainage utilities**

The Utilities Board hereby amends Chapter 21, "Service Supplied by Water Utilities," Iowa Administrative Code.

*Legal Authority for Rule Making*

This rule making is adopted under the authority provided in Iowa Code section 476.2.

*State or Federal Law Implemented*

This rule making implements, in whole or in part, Iowa Code section 476.1.

*Purpose and Summary*

The Utilities Board is adopting amendments to Chapter 21 to add clarity, improve consistency, and eliminate outdated or unneeded provisions. The Board is also adopting new rules to implement recent legislation. In 2016, the Legislature, through 2016 Iowa Acts, chapter 1013, expanded the definition of "public utility" in Iowa Code section 476.1(3) to include sanitary sewage and storm water drainage disposal services provided to the public for compensation and brought these utilities under regulation by the Board. Iowa Code section 476.1(4) exempts municipally owned sanitary sewage and storm water drainage utilities from Board jurisdiction. The Board is adopting new rules in Chapter 21 that apply to sanitary sewage and storm water drainage utilities subject to the Board's jurisdiction.

*Public Comment and Changes to Rule Making*

Notice of Intended Action for this rule making was published in the Iowa Administrative Bulletin on July 17, 2019, as **ARC 4536C**. An oral presentation was held on August 20, 2019, at 11:30 a.m. in the Board Hearing Room, 1375 East Court Avenue, Des Moines, Iowa.

Iowa American Water Company, Iowa Association of Municipal Utilities, and the Office of the Consumer Advocate, a division of the Iowa Department of Justice, participated in the oral presentation. The Board also received written comments from Iowa American Water Company and the Office of the Consumer Advocate. The Board issued an order on October 15, 2019, summarizing the written comments and the comments it received at the oral presentation. The order is available on the Board's electronic filing system, efs.iowa.gov, under Docket No. RMU-2016-0035.

The Board issued an order adopting amendments on December 18, 2019, and the order is available on the Board's electronic filing system under Docket No. RMU-2016-0035.

The Board made several changes in response to comments. Those changes are described in the orders issued by the Board on October 15, 2019, and December 18, 2019. The orders are available on the Board's electronic filing system under Docket No. RMU-2016-0035.

*Adoption of Rule Making*

This rule making was adopted by the Board on December 18, 2019.

*Fiscal Impact*

This rule making has no fiscal impact to the State of Iowa.

*Jobs Impact*

After analysis and review of this rule making, no impact on jobs has been found.

*Waivers*

Any person who believes that the application of the discretionary provisions of this rule making would result in hardship or injustice to that person may petition the Board for a waiver of the discretionary provisions, if any, pursuant to rule 199—1.3(17A,474,476).

*Review by Administrative Rules Review Committee*

The Administrative Rules Review Committee, a bipartisan legislative committee which oversees rule making by executive branch agencies, may, on its own motion or on written request by any individual or group, review this rule making at its regular monthly meeting or at a special meeting. The Committee's meetings are open to the public, and interested persons may be heard as provided in Iowa Code section 17A.8(6).

*Effective Date*

This rule making will become effective on February 19, 2020.

The following rule-making actions are adopted:

ITEM 1. Amend **199—Chapter 21**, title, as follows:

SERVICE SUPPLIED BY WATER, SANITARY SEWAGE, AND STORM WATER DRAINAGE UTILITIES

ITEM 2. Adopt the following **new** 199—Chapter 21, Division I heading, to precede rule 199—21.1(476):

DIVISION I
GENERAL PROVISIONS

ITEM 3. Amend rules 199—21.1(476) and 199—21.2(476) as follows:

**199—21.1(476) Application of rules.**

**21.1(1)** *Application of rules.* ~~The rules apply~~ This chapter applies to any water, sanitary sewage, or storm water drainage utility operating within the state of Iowa under the jurisdiction of the Iowa utilities board and ~~are~~ is established under Iowa Code chapter 476.

*a. Purpose.* These rules are intended to ~~promote~~ establish standards of service to the public~~,~~ by utilities providing water by piped distribution systems and utilities providing sanitary sewage or storm water drainage disposal by piped collection systems which are subject to the jurisdiction of the Iowa utilities board, and to provide standards for uniform practices by those utilities~~, and establish a basis for determining the reasonableness of the demands made by the public upon the utilities~~.

*b. Organization.* This rule and rule 199—21.2(476) apply to water, sanitary sewage, and storm water drainage utilities. Rules 199—21.3(476) through 199—21.10(476) apply only to water utilities. Rules 199—21.11(476) through 199—21.17(476) apply only to sanitary sewage utilities. Rules 199—21.18(476) through 199—21.21(476) apply only to storm water drainage utilities.

*c. Board.* The term "board" as used in this chapter means the Iowa utilities board.

*d. Utility.* The term "utility" or "utilities," when not more specifically described, means a water, sanitary sewage, or storm water drainage public utility as defined in Iowa Code section 476.1(3)*"c"* and *"d."* The term does not include a county or an entity organized pursuant to Iowa Code chapter 28E which is comprised entirely of counties.

*e. Waiver.* A utility or customer may file for a waiver of these rules in accordance with the provisions of rule 199—1.3(17A,474,476~~,78GA,HF2206~~).

*f. Other laws.* These rules shall not relieve a utility from its duties under the laws of this state.

**21.1(2)** *Authorization of rules.* Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just, and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content, and filing of reports, documents, and other papers necessary to carry out the provisions of ~~this law~~ Iowa Code chapter 476.

**199—21.2(476) Records and reports for water, sanitary sewage, and storm water drainage utilities.**

**21.2(1)** *Location and retention of records.* Unless otherwise specified in this chapter, all records required by these rules shall be kept and preserved in accordance with the applicable provisions of 199—Chapter 18.

**21.2(2)** *Tariffs.* The utility shall maintain its tariff filing in a current status.

The ~~schedules of~~ rates and rules of all ~~rate-regulated~~ utilities subject to the rules in this chapter shall be filed with the board.

The form, identification and content of tariffs shall be in accordance with these rules.

*a. Form and identification.*

(1) The tariff shall be ~~printed, typewritten or otherwise reproduced~~ on ~~8½ × 11 inch sheets~~ 8½ × 11-inch pages so as to result in a clear and permanent record. ~~The sheets of the tariff should be ruled or spaced to set off a border on the left side suitable for binding.~~ Tariffs shall be filed electronically in compliance with 199—Chapter 14.

(2) The ~~title page of every tariff and supplement shall specify the following~~ tariff shall conform to the following requirements:

1. The first page shall be the title page, which will show~~:~~ the name of the utility, the type of utility service being provided, and the words "Iowa Utilities Board."

~~Name of Public Utility~~

~~Water Tariff~~

~~Filed With~~

~~The Iowa Utilities Board~~

2. When a tariff is to be superseded or replaced in its entirety, the replacing tariff shall show on the upper right corner of its title page that it is a revision of a tariff on file and the number being superseded or replaced; for example:

Tariff No. _____
Supersedes Tariff No. _____

3. When a ~~new part of a~~ tariff ~~revises, amends, or eliminates an existing part of a tariff, it shall so state and identify the part revised, amended or eliminated~~ sheet in a tariff is revised, amended, or eliminated, the tariff sheet shall indicate in the top right corner the number of the revision to that tariff sheet.

4. Any tariff sheet modifications~~, as defined in "3" above, replacing tariff sheets~~ shall be marked in the right margin with symbols as described below to indicate the place, nature, and extent of the change in text~~:~~. The marked version shall show all added language marked with underlined text and all deleted language with strike-through.

| ~~Symbol~~ | ~~Meaning~~ |
|---|---|
| ~~(C)~~ | ~~A change in regulation.~~ |
| ~~(D)~~ | ~~A discontinued or deleted rate, treatment or regulation.~~ |
| ~~(I)~~ | ~~An increased rate or new treatment resulting in increased rate.~~ |
| ~~(N)~~ | ~~A new rate, treatment or regulation.~~ |
| ~~(R)~~ | ~~A reduced rate or new treatment resulting in a reduced rate.~~ |
| ~~(T)~~ | ~~A change in text but no change in rate, treatment or regulation.~~ |

- (C)—Change in regulation.
- (D)—Discontinued rate or regulation.
- (I)—Increase in rate or new treatment resulting in increased rate.
- (N)—New rate, treatment, or regulation.
- (R)—Reduction in rate or new treatment resulting in reduction in rate.
- (T)—Change in text only.

5. All sheets except the title page shall have the following information located at the top left of the tariff sheet:

- Company name.
- Type of utility tariff.

- The words "Filed with board."

6. All sheets except the title page shall have the following information located at the top right of the tariff sheet:

- Tariff part identification, if any.
- Tariff sheet number, original or revised.
- Canceled tariff sheet number, original or revised.

7. All sheets except the title page shall have the following information located at the bottom left of the tariff sheet:

- The issued date.
- The name of the person responsible for the issuance.

8. All sheets except the title page shall have the following information located at the bottom right of the tariff sheet:

- An effective date field.
- Proposed effective date for the tariff sheet.

~~(3) All sheets except the title page shall have, in addition to the above requirements, the issue date.~~

~~(4) All sheets except the title page shall have the following form:~~

~~(Company Name)~~ ~~(Part Identification)~~

~~Water Tariff~~ ~~(This sheet identification)~~

~~Filed with board~~ ~~(Canceled sheet identification, if any)~~

~~(Content of tariff)~~

~~Issued: (Date)~~ ~~Effective Date:~~

~~(Proposed Effective Date:)~~

(3) The issued date is the date the tariff or the ~~amended~~ revised sheet content was ~~adopted by the utility~~ filed by the utility in the board's electronic filing system.

(4) The effective date ~~is to~~ may be left blank by the utility and shall be determined by the board. The utility may propose an effective date.

*b. Content of tariffs.* A tariff filed with the board shall contain~~:~~ a table of contents and rates,

~~(1) Table of contents.~~

~~(2)~~ ~~Rates,~~ including all rates of utilities ~~subject to rate regulation~~ for service with indication for each rate of the type of ~~water~~ service and the class of customers to which each rate applies as approved by the board. There shall also be shown the prices per unit of service, ~~and~~ the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands and consumptions, including method of calculating or estimating loads or minimums, and any special terms and conditions applicable. ~~There shall be specified any~~ Any discount for prompt payment or penalty for late payment and the period during which the net amount may be paid~~,~~ shall be specified and ~~both~~ shall be in accordance with subrule 21.4(4).

**21.2(3)** *List of persons authorized to receive board inquiries.* Each utility shall file with the board in the annual report required by 199—subrule 23.1(2) a list of names, titles, addresses, and telephone numbers of persons authorized to receive, act upon, and respond to communications from the board in connection with: (1) general management duties; (2) customer relations (complaints); (3) engineering operations; and (4) meter tests and repairs, if meters are used. Each utility shall file with the board a telephone contact number where the board can obtain current information 24 hours a day about interruptions of service from a knowledgeable person. The contact information required by this subrule shall be kept current.

ITEM 4. Adopt the following **new** 199—Chapter 21, Division II heading, to precede rule 199—21.3(476):

DIVISION II
WATER UTILITIES

ITEM 5. Amend rules 199—21.3(476) to 199—21.9(476) as follows:

**199—21.3(476) General water service requirements.**

**21.3(1)** ~~*Disposition of water*~~ *Water service.*

*a. Metered measurement of water.* All water sold by a utility shall be on the basis of metered measurement except that the utility may at its option provide flat rate or estimated service for the following:

(1) Temporary service where the water use can be readily estimated.

(2) Public and private fire protection service.

(3) Water used for street sprinkling and sewer flushing.

*b. Separate metering for premises.* Separate premises shall be separately metered and billed. Submetering shall not be permitted.

**21.3(2)** *Temporary service.* When the utility renders temporary service to a customer, it may require that the customer bear all the costs of installing and removing the service in excess of any salvage realized.

**21.3(3)** ~~*Meter*~~ *Water meter requirements.*

*a.* ~~*Meter*~~ *Water meter installation.* Each water utility shall adopt a written standard method of meter installation. Copies of standard methods shall be made available upon request. All meters shall be set in place by the utility.

*b. Records of water meters and associated metering devices.* Each water utility shall maintain for each meter and associated metering device the following applicable data.

(1) *Meter identification.*

1. Manufacturer.
2. Meter type, catalog number, and serial number.
3. Meter capacity~~, multiplier and constants~~.
4. ~~Unit registration measures~~ Registration unit of measurement (gallons or cubic feet).
5. Number of moving digits or dials ~~in~~ on register.
6. Number of ~~stationary or pointed~~ fixed zeros on register.
7. Pressure rating of the meter.

(2) *Meter location history.*

1. Dates of installation and removal from service.
2. Location of installations.
3. All customer names with readings and read out dates ~~(Remote register readings shall be maintained identical to readings of the meter register)~~.

~~(3)~~ Remote register readings shall be maintained identical to readings of the meter register.

*c. Registration devices for meters.* ~~Where a constant or multiplier is necessary to determine the meter reading, it shall be indicated on the face of the meter.~~ Where remote meter reading is used, the customer shall have a readable meter register at the meter.

*d.* ~~*Meter*~~ *Water meter readings.*

(1) ~~*Meter*~~ *Water meter reading interval.* Reading of all meters used for determining charges to customers shall be scheduled at least quarterly. An effort shall be made to read meters on corresponding days of each meter reading period. The meter reading date may be advanced or postponed no more than ten days without adjustment of the billing for the period.

(2) *Customer water meter reading.* The utility may permit the customer to supply the meter readings on a form supplied by the utility~~,~~ or, in the alternative, may permit the customer to supply the meter reading information by telephone, or electronically, provided a utility representative reads the meter at least once every ~~24~~ 12 months and when there is a change of customer.

~~(2)~~ (3) *Readings and estimates in unusual situations.* When a customer is connected or disconnected, or the regular meter reading date is substantially revised causing a given billing period to be longer or shorter than usual, ~~such bills~~ the bill shall be prorated on a daily basis.

(4) *Estimated bill.* An estimated bill may be rendered in the event that access to a meter cannot be gained and a meter reading form left with the customer is not returned in time for the billing operation. Only in unusual cases shall more than three consecutive estimated bills be rendered.

**21.3(4)** *Filing published meter and service installation rules.* A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation shall be filed with the board.

**21.3(5)** *Extensions to customers.*

*a. Definitions.* The following definitions shall apply to the terms used in this ~~rule~~ subrule:

*"Advances for construction costs,"* ~~as used in these subrules, are~~ means cash payments or surety bonds or an equivalent surety made to the utility by an applicant for an extension, portions of which may be refunded depending on any subsequent connections made to the extension. Cash payments, surety bonds, or equivalent sureties shall include a grossed-up amount for the income tax effect of such revenue.

*"Agreed-upon attachment period,"* ~~as used in this subrule,~~ means a period of not less than 30 days nor more than one year mutually agreed upon by the utility and the applicant within which the customer will attach. If no time period is mutually agreed upon, the agreed-upon attachment period shall be deemed to be 30 days.

*"Contribution in aid of construction,"* ~~as used in these subrules,~~ means a nonrefundable cash payment covering the costs of an extension that are in excess of utility-funded allowances. Cash payments shall be grossed-up for the income tax effect of such revenue. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

*"Customer ~~advances~~ advance for construction ~~records,~~ record"* ~~as used in this subrule,~~ means a separate record established and maintained by the utility, which includes by depositor, the amount of advance for construction provided by the customer, whether the advance is by cash or surety bond or equivalent surety, and if by surety bond, all relevant information concerning the bond or equivalent surety, the amount of refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project on which or work order pursuant to which the extension was installed ~~on~~.

*"Estimated annual revenues,"* ~~as used in this subrule, shall be calculated~~ means an estimated calculation of annual revenue based upon the following factors, including~~,~~ but not limited to: ~~The~~ the size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

*"Estimated construction costs,"* ~~as used in this subrule, shall be calculated~~ means an estimated calculation of construction costs using average costs in accordance with good engineering practices and based upon the following factors: amount of service required or desired by the customer requesting the extension~~,~~; size, location and characteristics of the extension, including all appurtenances; and whether or not the ground is frozen or whether other adverse conditions exist. The average cost per foot shall be calculated utilizing the prior calendar year costs, to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions, divided by the total feet of extensions by size of pipe for the prior calendar year. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility.

*"Extensions"* means a distribution main extension.

*"Similarly situated customer"* ~~is~~ means a customer whose annual consumption or service requirements, as defined by estimated annual revenue, ~~is similar to other customers with~~ are approximately the same as the annual consumption or service requirements of other customers.

~~*"Utility,"* as used in these subrules, means a rate-regulated utility.~~

*b. Terms and conditions.* The utility shall extend service to new customers under the following terms and conditions:

(1) ~~Plant additions.~~ The utility ~~will~~ shall provide all water ~~plants~~ plant additions at its cost and expense without requiring an advance for construction or contribution in aid of construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for board inspection.

(2) ~~Advances for construction costs for distribution main extensions for customers who will attach within 30 days.~~ Where the customer will attach within 30 days after completion of the distribution main extension, the following shall apply:

1. If the estimated construction cost to provide a distribution main extension is less than or equal to five times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the ~~main~~ extension without requiring an advance for construction.

2. If the estimated construction cost to provide a distribution main extension is greater than five times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit no more than 30 days prior to commencement of construction an advance for construction equal to the estimated construction cost less five times the estimated annual revenue to be produced by the customer ~~no more than 30 days prior to commencement of construction~~.

(3) ~~Advances for construction costs for distribution main extensions for customers who will not attach within the agreed-upon attachment period.~~ Where the customer will not attach within the agreed-upon attachment period after completion of the distribution main extension, the ~~applicant for~~ customer requesting the extension shall contract with the utility and deposit no more than 30 days prior to the commencement of construction an advance for construction equal to the estimated construction cost.

(4) Advance payments for plant additions or extensions ~~which~~ are subject to refund for a ten-year period and may be made by cash, surety bond, or equivalent surety. In the event a surety bond or an equivalent surety is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are sufficient earned refunds to offset the amount of the surety bond, less the surcharge, the depositors shall provide the utility the amount of the surcharge. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge, or the depositor may pay the interest on the previous year's bond and rebond the balance due to the utility for a second or third one-year period. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

*c. Refunds.* The utility shall refund to the depositor for a period of ten years from the date of the original advance, a pro-rata share for each service attachment to the distribution main extension. The pro-rata refund shall be computed in the following manner:

(1) If the combined total of ~~three~~ five times the estimated annual revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of ~~three~~ five times the estimated annual revenue for the depositor and each customer who has attached to the distribution main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal ~~three~~ five times the estimated annual revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

*d. Extensions not required.* Utilities shall not be required to make extensions as described in this ~~rule,~~ subrule unless the extension shall be of a permanent nature.

*e. ~~Extensions~~ More favorable methods permitted.* ~~This rule~~ Subrule 21.3(5) shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

*f. Connections to utility-owned equipment.* ~~This rule~~ Subrule 21.3(5) shall not be construed as prohibiting an individual, partnership, or company from constructing its own extension. An extension constructed by a nonutility entity must meet at a minimum the applicable portions of the standards in subrules 21.5(1) and 21.5(2) and such other reasonable standards as the utility may employ in constructing extensions, so long as the standards do not mandate a particular supplier. All connections to the utility-owned equipment or facilities shall be made by the utility at the applicant's expense. At the time of attachment to the utility-owned equipment or facilities, the applicant shall transfer ownership of the extension to the utility and the utility shall book the original cost of construction of the extension as an advance for construction, and refunds shall be made to the applicant in accordance with paragraph 21.3(5)*"c."* The utility shall be responsible for the operation and maintenance of the extension after attachment.

*g. Reimbursement of extension construction cost.* If the utility requires the applicant to construct the extension to meet service requirements greater than those necessary to serve the applicant's service needs, the utility shall reimburse the applicant for the difference in cost between the extension specifications required by the utility and the extension specifications necessary to meet the applicant's service needs.

**21.3(6)** *~~Service~~ Water service connections.* ~~In urban areas with well-defined streets, the~~ The utility shall ~~control (supervise the installation and maintenance of)~~ supervise the installation and maintenance of that portion of the water service pipe from its main to and including the customer's meter. A curb stop shall be installed at a convenient place between the property line and the curb. All services shall include a curb stop and curb box or meter vault. In installations where meters are installed in meter vaults incorporating a built-in valve~~,~~ and are installed between the property line and curb, no separate curb stop and curb box is required.

**21.3(7)** *Location of meters.* Meters may be installed outside or inside as mutually agreed upon by the customer and the utility.

*a. Outside meters.* Meters installed out-of-doors shall be readily accessible for maintenance and reading, and so far as practicable the location should be mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from injury.

*b. Inside meters.* Meters installed inside the customer's building shall be located as near as possible to the point where the service pipe enters the building and at a point reasonably secure from injury and readily accessible for reading and testing. In cases of multiple buildings, such as two-family dwellings or apartment buildings, the meter(s) shall be located within the premises served or in a common location accessible to the customers and the utility.

**199—21.4(476) Customer relations for water service.**

**21.4(1)** *Customer information.*

*a.* Each utility shall:

~~*a.*~~ (1) Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the ~~rate schedules~~ rates and rules relating to the service of the utility are available for public inspection.

~~*b.*~~ (2) Maintain up-to-date maps, plans, or records of its entire water system.

~~*e.*~~ (3) Upon request, assist the customer or ~~proposed~~ prospective customers in selecting the most economic rate schedule available for the proposed type of service.

~~*d.*~~ (4) Upon request, inform ~~its customers~~ the customer as to the method of reading meters and the method of computing the customer's bill.

~~*e.*~~ (5) Notify customers affected by a change in rates or rate classification as directed in the ~~board~~ board's rules of practice and procedures.

~~*f.*~~ *b.* Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

*c.* Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling 1-877-565-4450, by writing to 1375 E. Court Avenue, ~~Room 69,~~ Des Moines, Iowa 50319-0069, or by ~~E-mail~~ email to customer@iub.iowa.gov."

*d.* The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard ~~form contained herein~~ statement described in this subrule shall file its proposed ~~form~~ statement in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

**21.4(2)** *Customer deposits.*

*a. Deposit required.* Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

*b. Amount of deposit.* The total deposit shall not be less than $5 nor more in amount than the maximum estimated charge for service for 90 days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

*c. New or additional deposit.* A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

*d. Customer's deposit receipt.* The utility shall issue a receipt of deposit to each customer from whom a deposit is received.

*e. Interest on customer deposits.* Interest shall be paid by the ~~rate-regulated~~ utility to each customer required to make a deposit. ~~On or after April 21, 1994, rate-regulated utilities~~ Utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

*f. Deposit refund.* The deposit shall be refunded after 12 consecutive months of prompt payment, unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit shall be refunded upon termination of the customer's service.

*g. Unclaimed deposits.* The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4 at which time the record

and deposit, together with accrued interest, less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section ~~556.11~~ 556.13.

**21.4(3)** *Customer bill forms.* The utility shall bill each customer as promptly as possible following the reading of the customer's meter. Each bill, including the customer's receipt, shall show:

*a.* The date and the reading of the meter at the beginning and at the end of the period or the period for which the bill is rendered.

*b.* The number of units metered when applicable.

*c.* Identification of the applicable ~~rate schedule~~ rates.

*d.* The gross and net amount of the bill.

*e.* The ~~delayed~~ late payment charge and the latest date on which the bill may be paid without incurring a penalty.

*f.* A distinct marking to identify an estimated bill.

**21.4(4)** *Bill payment terms.* The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall be not less than 20 days between the rendering of a bill and the date by which the account becomes delinquent.

*a. Late payment charge.* A ~~rate-regulated~~ utility's late payment charge shall not exceed 1.5 percent per month of the past due amount.

*b. Charge forgiveness.* Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified that the eligibility has been used.

~~The company rules shall state how the customer is notified the eligibility has been used.~~

**21.4(5)** *Customer records.* The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with 21.4(6), but not less than three years.

**21.4(6)** *Adjustment of bills.* Bills which are incorrect due to meter or billing errors are to be adjusted as follows:

*a. Fast meters.* Whenever a meter in service is tested and found to have overregistered more than 2 percent, the utility shall adjust the customer's bill for the excess amount paid. The estimated amount of overcharge is to be based on the period the error first developed or occurred. If that period cannot be definitely determined, it will be assumed that the overregistration existed for a period equal to one-half the time since the meter was last tested, or one-half the time since the meter was installed unless otherwise ordered by the board. If the recalculated bill indicates that more than $5 is due an existing customer, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last-known address.

*b. Nonregistering meters.* Whenever a meter in service is found not to register, the utility may render an estimated bill.

*c. Slow meters.* Whenever a meter is found to be more than 2 percent slow, the utility may bill the customer for the amount the test indicates the customer has been undercharged for the period of inaccuracy, or a period as estimated in 21.4(6)*"a"* unless otherwise ordered by the board.

*d. Overcharges.* When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

*e. Undercharges.* When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the tariff may provide for billing the amount of the undercharge to the customer. The time period for which the utility may adjust for the undercharge need not exceed five years unless

otherwise ordered by the board. The maximum bill shall not exceed the billing for like charges (e.g., usage-based, fixed, or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

**21.4(7)** *Refusal or disconnection of service.* Service may be refused or discontinued only for the reasons listed in paragraphs 21.4(7)*"a"* through *"f"* below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and legal holidays, following mailing of notice of disconnect in which to take necessary action before service is discontinued. When a person is refused service, the utility shall notify the person promptly of the reason for the refusal to serve and of the person's right to file a complaint about the utility's decision with the board.

*a.* Without notice in the event of an emergency.

*b.* Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining water by fraudulent means.

*c.* For violation of or noncompliance with the utility's rules on file with the board.

*d.* For failure of the customer to permit the utility reasonable access to its equipment.

*e.* For nonpayment of bill, provided that the utility has: (1) made a reasonable attempt to effect collection; ~~and~~ (2) given the customer written notice that the customer has at least 12 days, excluding Sundays and legal holidays, in which to make settlement of the account; and (3) given the customer the written statement of the customer's rights and responsibilities to avoid a shutoff, as required by subrule 21.4(8). In the event there is dispute concerning a bill ~~for water service~~, the utility may require the customer to pay a sum of money equal to the amount of the undisputed portion of the bill pending settlement and thereby avoid discontinuance of service for nonpayment of the disputed bill for up to 45 days after the rendering of the bill. The 45 days shall be extended by up to 60 days if requested of the utility by the board in the event the customer files a written complaint with the board.

*f.* For failure to pay a debt owed to a city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment. Disconnection of water service pursuant to this paragraph shall only be allowed if the governing body of a city utility, city enterprise, combined city utility, or combined city enterprise has entered into a written agreement with the ~~public water~~ utility that includes provisions:

(1) Requiring that a notice of disconnection of water service for failure to pay a debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment be made by the ~~public water~~ utility and allow the customer 12 days, excluding Sundays and legal holidays, after the mailing of the notice to take necessary action to satisfy the debt.

(2) Providing for prompt notice from the city utility, city enterprise, combined city utility, or combined city enterprise to the ~~public water~~ utility that the debt for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment has been satisfied and providing that, once notified of the payment of the debt, the ~~public water~~ utility shall reconnect water service to the customer as provided for in the ~~public water~~ utility's tariff.

(3) Requiring the city utility, city enterprise, combined city utility, or combined city enterprise, prior to contacting the ~~public water~~ utility for disconnection of water service to a customer, to have completed the disconnection notification procedures established in the tariffs or ordinances of the city utility, city enterprise, combined city utility, or combined city enterprise.

(4) Providing that the customer may be charged a fee for disconnection and reconnection of water service by the ~~public water~~ utility for failure of the customer to pay a debt owed to the city utility, city enterprise, combined city utility, or combined city enterprise for wastewater service or services of sewer systems, storm water drainage systems, or sewage treatment, that the fee be no greater than the rates or charges established for reconnection and disconnection of water service in the ~~water~~ utility's tariffs approved by the ~~utilities~~ board, and that recovery of lost revenue by the ~~public water~~ utility as a result of disconnection of water service pursuant to this paragraph is not authorized under these rules.

**21.4(8)** *Statement of customer rights and responsibilities.* In addition to providing the written notice of disconnect required by subrule 21.4(7), a utility shall, prior to refusing water service due to nonpayment of a bill, provide the customer a written statement of rights and responsibilities to avoid

shutoff. Any utility which does not use the standard form set forth below shall electronically submit its proposed form to the board for approval. A utility which is preparing to disconnect water service due to nonpayment of a bill for sanitary sewage disposal service or storm water drainage service shall replace the words "water service" in the form below with the words "sanitary sewage disposal service" or "storm water drainage service" as appropriate. The utility shall provide the customer with the written statement of customer rights and responsibilities at the same time it provides the customer the written notice of disconnect.

**CUSTOMER RIGHTS AND RESPONSIBILITIES TO AVOID SHUTOFF OF WATER SERVICE FOR NONPAYMENT**

**1. What can I do if I receive a notice from the utility that says my water service will be shut off because I have a past due bill?**

a. Pay the bill in full; or

b. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #2 below).

**2. What should I do if I believe my bill is not correct?**

You may dispute your utility bill. You must tell the utility that you dispute the bill. You must pay the part of the bill you think is correct. If you do this, the utility will not shut off your service for 45 days from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect. You may ask the Iowa Utilities Board for assistance in resolving the dispute. (See #6 below.)

**3. When can the utility shut off my utility service because I have not paid my bill?**

The utility will not shut off your service for up to 45 days from the rendering of the bill if you have notified the utility that you dispute a portion of your bill and you pay the part of the bill that you agree is correct. The 45 days will be extended by up to 60 days if requested of the utility by the Utilities Board in the event you file a written complaint with the Utilities Board.

**4. How will I be told the utility is going to shut off my service?**

You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment. The 12-day period does not include Sundays and legal holidays.

**5. If service is shut off, when will it be turned back on?**

a. The utility must turn your service back on promptly if you pay the whole amount you owe or, in the event that you dispute a portion of the bill, if you pay the portion of the bill that is not under dispute (see #2 above).

b. The utility may charge you a fee to turn your service back on. Those fees may be higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

**6. Is there any other help available besides my utility?**

If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll-free at 877-565-4450. You may also write the Iowa Utilities Board at 1375 E. Court Avenue, Des Moines, Iowa 50319-0069, or by email at customer@iub.iowa.gov. Low-income customers may also be eligible for free legal assistance from Iowa Legal Aid, and may contact Legal Aid at 1-800-532-1275.

~~**21.4(8)**~~ **21.4(9)** *Reconnection and charges.* In all cases of discontinuance of service where the cause of discontinuance has been corrected, the utility shall promptly restore service to the customer. The utility may make a reasonable charge applied uniformly for reconnection of service.

~~**21.4(9)**~~ **21.4(10)** *Insufficient reasons for denying service.* The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

*a.* ~~Nonpayment for service by someone who is no longer an occupant of the premises to be served, except in cases of immediate family occupation or cohabitation of adults at the premises.~~ Delinquency in payment for service by a previous occupant of the premises to be served.

*b.* Failure to pay the bill of another customer as guarantor thereof.

*c.* Failure to pay for a different type or class of ~~public~~ utility service, except sanitary sewage disposal service or storm water drainage service. Disconnection of water service pursuant to the

provisions of paragraph 21.4(7)*"f"* is not considered a different type or class of public utility service for purposes of subrule ~~21.4(9)~~ 21.4(10).

*d.* Delinquency in payment for service arising more than ten years prior, as measured from the most recent of the last date of service, the physical disconnection of service, or the last payment or promise of payment made by the customer.

**~~21.4(10)~~ 21.4(11)** *Customer complaints.* A "complaint" shall mean any objection to the charge, facilities, or quality of service of a utility.

*a.* Each utility shall investigate promptly and thoroughly and keep a record of all complaints received from its customers that will enable it to review its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date resolved.

*b.* All complaints caused by a major service interruption shall be summarized in a single report.

*c.* A record of the original complaint shall be kept for a period of three years after final settlement of the complaint.

**199—21.5(476) Engineering practice for water service.**

**21.5(1)** *Requirement of good engineering practice.* The design and construction of the utility's ~~water~~ plant and distribution system shall conform to good standard engineering practice.

**21.5(2)** *Inspection ~~of water plant~~.* Each utility shall adopt and follow a program of inspection of its ~~water~~ plant and distribution system in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice.

**199—21.6(476) Meter testing for water service.**

**21.6(1)** *Periodic and routine tests.* Each utility shall adopt schedules approved by the board for periodic and routine tests and repair of its meters.

**21.6(2)** *Meter test facilities and equipment.* Each utility furnishing metered ~~water~~ service shall provide the necessary standard facilities, instruments, and other equipment for testing its meters, or ~~mail~~ contract for test of its meters by another utility or agency equipped to test meters subject to approval by the board.

**21.6(3)** *Accuracy requirements.* All meters ~~used for measuring quantity of water delivered to a customer~~ shall be in good mechanical condition. All meters shall be accurate to the following standards:

*a. Test flow limits.* For determination of minimum test flow and normal test flow limits, the ~~company will~~ utility shall use as a guide the appropriate standard specifications of the American Water Works Association for the various types of meters.

*b. Accuracy limits.* A meter shall not be placed in service if it registers less than 95 percent of the ~~water~~ volume passed through it at the minimum test flow, or overregisters or underregisters more than 1.5 percent at the intermediate or maximum limit.

**21.6(4)** *Initial test and storage of meters.* Every ~~water~~ meter shall be tested prior to its installation either by the manufacturer, the utility, or an organization equipped for meter testing.

If a meter is not stored as recommended by the manufacturer, the meter shall be tested immediately before installation.

**21.6(5)** *As found tests.* To determine the average meter error in accordance with these rules for periodic or complaint tests, meters shall be tested in the condition as found in the customer's service. Tests shall be made at intermediate and maximum rates of flow, and the meter error shall be the algebraic average of the errors of the two tests.

**21.6(6)** *Request tests.* A utility shall test any ~~water~~ meter upon written request of a customer. The utility will not be required to perform request tests more than once each 18 months. The customer shall be given the opportunity to be present at the request tests.

**21.6(7)** *Board-ordered tests.* The board shall order tests of meters as follows:

*a. Application.* Upon written application to the board by a customer or a utility, a test shall be made of the customer's meter as soon as practicable.

*b. Guarantee.* The application shall be sent by certified or registered mail and accompanied by a certified check or money order made payable to the utility in the amount indicated below:

(1) Capacity of 80 gallons per minute or less . . . . . $24

(2) Capacity over 80 gallons, up to 120 gallons per minute . . . . . $26

(3) Capacity of over 120 gallons per minute . . . . . $30

*c. Conduct of test.* On receipt of a request from a customer, the board shall forward the deposit to the utility and notify the utility of the requirement for the test. The utility shall not knowingly remove or adjust the meter until tested. The utility shall furnish all instruments, load devices, and other facilities necessary for the test and shall perform the test and shall furnish verification of the accuracy of test instruments used.

*d. Test results.* If the tested meter is found to overregister to an extent requiring a refund under the provisions of 21.4(6)*"a,"* the amount paid to the utility shall be returned to the customer by the utility.

*e. Notification.* The utility shall notify the customer in advance of the date and time of the board-ordered test.

*f. Utility report.* The utility shall make a written report of the results of the test ~~which~~. The report shall be sent to the customer and to the board.

**21.6(8)** *Sealing of meters.* Upon completion of adjustment and test of any water meter the utility shall place a suitable register seal on the meter in a manner that adjustment or registration of the meter cannot be changed without breaking the seal.

**21.6(9)** *Record of meter tests.* Meter test records shall include:

*a.* The date and reason for the test.

*b.* The meter reading prior to any test.

*c.* The accuracy as found at each of the flow rates required by 21.6(3)*"a."*

*d.* The accuracy as left at each of the flow rates required by 21.6(3)*"a."*

*e.* Statement of any repairs.

*f.* If the meter test is made using a standard meter, the utility shall retain all data taken at the time of the test sufficient to permit the convenient checking of the test method, calculations, and traceability to the National Bureau of Standards' volumetric standardization.

The test records of each meter shall be retained for two consecutive periodic tests or at least for two years. A record of the test made at the time of the meter's retirement, if any, shall be retained for a minimum of three years.

**199—21.7(476) Standards of quality of water service.**

**21.7(1)** ~~*Pressures*~~ *Water pressures.* Under normal condition of water usage, the pressure (pound per square inch gauge) at a customer's service line shall be not less than ~~25~~ 35 PSIG and not more than 125 PSIG.

At regular intervals, a utility shall make a survey of pressures in its water system. The survey shall be of sufficient magnitude to indicate the quality of service being rendered at representative points on its system. ~~Survey should~~ The survey shall be conducted during periods of high usage at or near the maximum usage during the year. The pressure charts for these surveys shall show the date and time of beginning and end of the test~~,~~ and the test location. Records of these pressure surveys shall be maintained at the utility's principal office in the state and made available to the board upon request.

**21.7(2)** *Interruption of ~~supply~~ water service.*

*a.* A utility shall make a reasonable effort to prevent interruptions of water service. When an emergency interruption occurs, the utility shall reestablish service with the shortest possible delay consistent with the safety ~~to~~ of its customers and the general public. If an emergency interruption affects fire protection service, the utility shall immediately notify the fire chief or other responsible local official.

*b.* When a utility finds it necessary to schedule an interruption of water service, it shall make a reasonable effort to notify all customers to be affected by the interruption. The notice shall include the time and anticipated duration of the interruption. Interruptions ~~should~~ shall be scheduled at hours which create the least inconvenience to the customer.

*c.* A utility shall retain records of interruptions for a period of at least five years.

**21.7(3)** ~~*Supply*~~ *Water supply shortage.* The utility shall attempt to furnish a continuous and adequate supply of water to its customers and to avoid any shortage or interruption of water delivery.

*a.* If a utility finds that it is necessary to restrict the use of water due to a shortage, it shall ~~notify its customers, and give the board notice, before the restriction becomes effective~~ equitably apportion its available water supply among its customers. ~~The notification shall specify~~ The utility shall notify its customers and the board of the following:

(1) The reason for the restriction.

(2) The nature and extent of the restriction.

(3) The effective date of the restriction.

(4) The probable date of termination of the restriction.

*b.* ~~During the times of threatened or actual water shortage, the utility shall equitably apportion its available water supply among its customers.~~ The water use restriction shall not take effect unless approved by the board, except in cases of emergency.

**199—21.8(476) Applications for water costs for fire protection services.**

**21.8(1)** *Definition.* For purposes of ~~these rules~~ this rule, "water costs for fire protection service" shall be defined as all or a part of the utility's costs of fire hydrants and other improvements, maintenance, and operations for the purpose of providing adequate water production, storage, and distribution for public fire protection, as reflected in the utility's current tariff for public fire protection water service.

**21.8(2)** *Utility requirements.* A ~~rate-regulated~~ utility which provides public fire protection water service to a city preparing an application pursuant to subrule 21.8(3) shall provide the city all necessary information and affidavits to enable the city to meet its application filing requirements.

**21.8(3)** *Application contents.* Any city filing an application with the board requesting inclusion of all or a part of the water costs for fire protection service in a ~~rate-regulated~~ utility's rates or charges to customers covered by the city's fire protection service shall submit, at the time the application is filed, the following information with supporting testimony:

*a.* A statement showing (1) the proposed method of allocating costs to affected customers, and (2) both the proposed per-customer rate increase and the average percentage increase by customer class, based on the utility's current tariff, if the costs for fire protection water service are included in rates charged to affected customers;

*b.* Copies of all bills rendered to the city by the utility for public fire protection water service during the preceding 24-month period;

*c.* The current number of utility customers served within the city's corporate limits, by customer class, with an affidavit from the utility verifying the information;

*d.* A map illustrating both (1) the city's corporate limits, and (2) the portion of the utility's customer service area within the city's corporate limits, with an affidavit from the utility verifying the customer service area;

*e.* An affidavit from the utility showing that the notice required by Iowa Code section ~~476.6(18)*"c"*~~ 476.6(14)*"c"* and subrule 21.8(4) has been provided and paid for by the applicant and mailed by the utility to all affected customers.

**21.8(4)** *Customer notification.*

*a. Prior approval.* The city shall ~~submit to~~ file with the board for its approval, not less than 30 days before providing notification to affected customers, ~~ten copies~~ a copy of the proposed notice.

*b. Required content of notification.* The notice shall advise affected customers of the proposed increase in rates and charges, the proposed effective date of the increase, and the percentage increase by customer class. It shall advise customers that the city is requesting the increase and that ~~they~~ customers have ~~a~~ the right to file with the board a written objection to the proposed increase and to request a public hearing. It shall also include a written explanation of the reason for the increase.

*c. Notice of deficiencies.* Within 30 days of the filing of the proposed notice, the city shall be notified ~~of~~ either of the approval of the notice or of any deficiencies in the notice and the corrective measures required for approval.

*d. Distribution.* The city shall provide to the utility, for mailing, a sufficient number of copies of the approved notice. The city shall direct the utility either to (1) include the notice with the utility's next regularly scheduled mailing to the affected customers; or (2) make a separate mailing of the notice to affected customers within 30 days of receiving from the city the requisite number of copies of the notice. The city shall pay all expenses incurred by the utility in providing notice to affected customers. The utility may require payment prior to the mailing.

*e. Delivery.* The written notice to affected customers shall be mailed or delivered by the utility not more than 90 days before the application is filed and no later than the date the application is filed.

**21.8(5)** *Procedure.*

*a. ~~Service~~ Filing of application.* The applicant shall file ~~an original plus ten copies of the application with the executive secretary's office, serve two copies of the application on the public utility and serve two copies on the consumer advocate division of the Iowa department of justice~~ the application with the board.

*b. Docketing.* Within 30 days of the filing of the application, the board shall either approve the application or docket the case as a formal proceeding and establish a procedural schedule.

*c. Rules.* If the case is docketed as a formal proceeding, the rules in 199—Chapter 7, if not inconsistent, shall apply.

*d. Decision.* The board shall render its decision within six months of the date of the application. If the application is approved, the board shall order the ~~rate-regulated~~ utility providing the water service to the city to file tariffs implementing the board's decision. The utility shall include annually a bill insert explaining to customers that they are being charged for water-related fire protection costs. The city shall pay all costs incurred by the utility to file and implement the required tariff.

**199—21.9(476) Incident reports regarding water service.**

**21.9(1)** *Notification.* A ~~regulated public~~ water utility shall notify the board ~~when it notifies the Iowa department of natural resources or the local county health department~~ about ~~an~~ any incident involving: ~~(1) an occurrence of waterborne emergency (e.g., treatment process malfunction, chemical/biological spill in the water supply, contamination event in the distribution system, emergency that has the potential for drinking water contamination); (2) a boil water advisory and contamination event; or (3) a low-pressure event (less than 20 psi) affecting a widespread area of the system. Notification shall be made to the board by e-mail to the board duty officer at dutyofficer@iub.iowa.gov or, in appropriate circumstances, by calling (515)745-2332. The person contacting the board shall leave a call-back number for a person knowledgeable about the incident. The utility shall report to the board when the incident has ended and normal water service has been restored.~~

*a.* The occurrence of a waterborne illness;

*b.* The issuance of a boil water advisory;

*c.* A contamination event;

*d.* A low-pressure event (less than 20 psi) that negatively affects the quality of water service;

*e.* A flood event affecting the utility's plant or distribution system; or

*f.* A cyberattack affecting the well-being of the utility, its customers, or the environment.

**21.9(2)** *Information required.* The utility shall notify the board immediately, or as soon as practical, of any reportable incident by emailing the duty officer at dutyofficer@iub.iowa.gov or, when email is not available, by calling the board duty officer at (515)745-2332. The person sending the email shall leave the telephone number of a person who can provide the following information:

*a.* The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.

*b.* The location of the incident.

*c.* The time of the incident.

*d.* The number of deaths or personal injuries and the extent of those injuries, if any.

*e.* The number of services interrupted.

*f.* A summary of the significant information available to the utility regarding the likely cause of the incident and the estimated extent of damage.

**21.9(3)** *Normal service restored.* The utility shall notify the board when the incident has ended and normal water service has been restored.

ITEM 6. Adopt the following **new** rule 199—21.10(476):

**199—21.10(476) Separate books for acquired water service assets.** A utility acquiring the whole or any substantial part of a water system with a fair market value of $500,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(4) shall maintain separate books and records for the acquired system until the utility's next general rate case, unless otherwise ordered by the board.

ITEM 7. Adopt the following **new** 199—Chapter 21, Division III heading, to precede new rule 199—21.11(476):

DIVISION III
SANITARY SEWAGE UTILITIES

ITEM 8. Adopt the following **new** rules 199—21.11(476) to 199—21.17(476):

**199—21.11(476) General sanitary sewage disposal service requirements.**

**21.11(1)** *Sanitary sewage disposal service.*

*a. Metered measurement of sanitary sewage.* All sanitary sewage disposal service sold by a utility shall be on the basis of metered measurement except that the utility may at its option, pursuant to board-approved tariffs, provide flat rate or estimated service for the following:

(1) Temporary service; or

(2) The disposal at the sewage treatment plant of delivered sewage where the amount of sewage can be readily estimated.

*b. Sanitary sewage meter requirements.* Sanitary sewage disposal service provided by a utility may be based upon the amount of water used by the customer as measured pursuant to rule 199—21.3(476) or separately metered in substantial conformity with the requirements of rule 199—21.3(476). The method of measuring sanitary sewage disposal service shall be filed in the utility's tariff and approved by the board. A proposed tariff which includes provisions for separate sanitary sewage meters shall describe the circumstances under which separate meters will be used.

*c. Customer classes.* In establishing customer classes, the utility may consider the characteristics of the sewage generated by that customer class and the existence of any industrial pretreatment agreements. Customer classes shall be established pursuant to board-approved tariffs.

**21.11(2)** *Temporary service.* When the utility renders temporary service to a customer, it may require that the customer bear all of the costs of installing and removing the service in excess of any salvage realized, pursuant to board-approved tariffs.

**21.11(3)** *Sewage meter requirements.*

*a. Sewage meter installation.* Each sanitary sewage utility shall adopt a written standard method or a method preapproved by the board for meter installation. Copies of standard methods shall be made available upon request. All meters shall be set in place by the utility.

*b. Records of sewage meters and associated metering devices.* Each sanitary sewage utility shall maintain for each meter and associated metering device the following applicable data:

(1) Meter identification.

1. Manufacturer.
2. Meter type, catalog number, and serial number.
3. Meter capacity.
4. Registration unit of measurement (gallons or cubic feet).
5. Number of moving digits or dials on register.
6. Number of fixed zeros on register.
7. Pressure rating of the meter.

(2) Meter location history.

1. Dates of installation and removal from service.
2. Location of installation.
3. All customer names with readings and read out dates.

Remote register readings shall be maintained identical to readings of the meter register.

*c. Registration devices for meters.* Where remote meter reading is used, the customer shall have a readable meter register at the meter.

*d. Sewage meter readings.*

(1) Sewage meter reading interval. Reading of all meters used for determining charges to customers shall be scheduled at least quarterly. An effort shall be made to read meters on corresponding days of each meter reading period. The meter reading date may be advanced or postponed no more than ten days without adjustment of the billing for the period.

(2) Customer sewage meter reading. The utility may permit the customer to supply the meter readings on a form supplied by the utility or, in the alternative, may permit the customer to supply the meter reading information by telephone, or electronically, provided a utility representative reads the meter at least once every 12 months and when there is a change of customer.

(3) Readings and estimates in unusual situations. When a customer is connected or disconnected, or the regular meter reading date is substantially revised causing a given billing period to be longer or shorter than usual, such bills shall be prorated on a daily basis.

(4) Estimated bill. An estimated bill may be rendered in the event that access to a meter cannot be gained and a meter reading form left with the customer is not returned in time for the billing operation. Only in unusual cases shall more than three consecutive estimated bills be rendered.

**21.11(4)** *Filing published meter and service installation rules.* A copy of the utility's current rules, if any, published or furnished by the utility for the use of engineers, architects, plumbing contractors, etc., covering meter and service installation shall be filed with the board.

**21.11(5)** *Extensions to customers.*

*a. Definitions.* The following definitions shall apply to the terms used in subrule 21.11(5):

*"Advances for construction costs"* means cash payments or surety bonds or an equivalent surety made to the utility by an applicant for an extension, portions of which may be refunded depending on any subsequent connections made to the extension. Cash payments, surety bonds, or equivalent sureties shall include a grossed-up amount for the income tax effect of such revenue.

*"Agreed-upon attachment period"* means a period of not less than 30 days nor more than one year mutually agreed upon by the utility and the applicant within which the customer will attach. If no time period is mutually agreed upon, the agreed-upon attachment period shall be deemed to be 30 days.

*"Contribution in aid of construction"* means a nonrefundable cash payment covering the costs of an extension that are in excess of utility-funded allowances. Cash payments shall be grossed-up for the income tax effect of such revenue. The amount of tax shall be reduced by the present value of the tax benefits to be obtained by depreciating the property in determining the tax liability.

*"Customer advance for construction record"* means a separate record established and maintained by the utility, which includes by depositor, the amount of advance for construction provided by the customer, whether the advance is by cash or surety bond or equivalent surety, and if by surety bond, all relevant information concerning the bond or equivalent surety, the amount of refund, if any, to which the depositor is entitled, the amount of refund, if any, which has been made to the customer, the amount unrefunded, and the construction project on which or work order pursuant to which the extension was installed.

*"Estimated annual revenues"* means an estimated calculation of annual revenue based upon the following factors, including but not limited to: the size of the facility to be used by the customer, the size and type of equipment to be used by the customer, the average annual amount of service required by the equipment, and the average number of hours per day and days per year the equipment will be in use.

*"Estimated construction cost"* means an estimated calculation of construction costs using average costs in accordance with good engineering practices and based upon the following factors: amount of service required or desired by the customer requesting the extension; size, location and characteristics of the extension, including all appurtenances; and whether or not the ground is frozen or whether other adverse conditions exist. The average cost per foot shall be calculated utilizing the prior calendar year

costs, to the extent such cost basis does not exceed the current costs using current construction cost methodologies, resources and material, and working conditions, divided by the total feet of extensions by size of pipe for the prior calendar year. In no event shall estimated construction costs include costs associated with facilities built for the convenience of the utility.

*"Extensions"* means a sanitary sewer main extension.

*"Similarly situated customer"* means a customer whose annual consumption or service requirements, as defined by estimated annual revenue, are approximately the same as the annual consumption or service requirements of other customers.

*b. Terms and conditions.* The utility shall extend service to new customers under the following terms and conditions:

(1) The utility shall provide all sewage treatment plant additions at its cost and expense without requiring an advance for construction or contribution in aid of construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to advance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for board inspection.

(2) Where the customer will attach within 30 days after completion of the sewer main extension, the following shall apply:

1. If the estimated construction cost to provide a sewer main extension is less than or equal to five times the estimated annual revenue calculated on the basis of similarly situated customers, the utility shall finance and make the extension without requiring an advance for construction.

2. If the estimated construction cost to provide a sewer main extension is greater than five times the estimated annual revenue calculated on the basis of similarly situated customers, the applicant for such an extension shall contract with the utility and deposit no more than 30 days prior to commencement of construction an advance for construction equal to the estimated construction cost less five times the estimated annual revenue to be produced by the customer.

(3) Where the customer will not attach within the agreed-upon attachment period after completion of the sewer main extension, the customer requesting the extension shall contract with the utility and deposit no more than 30 days prior to the commencement of construction an advance for construction equal to the estimated construction cost.

(4) Advance payments for plant additions or extensions are subject to refund for a ten-year period and may be made by cash, surety bond, or equivalent surety. In the event a surety bond or an equivalent surety is used, the bonded amount shall have added to it a surcharge equal to the annual interest rate paid by the utility on customer bill deposits times the bonded amount. The bond shall be called by the utility at the end of one year or when the earned refunds are equal to the bonded amount, less the surcharge, whichever occurs first. If, upon termination of the surety bond, there are sufficient earned refunds to offset the amount of the surety bond, less the surcharge, the depositors shall provide the utility the amount of the surcharge. If, upon termination of the surety bond, there are not sufficient earned refunds to offset the full amount of the surety bond, less the surcharge, the depositors shall provide the utility a cash deposit equal to the amount of the surety bond, less refunds accumulated during the bonded period, plus the surcharge, or the depositor may pay the interest on the previous year's bond and rebond the balance due to the utility for a second or third one-year period. Upon receipt of such cash deposit, the utility shall release the surety bond. The cash deposit, less the surcharge, shall be subject to refund by the utility for the remainder of the ten-year period.

*c. Refunds.* The utility shall refund to the depositor for a period of ten years from the date of the original advance, a pro-rata share for each service attachment to the sewer main extension. The pro-rata refund shall be computed in the following manner:

(1) If the combined total of five times the estimated annual revenue for the depositor and each customer who has attached to the sewer main extension exceeds the total estimated construction cost to

provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) If the combined total of five times the estimated annual revenue for the depositor and each customer who has attached to the sewer main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal five times the estimated annual revenue of the customer attaching to the extension.

(3) In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

*d. Extensions not required.* Utilities shall not be required to make extensions as described in subrule 21.11(5), unless the extension shall be of a permanent nature.

*e. More favorable methods permitted.* Subrule 21.11(5) shall not be construed as prohibiting any utility from making a contract with a customer in a different manner, if the contract provides a more favorable method of extension to the customer, so long as no discrimination is practiced among customers or depositors.

*f. Connections to utility-owned equipment.* Subrule 21.11(5) shall not be construed as prohibiting an individual, partnership, or company from constructing its own extension. An extension constructed by a nonutility entity must meet at a minimum the applicable portions of the standards in subrules 21.13(1) and 21.13(2) and such other reasonable standards as the utility may employ in constructing extensions, so long as the standards do not mandate a particular supplier. All connections to the utility-owned equipment or facilities shall be made by the utility at the applicant's expense. At the time of attachment to the utility-owned equipment or facilities, the applicant shall transfer ownership of the extension to the utility and the utility shall book the original cost of construction of the extension as an advance for construction, and refunds shall be made to the applicant in accordance with paragraph 21.11(5)*"c."* The utility shall be responsible for the operation and maintenance of the extension after attachment.

*g. Reimbursement of extension construction cost.* If the utility requires the applicant to construct the extension to meet service requirements greater than those necessary to serve the applicant's service needs, the utility shall reimburse the applicant for the difference in cost between the extension specifications required by the utility and the extension specifications necessary to meet the applicant's service needs.

**21.11(6)** *Sanitary sewer service connections.* The utility shall supervise the installation and maintenance of that portion of the sanitary sewer service line from the main to and including the customer's meter or, if the customer does not have a separate meter for sanitary sewage disposal service, to the point where the sanitary sewage line exits the customer's residence or building.

**21.11(7)** *Location of meters.* Meters may be installed outside or inside as mutually agreed upon by the customer and utility.

*a. Outside meters.* Meters installed out-of-doors shall be readily accessible for maintenance and reading, and so far as practicable the location should be mutually acceptable to the customer and the utility. The meter shall be installed so as to be unaffected by climatic conditions and reasonably secure from injury.

*b. Inside meters.* Meters installed inside the customer's building shall be located as near as possible to the point where the service pipe enters the building and at a point reasonably secure from injury and readily accessible for reading and testing. In cases of multiple buildings, such as two-family dwellings or apartment buildings, the meter(s) shall be located within the premises served or in a common location accessible to the customers and the utility.

**199—21.12(476) Customer relations for sanitary sewage disposal service.**

**21.12(1)** *Customer information.*

*a.* Each utility shall:

(1) Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rates and rules relating to the service of the utility are available for public inspection.

(2) Maintain up-to-date maps, plans, or records of its entire system.

(3) Upon request, assist the customer or prospective customers in selecting the most economic rate schedule available for the proposed type of service.

(4) Upon request, inform the customer as to the method of reading meters and the method of computing the customer's bill.

(5) Notify customers affected by a change in rates or rate classification as directed in the board's rules of practice and procedures.

*b.* Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

*c.* Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling 877-565-4450; by writing to 1375 E. Court Avenue, Des Moines, Iowa 50319-0069; or by email to customer@iub.iowa.gov."

*d.* The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

**21.12(2)** *Customer deposits.*

*a. Deposit required.* Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

*b. Amount of deposit.* The total deposit shall not be less than $5 nor more in amount than the maximum estimated charge for service for 90 days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

*c. New or additional deposit.* A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

*d. Customer's deposit receipt.* The utility shall issue a receipt of deposit to each customer from whom a deposit is received.

*e. Interest on customer deposits.* Interest shall be paid by the utility to each customer required to make a deposit. Utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

*f. Deposit refund.* The deposit shall be refunded after 12 consecutive months of prompt payment unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit shall be refunded upon termination of the customer's service.

*g. Unclaimed deposits.* The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall

maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest, less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.13.

**21.12(3)** *Customer bill forms.* The utility shall bill each customer as promptly as possible following the reading of the customer's meter. Each bill, including the customer's receipt, shall show:

*a.* The date and the reading of the meter at the beginning and at the end of the period or the period for which the bill is rendered.

*b.* The number of units metered when applicable.

*c.* Identification of the applicable rates.

*d.* The gross and net amounts of the bill.

*e.* The late payment charge and the latest date on which the bill may be paid without incurring a penalty.

*f.* A distinct marking to identify an estimated bill.

**21.12(4)** *Bill payment terms.* The bill shall be considered rendered to the customer when deposited in the U.S. mail with postage prepaid. If delivery is by other than U.S. mail, the bill shall be considered rendered when delivered to the last-known address of the party responsible for payment. There shall be not less than 20 days between the rendering of a bill and the date by which the account becomes delinquent.

*a. Late payment charge.* A utility's late payment charge shall not exceed 1.5 percent per month of the past due amount.

*b. Charge forgiveness.* Each account shall be granted not less than one complete forgiveness of a late payment charge each calendar year. The utility's rules shall be definitive that on one monthly bill in each period of eligibility, the utility will accept the net amount of such bill as full payment for such month after expiration of the net payment period. The rules shall state how the customer is notified that the eligibility has been used.

**21.12(5)** *Customer records.* The utility shall retain customer billing records for the length of time necessary to permit the utility to comply with subrule 21.12(6), but not less than three years.

**21.12(6)** *Adjustment of bills.* Bills which are incorrect due to meter or billing errors are to be adjusted as follows:

*a. Fast meters.* Whenever a meter in service is tested and found to have overregistered more than 2 percent, the utility shall adjust the customer's bill for the excess amount paid. The estimated amount of overcharge is to be based on the period the error first developed or occurred. If that period cannot be definitely determined, it will be assumed that the overregistration existed for a period equal to one-half the time since the meter was last tested, or one-half the time since the meter was installed unless otherwise ordered by the board. If the recalculated bill indicates that more than $5 is due an existing customer, the full amount of the calculated difference between the amount paid and the recalculated amount shall be refunded to the customer. If a refund is due a person no longer a customer of the utility, a notice shall be mailed to the last-known address.

*b. Nonregistering meters.* Whenever a meter in service is found not to register, the utility may render an estimated bill.

*c. Slow meters.* Whenever a meter is found to be more than 2 percent slow, the utility may bill the customer for the amount the test indicates the customer has been undercharged for the period of inaccuracy, or a period as estimated in paragraph 21.12(6)*"a"* unless otherwise ordered by the board.

*d. Overcharges.* When a customer has been overcharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the amount of the overcharge shall be adjusted, refunded, or credited to the customer. The time period for which the utility is required to adjust, refund, or credit the customer's bill shall not exceed five years unless otherwise ordered by the board.

*e. Undercharges.* When a customer has been undercharged as a result of incorrect reading of the meter, incorrect application of the rate schedule, incorrect connection of the metering installation, or other similar reasons, the tariff may provide for billing the amount of the undercharge to the customer.

The time period for which the utility may adjust for the undercharge need not exceed five years unless otherwise ordered by the board. The maximum bill shall not exceed the billing for like charges (e.g., usage-based, fixed, or service charges) in the 12 months preceding discovery of the error unless otherwise ordered by the board.

**21.12(7)** *Refusal of service.* Service may be refused only for the reasons listed in paragraphs 21.12(7)*"a"* through *"e"* below. Unless otherwise stated, the customer shall be permitted at least 12 days, excluding Sundays and legal holidays, following mailing of notice of refusal in which to take necessary action before service is refused. When a person is refused service, the utility shall notify the person promptly of the reason for the refusal to serve and of the person's right to file a complaint about the utility's decision with the board. Refusal of service shall be pursuant to tariffs approved by the board.

*a.* Without notice in the event of an emergency.

*b.* Without notice in the event of tampering with the equipment furnished and owned by the utility or obtaining service by fraudulent means.

*c.* For violation of or noncompliance with the utility's rules on file with the board.

*d.* For failure of the customer to permit the utility reasonable access to its equipment.

*e.* For nonpayment of bill.

**21.12(8)** *Method of refusing service.* A utility may refuse sanitary sewage disposal service to a residential customer by disconnecting water service or by arranging for the disconnection of water service pursuant to an agreement with the entity providing water service. Except in the event of an emergency or with prior written authorization from the Board, a utility shall not refuse sanitary sewage disposal service to a residential customer by physically disconnecting the customer's sanitary sewage service connection.

**21.12(9)** *Reconnection and charges.* In all cases of discontinuance of sanitary sewage disposal service where the cause of discontinuance has been corrected, the utility shall promptly restore service to the customer. The utility may make a reasonable charge applied uniformly for reconnection of service.

**21.12(10)** *Insufficient reasons for denying service.* The following shall not constitute sufficient cause for refusal of service to a present or prospective customer:

*a.* Delinquency in payment for service by a previous occupant of the premises to be served.

*b.* Failure to pay the bill of another customer as guarantor thereof.

*c.* Failure to pay for a different type or class of utility service.

*d.* Delinquency in payment for service arising more than ten years prior, as measured from the most recent of the last date of service, the physical disconnection of service, or the last payment or promise of payment made by the customer.

**21.12(11)** *Customer complaints.* A "complaint" shall mean any objection to the charge, facilities, or quality of service of a utility.

*a.* Each utility shall investigate promptly and thoroughly and keep a record of all complaints received from its customers that will enable it to review its procedures and actions. The record shall show the name and address of the complainant, the date and nature of the complaint, and its disposition and the date resolved.

*b.* All complaints caused by a major service interruption shall be summarized in a single report.

*c.* A record of the original complaint shall be kept for a period of three years after final settlement of the complaint.

**199—21.13(476) Engineering practice for sanitary sewage disposal service.**

**21.13(1)** *Requirement of good engineering practice.* The design and construction of the utility's plant and collection system shall conform to good standard engineering practice.

**21.13(2)** *Inspection.* Each utility shall adopt and follow a program of inspection of its plant and collection system in order to determine the necessity for replacement and repair. The frequency of the various inspections shall be based on the utility's experience and accepted good practice.

**199—21.14(476) Meter testing for sanitary sewage disposal service.** If a utility uses separate meters to measure the volume of sewage disposal, the separate meters shall be tested in substantial conformity with the requirements of rule 199—21.6(476).

**199—21.15(476) Standards of quality of sanitary sewage disposal service.**

**21.15(1)** *Operation and maintenance.* The utility shall maintain and operate any sewage treatment facility with adequate capacity and equipment to convey all sewage to the plant and to treat the sewage to the quality required by all applicable laws and regulations.

**21.15(2)** *Design and construction.* The design and construction of the utility's collection system, treatment facility, and all additions and modifications shall conform to the requirements prescribed by law.

**21.15(3)** *Reasonable efforts to prevent.* The utility shall make reasonable efforts to eliminate or prevent the entry of surface water or groundwater into its sanitary sewage system or the unlawful release of untreated sanitary sewage. The utility may request assistance from any appropriate state, county, or municipal authorities, but such a request does not relieve the utility of its responsibility to make reasonable efforts to eliminate or prevent the entry of surface water or groundwater and to contain sewage. The utility shall notify the board when it requests assistance from other state or local agencies.

**21.15(4)** *Bypass and upset.* The utility shall comply with the bypass and upset provisions of rule 567—63.6(455B).

**21.15(5)** *Interruption of sanitary sewage disposal service.*

*a.* A utility shall make a reasonable effort to prevent interruptions of sanitary sewage service. When an emergency interruption occurs, the utility shall reestablish service with the shortest possible delay consistent with the safety of its customers and the general public.

*b.* When a utility finds it necessary to schedule an interruption of service, it shall make a reasonable effort to notify all customers to be affected by the interruption. The notice shall include the time and anticipated duration of the interruption. Interruptions shall be scheduled at hours which create the least inconvenience to the customer. The utility shall notify the board when sanitary sewage service is interrupted. Except for emergencies, a utility shall not interrupt sanitary sewage disposal service unless water service has been disconnected at least 24 hours prior.

*c.* A utility shall retain records of interruptions for a period of at least five years.

**21.15(6)** *Separate class.* Sanitary sewage service shall be considered a separate class of service for ratemaking purposes.

**199—21.16(476) Incident reports regarding sanitary sewage disposal service.**

**21.16(1)** *Notification.* A sanitary sewage utility shall notify the board about any incident involving:

*a.* An unlawful or uncontained release of sewage into the environment;

*b.* A flood event affecting the utility's plant or collection system;

*c.* A cyberattack affecting the well-being of the utility, its customers, or the environment; or

*d.* Any event that causes serious adverse impact on the health of people or the environment or interrupts service to the customer.

**21.16(2)** *Information required.* The utility shall notify the board immediately, or as soon as practical, of any reportable incident by emailing the duty officer at dutyofficer@iub.iowa.gov or, when email is not available, by calling the board duty officer at (515)745-2332. The person sending the email shall leave the telephone number of a person who can provide the following information:

*a.* The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.

*b.* The location of the incident.

*c.* The time of the incident.

*d.* The number of deaths or personal injuries and the extent of those injuries, if any.

*e.* The number of services interrupted.

*f.* A summary of the significant information available to the utility regarding the likely cause of the incident and the estimated extent of damage.

**21.16(3)** *Normal service restored.* The utility shall notify the board when the incident has ended and normal sanitary sewage service has been restored.

**199—21.17(476) Separate books for acquired sanitary sewage disposal service assets.** A utility acquiring the whole or any substantial part of a sanitary sewage system with a fair market value of $500,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(4) shall maintain separate books and records for the acquired system until the utility's next general rate case, unless otherwise ordered by the board.

ITEM 9. Adopt the following **new** 199—Chapter 21, Division IV heading, to precede new rule 199—21.18(476):

DIVISION IV
STORM WATER DRAINAGE UTILITIES

ITEM 10. Adopt the following **new** rules 199—21.18(476) to 199—21.21(476):

**199—21.18(476) Standards of quality of storm water drainage service.**

**21.18(1)** *Design and maintenance.* Systems for storm water drainage by piped collection shall be designed and maintained in conformance with good engineering practices. Such systems shall be designed and maintained so as to minimize flooding and ponding outside of areas designed to retain storm water and to reasonably provide for the drainage of normally anticipated rainfall events.

**21.18(2)** *Inspection.* Storm water drainage systems shall be inspected on a routine basis to identify and correct the blockage or obstruction of intake structures. The frequency of such inspections shall be based upon the utility's experience and be pursuant to tariffs approved by the board.

**21.18(3)** *Connections.* Utilities providing piped storm water drainage shall control the installation and maintenance of the piped connection up to and including all storm water intakes. Connections shall be adequate to receive all storm water drainage from properties upgradient of the storm water drainage connection unless other upgradient connections are provided. Connections shall be pursuant to tariffs approved by the board.

**21.18(4)** *Rates.* Rates for storm water drainage service provided by a utility may be based upon the acreage drained, or by some other method pursuant to tariffs approved by the board.

**21.18(5)** *Separate class.* Storm water drainage service shall be considered a separate class of service for ratemaking purposes.

**199—21.19(476) Customer relations for storm water drainage service.**

**21.19(1)** *Customer information.*

*a.* Each utility shall:

(1) Post a notice in a conspicuous place in each office of the utility where applications for service are received, informing the public that copies of the rates and rules relating to the service of the utility are available for public inspection.

(2) Maintain up-to-date maps, plans, or records of its entire storm water drainage system.

(3) Upon request, assist the customer or prospective customers in selecting the most economic rate schedule available for the proposed type of service.

(4) Upon request, inform the customer as to the method of computing the customer's bill.

(5) Notify customers affected by a change in rates or rate classification as directed in the board rules of practice and procedures.

*b.* Inquiries for information or complaints to a utility shall be resolved promptly and courteously. Employees who receive customer telephone calls and office visits shall be qualified and trained in screening and resolving complaints, to avoid a preliminary recitation of the entire complaint to employees without ability and authority to act. The employee shall provide identification to the customer which will enable the customer to reach that employee again if needed.

*c.* Each utility shall notify its customers, by bill insert or notice on the bill form, of the address and telephone number where a utility representative qualified to assist in resolving the complaint can

be reached. The bill insert or notice shall also include the following statement: "If (utility name) does not resolve your complaint, you may request assistance from the Iowa Utilities Board by calling 877-565-4450; by writing to 1375 E. Court Avenue, Des Moines, Iowa 50319-0069; or by email to customer@iub.iowa.gov."

*d.* The bill insert or notice on the bill will be provided no less than annually. Any utility which does not use the standard form contained herein shall file its proposed form in its tariff for approval. A utility which bills by postcard may place an advertisement in a local newspaper of general circulation or a customer newsletter instead of a mailing. The advertisement must be of a type size that is easily legible and conspicuous and must contain the information set forth above.

**21.19(2)** *Customer deposits.*

*a. Deposit required.* Each utility may require from any customer or prospective customer a deposit intended to guarantee payment of bills for service.

*b. Amount of deposit.* The total deposit shall not be less than $5 nor more in amount than the maximum estimated charge for service for 90 days or as may reasonably be required by the utility in cases involving service for short periods or special occasions.

*c. New or additional deposit.* A new or additional deposit may be required from a customer when a deposit has been refunded or is found to be inadequate. Written notice shall be mailed advising the customer of any new or additional deposit requirement. The customer shall have no less than 12 days from the date of mailing to comply. No written notice is required to be given of a deposit required as a prerequisite for commencing initial service.

*d. Customer's deposit receipt.* The utility shall issue a receipt of deposit to each customer from whom a deposit is received.

*e. Interest on customer deposits.* Interest shall be paid by the utility to each customer required to make a deposit. Utilities shall compute interest on customer deposits at 7.5 percent per annum, compounded annually. Interest for prior periods shall be computed at the rate specified by the rule in effect for the period in question. Interest shall be paid for the period beginning with the date of deposit to the date of refund or to the date that the deposit is applied to the customer's account, or to the date the customer's bill becomes permanently delinquent. The date of refund is that date on which the refund or the notice of deposit refund is forwarded to the customer's last-known address. The date a customer's bill becomes permanently delinquent is the most recent date the account is treated as uncollectible.

*f. Deposit refund.* The deposit shall be refunded after 12 consecutive months of prompt payment, unless the utility has evidence to indicate that the deposit is necessary to ensure payment of bills for service. In any event, the deposit shall be refunded upon termination of the customer's service.

*g. Unclaimed deposits.* The utility shall make a reasonable effort to return each unclaimed deposit and accrued interest after the termination of the services for which the deposit was made. The utility shall maintain a record of deposit information for at least two years or until such time as the deposit, together with accrued interest, escheats to the state pursuant to Iowa Code section 556.4, at which time the record and deposit, together with accrued interest, less any lawful deductions, shall be sent to the state treasurer pursuant to Iowa Code section 556.13.

**199—21.20(476) Incident reports regarding storm water drainage service.**

**21.20(1)** *Notification.* A utility shall notify the board about any incident involving:

*a.* A non-storm water discharge from the storm water drainage system;

*b.* A flood event affecting the storm water drainage system;

*c.* A cyberattack affecting the well-being of the utility, its customers, or the environment; or

*d.* Any event that causes serious adverse impact on the health of people or the environment or interrupts service to the customer.

**21.20(2)** *Information required.* The utility shall notify the board immediately, or as soon as practical, of any reportable incident by emailing the duty officer at dutyofficer@iub.iowa.gov or, when email is not available, by calling the board duty officer at (515)745-2332. The person sending the email shall leave the telephone number of a person who can provide the following information:

*a.* The name of the utility, the name and telephone number of the person making the report, and the name and telephone number of a contact person knowledgeable about the incident.

*b.* The location of the incident.

*c.* The time of the incident.

*d.* The number of deaths or personal injuries and the extent of those injuries, if any.

*e.* The number of services interrupted.

*f.* A summary of the significant information available to the utility regarding the likely cause of the incident and the estimated extent of damage.

**21.20(3)** *Normal service restored.* The utility shall notify the board when the incident has ended and normal storm water drainage service has been restored.

**199—21.21(476) Separate books for acquired storm water drainage service assets.** A utility acquiring the whole or any substantial part of a storm water drainage system with a fair market value of $500,000 or more from a non-rate-regulated entity described in Iowa Code section 476.1(4) shall maintain separate books and records for the acquired system until the utility's next general rate case, unless otherwise ordered by the board.

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