



# IOWA ADMINISTRATIVE BULLETIN

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NUMBER 12  
Pages 1329 to 1492

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## 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]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

**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, lettered paragraph, or numbered subparagraph).

|                       |                |
|-----------------------|----------------|
| 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) |

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 7.17, 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 2010

| NOTICE<br>SUBMISSION<br>DEADLINE | NOTICE<br>PUB.<br>DATE | HEARING<br>OR<br>COMMENTS<br>20 DAYS | FIRST<br>POSSIBLE<br>ADOPTION<br>DATE<br>35 DAYS | ADOPTED<br>FILING<br>DEADLINE | ADOPTED<br>PUB.<br>DATE | FIRST<br>POSSIBLE<br>EFFECTIVE<br>DATE | POSSIBLE<br>EXPIRATION<br>OF NOTICE<br>180 DAYS |
|----------------------------------|------------------------|--------------------------------------|--------------------------------------------------|-------------------------------|-------------------------|----------------------------------------|-------------------------------------------------|
| <b>*Dec. 23 '09*</b>             | Jan. 13 '10            | Feb. 2 '10                           | Feb. 17 '10                                      | Feb. 19 '10                   | Mar. 10 '10             | Apr. 14 '10                            | July 12 '10                                     |
| Jan. 8                           | Jan. 27                | Feb. 16                              | Mar. 3                                           | Mar. 5                        | Mar. 24                 | Apr. 28                                | July 26                                         |
| Jan. 22                          | Feb. 10                | Mar. 2                               | Mar. 17                                          | Mar. 19                       | Apr. 7                  | May 12                                 | Aug. 9                                          |
| Feb. 5                           | Feb. 24                | Mar. 16                              | Mar. 31                                          | Apr. 2                        | Apr. 21                 | May 26                                 | Aug. 23                                         |
| Feb. 19                          | Mar. 10                | Mar. 30                              | Apr. 14                                          | Apr. 16                       | May 5                   | June 9                                 | Sep. 6                                          |
| Mar. 5                           | Mar. 24                | Apr. 13                              | Apr. 28                                          | Apr. 30                       | May 19                  | June 23                                | Sep. 20                                         |
| Mar. 19                          | Apr. 7                 | Apr. 27                              | May 12                                           | May 14                        | June 2                  | July 7                                 | Oct. 4                                          |
| Apr. 2                           | Apr. 21                | May 11                               | May 26                                           | <b>***May 26***</b>           | June 16                 | July 21                                | Oct. 18                                         |
| Apr. 16                          | May 5                  | May 25                               | June 9                                           | June 11                       | June 30                 | Aug. 4                                 | Nov. 1                                          |
| Apr. 30                          | May 19                 | June 8                               | June 23                                          | <b>***June 23***</b>          | July 14                 | Aug. 18                                | Nov. 15                                         |
| May 14                           | June 2                 | June 22                              | July 7                                           | July 9                        | July 28                 | Sep. 1                                 | Nov. 29                                         |
| <b>***May 26***</b>              | June 16                | July 6                               | July 21                                          | July 23                       | Aug. 11                 | Sep. 15                                | Dec. 13                                         |
| June 11                          | June 30                | July 20                              | Aug. 4                                           | Aug. 6                        | Aug. 25                 | Sep. 29                                | Dec. 27                                         |
| <b>***June 23***</b>             | July 14                | Aug. 3                               | Aug. 18                                          | Aug. 20                       | Sep. 8                  | Oct. 13                                | Jan. 10 '11                                     |
| July 9                           | July 28                | Aug. 17                              | Sep. 1                                           | <b>***Sep. 1***</b>           | Sep. 22                 | Oct. 27                                | Jan. 24 '11                                     |
| July 23                          | Aug. 11                | Aug. 31                              | Sep. 15                                          | Sep. 17                       | Oct. 6                  | Nov. 10                                | Feb. 7 '11                                      |
| Aug. 6                           | Aug. 25                | Sep. 14                              | Sep. 29                                          | Oct. 1                        | Oct. 20                 | Nov. 24                                | Feb. 21 '11                                     |
| Aug. 20                          | Sep. 8                 | Sep. 28                              | Oct. 13                                          | Oct. 15                       | Nov. 3                  | Dec. 8                                 | Mar. 7 '11                                      |
| <b>***Sep. 1***</b>              | Sep. 22                | Oct. 12                              | Oct. 27                                          | <b>***Oct. 27***</b>          | Nov. 17                 | Dec. 22                                | Mar. 21 '11                                     |
| Sep. 17                          | Oct. 6                 | Oct. 26                              | Nov. 10                                          | <b>***Nov. 10***</b>          | Dec. 1                  | Jan. 5 '11                             | Apr. 4 '11                                      |
| Oct. 1                           | Oct. 20                | Nov. 9                               | Nov. 24                                          | <b>***Nov. 24***</b>          | Dec. 15                 | Jan. 19 '11                            | Apr. 18 '11                                     |
| Oct. 15                          | Nov. 3                 | Nov. 23                              | Dec. 8                                           | <b>***Dec. 8***</b>           | Dec. 29                 | Feb. 2 '11                             | May 2 '11                                       |
| <b>***Oct. 27***</b>             | Nov. 17                | Dec. 7                               | Dec. 22                                          | <b>***Dec. 22***</b>          | Jan. 12 '11             | Feb. 16 '11                            | May 16 '11                                      |
| <b>***Nov. 10***</b>             | Dec. 1                 | Dec. 21                              | Jan. 5 '11                                       | Jan. 7 '11                    | Jan. 26 '11             | Mar. 2 '11                             | May 30 '11                                      |
| <b>***Nov. 24***</b>             | Dec. 15                | Jan. 4 '11                           | Jan. 19 '11                                      | Jan. 21 '11                   | Feb. 9 '11              | Mar. 16 '11                            | June 13 '11                                     |
| <b>***Dec. 8***</b>              | Dec. 29                | Jan. 18 '11                          | Feb. 2 '11                                       | Feb. 4 '11                    | Feb. 23 '11             | Mar. 30 '11                            | June 27 '11                                     |
| <b>***Dec. 22***</b>             | Jan. 12 '11            | Feb. 1 '11                           | Feb. 16 '11                                      | Feb. 18 '11                   | Mar. 9 '11              | Apr. 13 '11                            | July 11 '11                                     |

### PRINTING SCHEDULE FOR IAB

| <u>ISSUE NUMBER</u> | <u>SUBMISSION DEADLINE</u>   | <u>ISSUE DATE</u> |
|---------------------|------------------------------|-------------------|
| 14                  | Wednesday, December 9, 2009  | December 30, 2009 |
| 15                  | Wednesday, December 23, 2009 | January 13, 2010  |
| 16                  | Friday, January 8, 2010      | January 27, 2010  |

**PLEASE NOTE:**

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

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

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

The Administrative Rules Review Committee will hold its regular, statutory meeting on Tuesday, December 8, at 9 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the November 18, 2009, Iowa Administrative Bulletin.

### **COLLEGE STUDENT AID COMMISSION[283]**

EDUCATION DEPARTMENT[281]"umbrella"

All Iowa opportunity scholarship program—eligibility, 8.3 Filed **ARC 8333B**..... 12/2/09

### **CORRECTIONS DEPARTMENT[201]**

Iowa sex offender registry—use of electronic monitoring, 38.1 to 38.3 Notice **ARC 8321B**..... 12/2/09

### **DENTAL BOARD[650]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Nonpayment of state debt, ch 36 Filed **ARC 8329B**..... 12/2/09

### **HISTORICAL DIVISION[223]**

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

HRDP grant eligibility—approval as a certified local government (CLG), 49.3 Notice **ARC 8336B**..... 12/2/09

### **HUMAN SERVICES DEPARTMENT[441]**

Individual development accounts, rescind ch 10 Filed Emergency **ARC 8340B**..... 12/2/09

Notices of legal settlement disputes, 15.2(1)"a"(2) Filed Emergency **ARC 8341B**..... 12/2/09

Estate recovery, 76.12(7) Filed **ARC 8343B**..... 12/2/09

Medicaid—mandated reductions in reimbursement, 78.10(1), 78.13(5), 79.1(8), 79.16, 81.6(16), 81.10(4) Notice **ARC 8345B**, also Filed Emergency **ARC 8344B**..... 12/2/09

PROMISE JOBS—decrease in mileage reimbursement rate for travel, 93.11(3)"b"(2) Notice **ARC 8347B**, also Filed Emergency **ARC 8346B**..... 12/2/09

State payment program waiting list, 153.53, 153.54, 153.58(1) Notice **ARC 8320B**, also Filed Emergency **ARC 8319B**..... 12/2/09

### **IOWA FINANCE AUTHORITY[265]**

Housing assistance retention agreement for persons affected by the natural disasters of 2008, 29.6(5) Notice **ARC 8324B**, also Filed Emergency **ARC 8323B**..... 12/2/09

Iowa jobs program application procedure, 32.4(6) Notice **ARC 8328B**, also Filed Emergency **ARC 8327B**..... 12/2/09

Affordable housing assistance grant fund allocation plan, 35.1 Notice **ARC 8326B**, also Filed Emergency **ARC 8325B**..... 12/2/09

### **LABOR SERVICES DIVISION[875]**

WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Elevator safety board, amendments to chs 65 to 70 Notice **ARC 8322B**..... 12/2/09

### **MEDICINE BOARD[653]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Nonpayment of state debt, 12.1 to 12.3 Filed **ARC 8353B**..... 12/2/09

### **NATURAL RESOURCE COMMISSION[571]**

NATURAL RESOURCES DEPARTMENT[561]"umbrella"

Aquatic plants in public waters; ginseng harvesting, amendments to ch 54 Notice **ARC 8332B**..... 12/2/09

### **PROFESSIONAL LICENSURE DIVISION[645]**

PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Noncompliance rules regarding child support, loan repayment and nonpayment of state debt, 4.16; rescind chs 14, 15 Notice **ARC 8334B**..... 12/2/09

Board of barbering—national examinations, continuing education, fees, 5.2, 21.1 to 21.3, 21.5, 21.7, 21.16(3), 23.8, 24.2(1), 24.3(2) Filed **ARC 8349B**..... 12/2/09

Board of cosmetology arts and sciences, amend chs 60 and 61; rescind ch 63; adopt ch 63 Notice **ARC 8330B**..... 12/2/09

Respiratory care—accrediting organization, 261.1, 261.3(1), 263.2(11) Filed **ARC 8348B**..... 12/2/09

### **PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]**

Propane education and research council, 1.1 to 1.3, 1.4(2) Filed **ARC 8350B**..... 12/2/09

### **PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

Mediation—fees, 7.3(2), 7.3(8) Notice **ARC 8318B**, also Filed Emergency **ARC 8317B**..... 12/2/09

|                                |                        |                  |         |
|--------------------------------|------------------------|------------------|---------|
| Mediation—fees, 7.3(2), 7.3(8) | Notice of Termination  | <b>ARC 8337B</b> | 12/2/09 |
| Mediation—fees, 7.3(2), 7.3(8) | <u>Filed Emergency</u> | <b>ARC 8338B</b> | 12/2/09 |

#### **PUBLIC HEALTH DEPARTMENT[641]**

|                                                                                                    |               |                  |         |
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| Plumbing and mechanical systems board—administrative and regulatory authority, ch 27               |               |                  |         |
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| Plumbing and mechanical systems board—licensure fees, ch 28 title, 28.1                            | <u>Notice</u> | <b>ARC 8361B</b> | 12/2/09 |
| Plumbing and mechanical systems board—application, licensure, and examination, amendments to ch 29 | <u>Notice</u> | <b>ARC 8362B</b> | 12/2/09 |
| Plumbing and mechanical systems board—waivers or variances from administrative rules, ch 31        | <u>Filed</u>  | <b>ARC 8359B</b> | 12/2/09 |
| Plumbing and mechanical systems board—licensee discipline, ch 32                                   | <u>Notice</u> | <b>ARC 8363B</b> | 12/2/09 |
| Plumbing and mechanical systems board—complaints and investigations, ch 34                         | <u>Notice</u> | <b>ARC 8364B</b> | 12/2/09 |
| Plumbing and mechanical systems board—licensure of nonresident applicant—reciprocity, ch 35        | <u>Notice</u> | <b>ARC 8365B</b> | 12/2/09 |
| Plumbing and mechanical systems board—petitions for rule making, ch 36                             | <u>Notice</u> | <b>ARC 8366B</b> | 12/2/09 |
| Renovation, remodeling, and repainting—lead hazard notification process, amendments to ch 69       | <u>Notice</u> | <b>ARC 8355B</b> | 12/2/09 |
| Lead-based paint activities, amendments to ch 70                                                   | <u>Notice</u> | <b>ARC 8357B</b> | 12/2/09 |

#### **REVENUE DEPARTMENT[701]**

|                                                                                                                             |               |                  |         |
|-----------------------------------------------------------------------------------------------------------------------------|---------------|------------------|---------|
| Interest rate for calendar year 2010, 10.2(29)                                                                              | <u>Notice</u> | <b>ARC 8354B</b> | 12/2/09 |
| Married taxpayers filing joint federal but separate Iowa returns, 40.15                                                     | <u>Filed</u>  | <b>ARC 8356B</b> | 12/2/09 |
| Responsibilities of assessors, 71.1(1), 71.2(1)                                                                             | <u>Notice</u> | <b>ARC 8352B</b> | 12/2/09 |
| Real estate tax and declaration of value; property tax credits and exemptions, 79.1, 79.5, 79.6, 80.12, 80.13, 80.26, 80.28 | <u>Filed</u>  | <b>ARC 8358B</b> | 12/2/09 |

#### **TRANSPORTATION DEPARTMENT[761]**

|                                                                                   |               |                                                |                          |
|-----------------------------------------------------------------------------------|---------------|------------------------------------------------|--------------------------|
| REAL ID driver's licenses and nonoperator's identification cards, 601.7, 630.2(7) |               |                                                |                          |
|                                                                                   | <u>Notice</u> | <b>ARC 8342B</b> , also <u>Filed Emergency</u> | <b>ARC 8339B</b> 12/2/09 |

#### **UTILITIES DIVISION[199]**

COMMERCE DEPARTMENT[181]"umbrella"

|                                                                                           |                              |                  |         |
|-------------------------------------------------------------------------------------------|------------------------------|------------------|---------|
| Small wind innovation zones, 15.19, 15.20                                                 | <u>Notice</u>                | <b>ARC 8335B</b> | 12/2/09 |
| Emergency outage reporting requirements for certificated local exchange carriers, 22.2(9) |                              |                  |         |
|                                                                                           | <u>Notice of Termination</u> | <b>ARC 8351B</b> | 12/2/09 |

#### **VETERINARY MEDICINE BOARD[811]**

|                                                          |                              |                  |         |
|----------------------------------------------------------|------------------------------|------------------|---------|
| Board of veterinary medicine, amendments to chs 1, 8, 10 | <u>Notice of Termination</u> | <b>ARC 8316B</b> | 12/2/09 |
|----------------------------------------------------------|------------------------------|------------------|---------|

#### **VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

|                                                  |              |                  |         |
|--------------------------------------------------|--------------|------------------|---------|
| Summer youth and green corps programs, chs 9, 10 | <u>Filed</u> | <b>ARC 8315B</b> | 12/2/09 |
|--------------------------------------------------|--------------|------------------|---------|

**CORRECTIONS DEPARTMENT[201]**

|                                                                                           |                                                                                                 |                                        |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------|
| Electronic monitoring of Iowa sex offenders, 38.1 to 38.3<br>IAB 12/2/09 <b>ARC 8321B</b> | First Floor Conference Room<br>Department of Corrections<br>510 E. 12th St.<br>Des Moines, Iowa | December 22, 2009<br>11 a.m. to 1 p.m. |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------|----------------------------------------|

**ENVIRONMENTAL PROTECTION COMMISSION[567]**

|                                                                                                                   |                                                                                                       |                                        |
|-------------------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------------------|----------------------------------------|
| Clean water state revolving fund, amendments to chs 90 to 93<br>IAB 11/18/09 <b>ARC 8312B</b>                     | Public Library<br>235 E. Hilton St.<br>Marengo, Iowa                                                  | December 8, 2009<br>10:30 a.m.         |
|                                                                                                                   | Public Library<br>609 Cayuga St.<br>Storm Lake, Iowa                                                  | December 9, 2009<br>1 p.m.             |
|                                                                                                                   | DNR Water Supply Office<br>401 SW 7th St., Suite M<br>Des Moines, Iowa                                | December 10, 2009<br>10 a.m.           |
| Satellite facilities and regional collection centers, amendments to chs 123, 211<br>IAB 11/18/09 <b>ARC 8313B</b> | Fourth Floor West Conference Room<br>Wallace State Office Bldg.<br>502 E. 9th St.<br>Des Moines, Iowa | December 8, 2009<br>11 a.m. to 12 noon |

**HISTORICAL DIVISION[223]**

|                                                                                                             |                                                                            |                              |
|-------------------------------------------------------------------------------------------------------------|----------------------------------------------------------------------------|------------------------------|
| HRDP grant eligibility—approval as a certified local government (CLG), 49.3<br>IAB 12/2/09 <b>ARC 8336B</b> | Tone Board Room, Historical Bldg.<br>600 E. Locust St.<br>Des Moines, Iowa | December 22, 2009<br>10 a.m. |
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**LABOR SERVICES DIVISION[875]**

|                                                                                   |                                                                                           |                                               |
|-----------------------------------------------------------------------------------|-------------------------------------------------------------------------------------------|-----------------------------------------------|
| Inflatable amusement rides, 61.1(1), 62.2(9)<br>IAB 11/18/09 <b>ARC 8301B</b>     | Stanley Room<br>Iowa Workforce Development<br>1000 E. Grand Ave.<br>Des Moines, Iowa      | December 10, 2009<br>9 a.m.<br>(If requested) |
| Elevator safety board, amendments to chs 65 to 70<br>IAB 12/2/09 <b>ARC 8322B</b> | Capitol View Room<br>Iowa Workforce Development<br>1000 E. Grand Ave.<br>Des Moines, Iowa | December 23, 2009<br>9 a.m.<br>(If requested) |

**NATURAL RESOURCE COMMISSION[571]**

|                                                                                                          |                                                                                     |                           |
|----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|---------------------------|
| Aquatic plants in public waters; ginseng harvesting, amendments to ch 54<br>IAB 12/2/09 <b>ARC 8332B</b> | Fourth Floor East Conference Room<br>Wallace State Office Bldg.<br>Des Moines, Iowa | January 5, 2010<br>1 p.m. |
|----------------------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|---------------------------|

**PROFESSIONAL LICENSURE DIVISION[645]**

|                                                                                                                   |                                                                                   |                                     |
|-------------------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|-------------------------------------|
| Child support, loan repayment, nonpayment of state debt, 4.16; rescind chs 14, 15<br>IAB 12/2/09 <b>ARC 8334B</b> | Fifth Floor Board Conference Room<br>Lucas State Office Bldg.<br>Des Moines, Iowa | December 22, 2009<br>8 to 8:30 a.m. |
| Consistency with statute—"felony" changed to "crime," 45.2(11)<br>IAB 11/18/09 <b>ARC 8278B</b>                   | Fifth Floor Board Room 526<br>Lucas State Office Bldg.<br>Des Moines, Iowa        | December 8, 2009<br>9:30 to 10 a.m. |

**PROFESSIONAL LICENSURE DIVISION[645] (Cont'd)**

|                                                                                                      |                                                                                   |                                      |
|------------------------------------------------------------------------------------------------------|-----------------------------------------------------------------------------------|--------------------------------------|
| Board of cosmetology arts and sciences, amendments to chs 60, 61, 63<br>IAB 12/2/09 <b>ARC 8330B</b> | Fifth Floor Board Conference Room<br>Lucas State Office Bldg.<br>Des Moines, Iowa | December 22, 2009<br>1 to 1:30 p.m.  |
| Consistency with statute—"felony" changed to "crime," 134.2(11)<br>IAB 11/18/09 <b>ARC 8277B</b>     | Fifth Floor Board Room 526<br>Lucas State Office Bldg.<br>Des Moines, Iowa        | December 8, 2009<br>9 to 9:30 a.m.   |
| Consistency with statute—"felony" changed to "crime," 329.2(11)<br>IAB 11/18/09 <b>ARC 8282B</b>     | Fifth Floor Board Room 526<br>Lucas State Office Bldg.<br>Des Moines, Iowa        | December 8, 2009<br>10 to 10:30 a.m. |

**PUBLIC HEALTH DEPARTMENT[641]**

|                                                                                                                                                |                                                                                          |                                        |
|------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------|----------------------------------------|
| Plumbing and mechanical systems board—administrative/regulatory authority, 27.1 to 27.4, 27.6(1)<br>IAB 12/2/09 <b>ARC 8360B (ICN Network)</b> | Public Library<br>529 Pierce St.<br>Sioux City, Iowa                                     | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Public Library<br>400 Willow Ave.<br>Council Bluffs, Iowa                                | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Meeting Room C, Public Library<br>415 Commercial St.<br>Waterloo, Iowa                   | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Ottumwa Regional Health Center<br>1001 E. Pennsylvania<br>Ottumwa, Iowa                  | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Kelinson Rm., Public Library Info Center<br>2950 Learning Campus Dr.<br>Bettendorf, Iowa | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | First Floor, Hoover State Office Bldg.<br>1305 E. Walnut<br>Des Moines, Iowa             | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Iowa Western Community College – 2<br>923 E. Washington<br>Clarinda, Iowa                | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | National Guard Armory<br>1160 19th St. SW<br>Mason City, Iowa                            | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Crestwood High School<br>1000 4th Ave. E.<br>Cresco, Iowa                                | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Archdiocesan Pastoral Center<br>1229 Mount Loretta<br>Dubuque, Iowa                      | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Spirit Lake High School<br>2701 Hill Ave.<br>Spirit Lake, Iowa                           | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                | Prairie Lakes AEA<br>1 Triton Circle, Library Bldg.<br>Fort Dodge, Iowa                  | December 22, 2009<br>11 a.m. to 1 p.m. |

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)**

|                                                                                                                                                                     |                                                                                       |                                        |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------------------------------------------------------------------------|----------------------------------------|
| <b>(ICN Network)</b>                                                                                                                                                | Kirkwood Community College<br>Room 117<br>1816 Lower Muscatine Rd.<br>Iowa City, Iowa | December 22, 2009<br>11 a.m. to 1 p.m. |
|                                                                                                                                                                     | Burlington High School<br>421 Terrace Dr.<br>Burlington, Iowa                         | December 22, 2009<br>11 a.m. to 1 p.m. |
| Plumbing and mechanical systems<br>board—license fees, 28.1<br>IAB 12/2/09 <b>ARC 8361B</b><br><b>(ICN Network)</b>                                                 | [See list of hearings in <b>ARC 8360B</b> above]                                      | December 22, 2009<br>11 a.m. to 1 p.m. |
| Plumbing and mechanical systems<br>board—application, licensure,<br>and examination,<br>amendments to ch 29<br>IAB 12/2/09 <b>ARC 8362B</b><br><b>(ICN Network)</b> | [See list of hearings in <b>ARC 8360B</b> above]                                      | December 22, 2009<br>11 a.m. to 1 p.m. |
| Plumbing and mechanical systems<br>board—licensee discipline,<br>adopt ch 32<br>IAB 12/2/09 <b>ARC 8363B</b><br><b>(ICN Network)</b>                                | [See list of hearings in <b>ARC 8360B</b> above]                                      | December 22, 2009<br>11 a.m. to 1 p.m. |
| Plumbing and mechanical<br>systems board—complaints<br>and investigations, adopt ch 34<br>IAB 12/2/09 <b>ARC 8364B</b><br><b>(ICN Network)</b>                      | [See list of hearings in <b>ARC 8360B</b> above]                                      | December 22, 2009<br>11 a.m. to 1 p.m. |
| Plumbing and mechanical systems<br>board—licensure of nonresident<br>applicant—reciprocity,<br>adopt ch 35<br>IAB 12/2/09 <b>ARC 8365B</b><br><b>(ICN Network)</b>  | [See list of hearings in <b>ARC 8360B</b> above]                                      | December 22, 2009<br>11 a.m. to 1 p.m. |
| Plumbing and mechanical systems<br>board—petitions for rule making,<br>adopt ch 36<br>IAB 12/2/09 <b>ARC 8366B</b><br><b>(ICN Network)</b>                          | [See list of hearings in <b>ARC 8360B</b> above]                                      | December 22, 2009<br>11 a.m. to 1 p.m. |
| Renovation, remodeling, and<br>repainting—lead hazard<br>notification process,<br>amendments to ch 69<br>IAB 12/2/09 <b>ARC 8355B</b><br><b>(ICN Network)</b>       | Public Library<br>507 Poplar<br>Atlantic, Iowa                                        | December 22, 2009<br>10 a.m.           |
|                                                                                                                                                                     | Great Prairie AEA Regional Office<br>3601 West Ave.<br>Burlington, Iowa               | December 22, 2009<br>10 a.m.           |
|                                                                                                                                                                     | Room 144, DMACC – Carroll Campus<br>906 N. Grant Rd.<br>Carroll, Iowa                 | December 22, 2009<br>10 a.m.           |
|                                                                                                                                                                     | Room 550, Fifth Floor, DHS<br>411 3rd St. SE<br>Cedar Rapids, Iowa                    | December 22, 2009<br>10 a.m.           |
|                                                                                                                                                                     | National Guard Armory<br>Dewey Rd., RR 1<br>Centerville, Iowa                         | December 22, 2009<br>10 a.m.           |

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)****(ICN Network)**

|                                                                                                             |                              |
|-------------------------------------------------------------------------------------------------------------|------------------------------|
| Room 116, Chariton High School<br>501 N. Grand<br>Chariton, Iowa                                            | December 22, 2009<br>10 a.m. |
| Room 105, Clinton Community College<br>1000 Lincoln Blvd.<br>Clinton, Iowa                                  | December 22, 2009<br>10 a.m. |
| Colo-Nesco Senior High School<br>919 West St.<br>Colo, Iowa                                                 | December 22, 2009<br>10 a.m. |
| Loess Hills AEA 13<br>24997 Hwy. 92<br>Council Bluffs, Iowa                                                 | December 22, 2009<br>10 a.m. |
| Turner Room, Green Valley AEA 14<br>1405 N. Lincoln<br>Creston, Iowa                                        | December 22, 2009<br>10 a.m. |
| Room 119, Kimberly Center<br>1002 W. Kimberly<br>Davenport, Iowa                                            | December 22, 2009<br>10 a.m. |
| Decorah High School<br>100 E. Claiborne Dr.<br>Decorah, Iowa                                                | December 22, 2009<br>10 a.m. |
| Department of Public Health<br>Sixth Floor, Lucas State Office Bldg.<br>321 E. 12th St.<br>Des Moines, Iowa | December 22, 2009<br>10 a.m. |
| Room 2, Keystone AEA 1<br>2310 Chaney Rd.<br>Dubuque, Iowa                                                  | December 22, 2009<br>10 a.m. |
| Public Library<br>424 Central Ave.<br>Fort Dodge, Iowa                                                      | December 22, 2009<br>10 a.m. |
| AEA 267 Regional Office<br>909 S. 12th St.<br>Marshalltown, Iowa                                            | December 22, 2009<br>10 a.m. |
| North Iowa Area Community College – 1<br>Room 106, Activity Center<br>500 College Dr.<br>Mason City, Iowa   | December 22, 2009<br>10 a.m. |
| Muscatine Community College<br>Room 60, Larson Hall<br>152 Colorado St.<br>Muscatine, Iowa                  | December 22, 2009<br>10 a.m. |
| Onawa-West Monona Jr.-Sr. High School<br>1314 15th St.<br>Onawa, Iowa                                       | December 22, 2009<br>10 a.m. |
| Rieckhoff Room, Public Library<br>112 Albany Ave. SE<br>Orange City, Iowa                                   | December 22, 2009<br>10 a.m. |
| Great Prairie AEA – 1<br>2814 N. Court St.<br>Ottumwa, Iowa                                                 | December 22, 2009<br>10 a.m. |

**PUBLIC HEALTH DEPARTMENT[641] (Cont'd)****(ICN Network)**

Southwestern Community College – 1  
Room 116, Red Oak Center  
2300 N. 4th St.  
Red Oak, Iowa

December 22, 2009  
10 a.m.

Room 206, Northwest AEA  
1520 Morningside Ave.  
Sioux City, Iowa

December 22, 2009  
10 a.m.

Iowa Lakes Community College  
Fiber Optic Rm. 118, Attendance Center  
1900 N. Grand Ave.  
Spencer, Iowa

December 22, 2009  
10 a.m.

Hawkeye Community College – 1  
Room 110, Tama Hall  
1501 E. Orange Rd.  
Waterloo, Iowa

December 22, 2009  
10 a.m.

Lead-based paint activities,  
amendments to ch 70  
IAB 12/2/09 **ARC 8357B**  
**(ICN Network)**

[See list of hearings in **ARC 8355B** above]

December 22, 2009  
10 a.m.

**REAL ESTATE COMMISSION[193E]**

Permitted activities of unlicensed  
support personnel, 7.13(4)  
IAB 11/18/09 **ARC 8291B**

Second Floor  
Professional Licensing Conference Room  
1920 SE Hulsizer Rd.  
Ankeny, Iowa

December 8, 2009  
9:30 a.m.

**TRANSPORTATION DEPARTMENT[761]**

REAL ID driver's licenses and  
nonoperator's identification  
cards, 601.7, 630.2(7)  
IAB 12/2/09 **ARC 8342B**  
(See also **ARC 8339B** herein)

Motor Vehicle Division Offices  
6310 SE Convenience Blvd.  
Ankeny, Iowa

December 29, 2009  
1 p.m.  
(If requested)

**UTILITIES DIVISION[199]**

Electric interconnection of  
distributed generation facilities,  
amend 15.8, 15.10, 15.11(4);  
adopt ch 45  
IAB 10/7/09 **ARC 8201B**

Board Hearing Room  
350 Maple St.  
Des Moines, Iowa

December 10, 2009  
10 a.m.

Small wind innovation zones,  
15.19, 15.20  
IAB 12/2/09 **ARC 8335B**

Board Hearing Room  
350 Maple St.  
Des Moines, Iowa

January 11, 2010  
10 a.m.

High-volume access service,  
22.1(3), 22.14(2), 22.20(5)  
IAB 10/7/09 **ARC 8227B**

Board Hearing Room  
350 Maple St.  
Des Moines, Iowa

December 8, 2009  
9 a.m.

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

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

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

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

The following list will be updated as changes occur:

ADMINISTRATIVE SERVICES DEPARTMENT[11]  
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]  
    Agricultural Development Authority[25]  
    Soil Conservation Division[27]  
ATTORNEY GENERAL[61]  
AUDITOR OF STATE[81]  
BEEF INDUSTRY COUNCIL, IOWA[101]  
BLIND, DEPARTMENT FOR THE[111]  
CAPITAL INVESTMENT BOARD, IOWA[123]  
CITIZENS’ AIDE[141]  
CIVIL RIGHTS COMMISSION[161]  
COMMERCE DEPARTMENT[181]  
    Alcoholic Beverages Division[185]  
    Banking Division[187]  
    Credit Union Division[189]  
    Insurance Division[191]  
    Professional Licensing and Regulation Bureau[193]  
        Accountancy Examining Board[193A]  
        Architectural Examining Board[193B]  
        Engineering and Land Surveying Examining Board[193C]  
        Landscape Architectural Examining Board[193D]  
        Real Estate Commission[193E]  
        Real Estate Appraiser Examining Board[193F]  
        Interior Design Examining Board[193G]  
    Savings and Loan Division[197]  
    Utilities Division[199]  
CORRECTIONS DEPARTMENT[201]  
    Parole Board[205]  
CULTURAL AFFAIRS DEPARTMENT[221]  
    Arts Division[222]  
    Historical Division[223]  
ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]  
    City Development Board[263]  
IOWA FINANCE AUTHORITY[265]  
EDUCATION DEPARTMENT[281]  
    Educational Examiners Board[282]  
    College Student Aid Commission[283]  
    Higher Education Loan Authority[284]  
    Iowa Advance Funding Authority[285]  
    Libraries and Information Services Division[286]  
    Public Broadcasting Division[288]  
    School Budget Review Committee[289]  
EGG COUNCIL, IOWA[301]  
ELDER AFFAIRS DEPARTMENT[321]  
EMPOWERMENT BOARD, IOWA[349]  
ENERGY INDEPENDENCE, OFFICE OF[350]  
ETHICS AND CAMPAIGN DISCLOSURE BOARD, IOWA[351]  
EXECUTIVE COUNCIL[361]  
FAIR BOARD[371]  
HUMAN RIGHTS DEPARTMENT[421]

Community Action Agencies Division[427]  
Criminal and Juvenile Justice Planning Division[428]  
Deaf Services Division[429]  
Persons With Disabilities Division[431]  
Latino Affairs Division[433]  
Status of African-Americans, Division on the[434]  
Status of Women Division[435]  
Status of Iowans of Asian and Pacific Islander Heritage[436]  
HUMAN SERVICES DEPARTMENT[441]  
INSPECTIONS AND APPEALS DEPARTMENT[481]  
Employment Appeal Board[486]  
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Racing and Gaming Commission[491]  
State Public Defender[493]  
IOWA PUBLIC EMPLOYEES' RETIREMENT SYSTEM[495]  
LAW ENFORCEMENT ACADEMY[501]  
LIVESTOCK HEALTH ADVISORY COUNCIL[521]  
LOTTERY AUTHORITY, IOWA[531]  
MANAGEMENT DEPARTMENT[541]  
Appeal Board, State[543]  
City Finance Committee[545]  
County Finance Committee[547]  
NATURAL RESOURCES DEPARTMENT[561]  
Energy and Geological Resources Division[565]  
Environmental Protection Commission[567]  
Natural Resource Commission[571]  
Preserves, State Advisory Board for[575]  
PETROLEUM UNDERGROUND STORAGE TANK FUND BOARD, IOWA COMPREHENSIVE[591]  
PREVENTION OF DISABILITIES POLICY COUNCIL[597]  
PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]  
PUBLIC DEFENSE DEPARTMENT[601]  
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PUBLIC EMPLOYMENT RELATIONS BOARD[621]  
PUBLIC HEALTH DEPARTMENT[641]  
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Nursing Board[655]  
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PUBLIC SAFETY DEPARTMENT[661]  
RECORDS COMMISSION[671]  
REGENTS BOARD[681]  
Archaeologist[685]  
REVENUE DEPARTMENT[701]  
SECRETARY OF STATE[721]  
SHEEP AND WOOL PROMOTION BOARD, IOWA[741]  
TELECOMMUNICATIONS AND TECHNOLOGY COMMISSION, IOWA[751]  
TRANSPORTATION DEPARTMENT[761]  
Railway Finance Authority[765]  
TREASURER OF STATE[781]  
TURKEY MARKETING COUNCIL, IOWA[787]  
UNIFORM STATE LAWS COMMISSION[791]  
VETERANS AFFAIRS, IOWA DEPARTMENT OF[801]  
VETERINARY MEDICINE BOARD[811]  
VOLUNTEER SERVICE, IOWA COMMISSION ON[817]  
VOTER REGISTRATION COMMISSION[821]  
WORKFORCE DEVELOPMENT DEPARTMENT[871]  
Labor Services Division[875]  
Workers' Compensation Division[876]  
Workforce Development Board and Workforce Development Center Administration Division[877]

## ARC 8321B

## CORRECTIONS DEPARTMENT[201]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 904.108, the Iowa Department of Corrections hereby gives Notice of Intended Action to amend Chapter 38, “Sex Offender Management and Treatment,” Iowa Administrative Code.

The purpose of these amendments is to ensure that the Department’s administrative rules are consistent with 2009 Iowa Acts, Senate File 340, which makes statutory changes to the Iowa sex offender registry process. 2009 Iowa Acts, Senate File 340, took effect on July 1, 2009. The amendments proposed herein implement the changes made by that legislation.

Any interested person may make written suggestions or comments on the proposed amendments on or before December 22, 2009. Such written material should be sent to the Department of Corrections, Legal and Policy Division, 510 E. 12th Street, Des Moines, Iowa 50319.

There will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m. in the First Floor Conference Room at the Iowa Department of Corrections Building, 510 E. 12th Street, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject matter of the amendments.

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

These amendments are intended to implement Iowa Code section 904.108 and 2009 Iowa Acts, Senate File 340.

The following amendments are proposed.

ITEM 1. Amend rule 201—38.1(692A,903B) as follows:

**201—38.1(692A,903B) Application of rules.** The following rules apply to sex offender registration electronic monitoring and hormonal intervention therapy.

ITEM 2. Rescind rule 201—38.2(692A,903B) and adopt the following new rule in lieu thereof:

**201—38.2(692A,903B) Electronic monitoring.** It is the intent of the Iowa department of corrections that the electronic monitoring system (EMS) shall be used to enhance public safety. Appropriate levels of EMS should be used to verify the location and restrict the movement of sex offenders based upon a validated risk assessment, the sex offender’s criminal history, progress in treatment and supervision, and other relevant factors. EMS is additionally governed by the provisions of department of corrections policy OP-SOP-06.

**38.2(1) Definitions.**

“*Electronic monitoring system*” or “*EMS*” is a term used collectively for technology that determines the location of offenders who have restricted movement while being supervised in their respective community. EMS may also incorporate the ability to conduct random substance abuse testing.

“*Offender*” means a person who is required to register with the Iowa sex offender registry.

**38.2(2) Selection of offenders for EMS.** All offenders on supervision for a current sex offense who are required to be registered as a sex offender under Iowa Code chapter 692A shall be placed on EMS immediately after assignment to supervision. This level may be changed based on risk assessment.

## CORRECTIONS DEPARTMENT[201](cont'd)

**38.2(3) Risk assessment instrument.** All required risk assessments shall be conducted utilizing the risk assessment instruments outlined below as approved by the department of corrections. The risk assessment should be completed within 30 days prior to the offender's release from custody or upon the offender's placement on probation, parole, or work release.

*a. Static-99.* Designed for adult male sex offenders aged 18 and over and juvenile male offenders waived to adult court who have a specific identified victim.

*b. ISORA-8.* Designed for adult male and female sex offenders aged 18 and over who may or may not have a specific identified victim.

*c. Stable 2007.* Designed to assess dynamic risk factors for sex offense recidivism for the purpose of treatment, supervision, and monitoring of sex offenders primarily on community correctional supervision.

*d. Level of service inventory—revised.* A quantitative risk assessment instrument to determine the offender's criminogenic risk, programming needs and the required level of service.

**38.2(4) Notification of victims.** A judicial district department of correctional services shall notify a registered victim regarding a sex offender convicted of a sex offense against a minor who is under the supervision of a judicial district department of correctional services of the following:

*a.* The beginning date for use of an electronic tracking and monitoring system to supervise the sex offender and the type of electronic tracking and monitoring system used.

*b.* The date of any modification to the use of an electronic tracking and monitoring system and the nature of the change.

NOTE: Notification includes the initial notification to victims of the date that an offender has been placed on an electronic monitoring device, notification as to the date an electronic monitoring device was changed with greater or less monitoring capabilities (GPS to radio frequency or radio frequency to GPS), and notification as to the date the offender was removed from an EMS.

**38.2(5) Additional rules.** The department of public safety's rules regarding the Iowa sex offender registry are published in 661—Chapter 83.

ITEM 3. Rescind and reserve rule **201—38.3(692A)**.

ITEM 4. Amend **201—Chapter 38**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapter 692A as amended by 2009 Iowa Acts, Senate File 340, and Iowa Code chapter 903B.

**ARC 8336B**

## **HISTORICAL DIVISION[223]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs proposes to amend Chapter 49, “Historical Resource Development Program Grants,” Iowa Administrative Code.

The proposed amendment to Chapter 49 adds language that clarifies the Certified Local Government requirement for grant applicants in the Historic Preservation category.

Public comments concerning the proposed amendment will be accepted until 4:30 p.m. on December 22, 2009. Interested persons may submit written comments by contacting Kristen Vander Molen, Department of Cultural Affairs, Historical Building, 600 East Locust Street, Des Moines, Iowa 50319-0290; fax (515)281-6975; E-mail [kristen.vandermolen@iowa.gov](mailto:kristen.vandermolen@iowa.gov). Persons who wish to convey their views orally should contact the Department of Cultural Affairs at (515)281-4228.

## HISTORICAL DIVISION[223](cont'd)

Also, there will be a public hearing on December 22, 2009, at 10 a.m. at the above address in the Tone Board Room. At the hearing, persons may present their views either orally or in writing. Persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendment.

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

This amendment is intended to implement Iowa Code chapter 303.

The following amendment is proposed.

Amend rule 223—49.3(303) as follows:

**223—49.3(303) Funding policies.** The grant programs shall be conducted according to published guidelines that outline funding priorities, review criteria, application forms, adjudication processes and grantee requirements. Programs include REAP/HRDP regular grants, REAP/HRDP emergency grants, and country school grants.

**49.3(1) to 49.3(12)** No change.

**49.3(13)** Grant funds shall not be awarded to a city or county government for a project in the historic preservation category unless the city or county government has been approved as a Certified Local Government (CLG) by the National Park Service and determined to be a CLG in good standing by the state historic preservation office (SHPO). CLG cities, counties, and land use districts must be current in their submission of Iowa CLG annual report forms to be considered in good standing.

**49.3(13) 49.3(14)** All government, nonprofit corporation, or Indian tribe applicants shall demonstrate that the historical resource is accessible to the public no less than an average of 16 hours per week or shall provide a statement concerning actions to be taken in the forthcoming 36 months after the grant award to provide the above-specified accessibility of the funded project to the public, unless access is restricted by specific federal or state code. Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

**49.3(14) 49.3(15)** All private corporations, businesses, and individual applicants shall demonstrate that the historical resources which benefit from being acquired, developed or preserved, or the portions of the historical resource so benefited, shall be accessible to the public no less than an average of 96 hours per year or shall provide a statement concerning actions to be taken in the forthcoming 36 months after the grant award to provide the above-specified accessibility of the funded project to the public, unless access is restricted by specific federal or state code. Archaeological sites that are part of funded projects are not required by this program to be accessible to the public.

**49.3(15) 49.3(16)** A grantee shall credit the historical resource development program in all promotions, publicity, advertising, and printed materials relating to the grant-supported project, with the following credit line or a reasonable facsimile: “This program is supported in part by the State Historical Society of Iowa, Historical Resource Development Program.” Noncompliance with this requirement shall jeopardize future funding of the grantee by the historical division.

**49.3(16) 49.3(17)** The historical division may, for cause, find that a grantee is not in compliance with the requirements of this program or the terms of the contract. At the division’s discretion, remedies for noncompliance may include penalties or the repayment of program funds. Reasons for a finding of noncompliance include but are not limited to: the grantee’s use of program funds for activities not described in its application or not permitted under the program; the grantee’s failure to complete approved activities in a timely manner; the grantee’s failure to comply with any applicable professional standards, state rules, or federal regulations; the lack of a continuing capacity on the part of the grantee to carry out the approved program in a timely manner; or violation of the terms of the contract.

**ARC 8345B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services proposes to amend Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments reduce the reimbursement for most Medicaid services to achieve the savings required by Executive Order 19, which mandated a 10 percent across-the-board cut in expenditures. Specifically, these amendments:

- Reduce the rental allowance for durable medical equipment from 150 percent of the purchase price to 100 percent of the purchase price.
- Reduce the reimbursement for nonemergency medical transportation by private automobile from 34 cents per mile to 30 cents per mile.
- Limit the reimbursement for nonemergency medical transportation by public transportation to \$1.40 per mile.
- Reduce the reimbursement for generic and brand-name specialty drugs from the average wholesale price less 12 percent to the average wholesale price less 17 percent.
- Reduce the multiplier used to calculate the state maximum allowable cost for generic drugs (SMAC) from 1.4 to 1.2 and clarify that the average acquisition cost is based on generic products only.
- Reduce the pharmacy dispensing fee from \$4.57 to \$4.34 for the remainder of the state fiscal year.
- Reduce payments to the following providers by 5 percent for services rendered during the remainder of state fiscal year 2010: hospitals (not including critical access hospitals), nursing facilities, and psychiatric medical institutions for children; physicians, podiatrists, advanced registered nurse practitioners, audiologists, occupational and physical therapists, psychologists, optometrists, opticians, and chiropractors; dealers of medical equipment and supplies, hearing aids, orthopedic shoes, and prosthetic devices; remedial and behavioral health services, laboratory, X-ray, and ambulance providers; ambulatory surgical centers, clinics, home health agencies, rehabilitation agencies, lead inspection agencies, family planning providers, and screening centers.
- Reduce payments to the following providers by 2.5 percent for services rendered during the remainder of state fiscal year 2010: dentists, community mental health centers, targeted case management providers, and home- and community-based waiver service providers.
- Provide that computation of administrative, environmental, and property expenses for nursing facilities shall be based on 90 percent of facility capacity, instead of 85 percent, unless the number of inpatient days is higher.
- Provide that nursing facilities shall be reimbursed for holding a bed for a hospitalized resident only if the facility’s occupancy rate is at 95 percent or more. For those facilities whose occupancy rate meets that level, the payment will be made at 25 percent of the facility’s daily rate, instead of 42 percent of the daily rate.

These amendments do not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8344B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

Any interested person may make written comments on the proposed amendments on or before December 22, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Executive Order 19 and Iowa Code chapter 249A.

**ARC 8347B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 239B.4(6) and 239B.8(2), the Department of Human Services proposes to amend Chapter 93, “PROMISE JOBS Program,” Iowa Administrative Code.

This amendment decreases the mileage reimbursement rate for travel to PROMISE JOBS activities in a private vehicle from \$.34 per mile to \$.30 per mile effective December 1, 2009.

The Department must reduce its projected spending for state fiscal year 2010 to comply with Executive Order 19, which mandated a 10 percent across-the-board spending reduction. Additionally, caseloads in the Family Investment Program and the PROMISE JOBS program are increasing at a higher rate than anticipated for state fiscal year 2010. Decreasing the mileage reimbursement rate will assist the Department in reducing its spending and staying within budget.

This amendment does not provide for waivers in specified situations. Needed savings will not be achieved if waivers are granted. Requests for the waiver of any rule may be submitted under the Department’s general rule on exceptions at 441—1.8(17A,217).

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 8346B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendment on or before December 22, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

This amendment is intended to implement Executive Order 19 and Iowa Code section 239B.8(2).

**ARC 8320B****HUMAN SERVICES DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 153, “Funding for Local Services,” Iowa Administrative Code.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments specify how the State Payment Program will implement a waiting list. Implementation of the waiting list is necessary for the state to operate within the reduced appropriation due to Executive Order 19, which mandated a 10 percent across-the-board spending reduction.

New applicants will be placed on a waiting list until the Department determines there is money to fund another applicant's services. The rules specify the procedures for submitting applications, determining the application date, and determining the priority of services for persons on the waiting list.

Placement on the waiting list will not apply to:

- Persons applying to the program for payment of commitment costs.
- Persons waiting for placement who are ready for discharge from an involuntary placement in an inpatient setting (such as a state mental health institute or a private hospital).

Requests for the waiver of any provision of the rules may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8319B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

Any interested person may make written comments on the proposed amendments on or before December 22, 2009. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Analysis and Appeals, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Executive Order 19 and Iowa Code section 331.440.

**ARC 8324B**

**IOWA FINANCE AUTHORITY[265]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority proposes to amend Chapter 29, “Jump-Start Housing Assistance Program,” Iowa Administrative Code.

The purpose of this amendment is to revise the program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

The Authority does not intend to grant waivers under the provisions of this rule, other than as may be allowed under the Authority's general rules concerning waivers.

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on December 22, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

The Authority anticipates that it may make changes to the proposed amendment based on comments received from the public.

On November 4, 2009, the Authority adopted this amendment emergency, pursuant to Iowa Code section 17A.4(3), to be effective immediately upon filing with the Administrative Rules Coordinator. The Adopted and Filed Emergency amendment is published herein as **ARC 8323B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code sections 16.5(1)“r” and 16.40 and 2009 Iowa Acts, Senate File 289.

**ARC 8328B****IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority proposes to amend Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of this amendment is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by amending rule 265—32.4(16,83GA,SF376), relating to the Iowa Jobs Program application procedures.

The Authority does not intend to grant waivers under the provisions of this rule, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on December 22, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

The Authority anticipates that it may make changes to the proposed amendment based on comments received from the public.

The amendment was also Adopted and Filed Emergency and is published herein as **ARC 8327B**. The purpose of this Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

**ARC 8326B****IOWA FINANCE AUTHORITY[265]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, section 30, the Iowa Finance Authority proposes to amend Chapter 35, “Affordable Housing Assistance Grant Fund,” Iowa Administrative Code.

The purpose of this amendment is to implement 2009 Iowa Acts, Senate File 376, section 30, by expanding the Affordable Housing Assistance Grant Fund program to include adaptive reuse projects.

The Authority does not intend to grant waivers under the provisions of this rule, other than as may be allowed under the Authority’s general rules concerning waivers.

The Authority will receive written comments on the proposed amendment until 4:30 p.m. on December 22, 2009. Comments may be addressed to Mark Thompson, Iowa Finance Authority, 2015 Grand Avenue, Des Moines, Iowa 50312. Comments may also be faxed to Mark Thompson at (515)725-4901 or E-mailed to [mark.thompson@iowa.gov](mailto:mark.thompson@iowa.gov).

The Authority anticipates that it may make changes to the proposed amendment based on comments received from the public.

IOWA FINANCE AUTHORITY[265](cont'd)

This amendment was also Adopted and Filed Emergency and is published herein as **ARC 8325B**. The purpose of the Notice is to solicit comment on that submission, the subject matter of which is incorporated by reference.

This amendment is intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, section 30.

## **ARC 8322B**

### **LABOR SERVICES DIVISION[875]**

#### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby gives Notice of Intended Action to amend Chapter 65, “Elevator Safety Board Administrative and Regulatory Authority,” Chapter 66, “Waivers or Variances from Administrative Rules by the Elevator Safety Board,” Chapter 67, “Elevator Safety Board Petitions for Rule Making,” Chapter 68, “Declaratory Orders by the Elevator Safety Board,” Chapter 69, “Contested Cases Before the Elevator Safety Board,” and Chapter 70, “Public Records and Fair Information Practices of the Elevator Safety Board,” Iowa Administrative Code.

These amendments make editorial and technical changes; adopt a definition of “conveyance”; require that a petitioner use the appropriate Board form to petition for board action; change the language concerning public comment during board meetings; clarify procedures for informal review of inspection reports; set forth procedures for an appeal from an action by the Labor Commissioner to suspend, deny or revoke an operating permit; and clarify procedures for issuance of a subpoena during a contested case.

The purposes of these amendments are to protect the health and safety of the public, make the rules more clear, align the language with the authority of Iowa Code chapters 17A and 89A, and implement legislative intent.

If requested in accordance with Iowa Code section 17A.4(1)“b” by the close of business on December 22, 2009, a public hearing will be held on December 23, 2009, at 9 a.m. in the Capitol View Room at 1000 East Grand Avenue, Des Moines, Iowa. Interested persons will be given the opportunity to make oral statements and file documents concerning the proposed amendments. The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should call (515)242-5869 in advance to arrange access or other needed services.

Written data, views, or arguments to be considered in adoption shall be submitted by interested persons no later than December 23, 2009, to Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209. Comments may be sent electronically to [kathleen.uehling@iwd.iowa.gov](mailto:kathleen.uehling@iwd.iowa.gov).

These amendments are intended to implement Iowa Code chapter 89A.

The following amendments are proposed.

ITEM 1. Amend rule 875—65.1(89A) as follows:

**875—65.1(89A) Definitions.** The definitions contained in this rule apply to 875—Chapters 65 to 73.

“*Board*” means the elevator safety board.

“*Board office*” means the offices of the division of labor services of the department of workforce development.

“*Commissioner*” means the labor commissioner of the state of Iowa.

## LABOR SERVICES DIVISION[875](cont'd)

“Conveyance” means an elevator, construction personnel hoist, dumbwaiter, escalator, moving walk, lift or inclined or vertical wheelchair lift subject to regulation under Iowa Code chapter 89A, and includes hoistways, rails, guides, and all other related mechanical and electrical equipment.

ITEM 2. Rescind rule 875—65.2(89A) and adopt the following **new** rule in lieu thereof:

**875—65.2(89A) Purpose and authority of board.** The purpose of the board is to perform statutory duties pursuant to Iowa Code chapter 89A. The mission of the board is to protect the public health, safety and welfare relating to the safe and proper installation, repair, maintenance, alteration, use, and operation of conveyances in the state. The authority and responsibilities of the board include, but are not limited to:

**65.2(1)** Adopting rules necessary to protect public health, safety and welfare and to administer the duties of the board.

**65.2(2)** Hearing and deciding appeals concerning inspection reports that relate to the installation, operation, and maintenance of conveyances in the state.

**65.2(3)** Hearing and deciding appeals concerning actions by the commissioner to deny, suspend or revoke operating permits.

**65.2(4)** Establishing fees.

**65.2(5)** Establishing committees of the board, the members and chairpersons of which shall be appointed by the board chairperson.

**65.2(6)** Performing any other function authorized by law.

ITEM 3. Rescind subrule **65.3(4)**.

ITEM 4. Amend subrules 65.4(5) and 65.4(6) as follows:

**65.4(5)** Members of the public may be present during board meetings unless the board votes to hold a closed session in accordance with Iowa Code chapter 21. The dates and locations of board meetings may be obtained from the division of labor’s Web site or ~~directly from~~ the board office.

**65.4(6)** At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. Requests to speak for two minutes per person ~~later in the meeting~~ when a particular topic comes before the board ~~should be made at the time of the public comment period and will~~ may be granted at the discretion of the chairperson. ~~No more than ten minutes will be allotted for public comment at any one time unless the chairperson indicates otherwise. Persons who have not asked to address the board during the public comment period may raise their hands to be recognized by the chairperson. Acknowledgment and an opportunity to speak will be at the discretion of the chairperson.~~ The chairperson may limit total public comment time to ten minutes.

ITEM 5. Amend rule 875—66.3(17A,89A), introductory paragraph, as follows:

**875—66.3(17A,89A) Criteria for waiver or variance.** In response to a petition completed pursuant to this chapter, the board may, in its sole discretion, issue an order waiving, in whole or in part, the requirements of a rule as applied to an identified person on the basis of the particular circumstances of that person if the board finds, based on clear and convincing evidence, all of the following:

ITEM 6. Amend subrule 66.4(3) as follows:

**66.4(3) Filing petition.** A petition is deemed filed when it is received in the board’s office. A petition should be sent to the Elevator Safety Board, Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319. The petitioner shall submit the petition and all related materials for consideration at least three weeks prior to a scheduled board meeting for board review of the petition at the meeting.

ITEM 7. Amend rule 875—66.5(17A,89A), introductory paragraph, as follows:

**875—66.5(17A,89A) Content of petition.** The required form for a petition for waiver or variance is available on the board’s Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. A

## LABOR SERVICES DIVISION[875](cont'd)

petition for waiver shall include the following information where applicable and known to the ~~requester~~ petitioner:

ITEM 8. Amend subrules 66.5(5), 66.5(6), 66.5(10) and 66.5(11) as follows:

**66.5(5)** A history of any prior contacts between the board, other departments or agencies of the state of Iowa, or political subdivisions and the petitioner relating to the ~~elevator, escalator, or other equipment conveyance~~ affected by the proposed waiver.

**66.5(6)** ~~Any information known to the requester~~ Information regarding the board's action in similar cases.

**66.5(10)** Signed releases of information authorizing persons with knowledge regarding the ~~request~~ petition to furnish the board with information relevant to the petition for waiver.

**66.5(11)** The state identification number of the ~~elevator, escalator, or related equipment~~ conveyance.

ITEM 9. Amend rule 875—66.6(17A,89A) as follows:

**875—66.6(17A,89A) Additional information.** Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a representative or representatives of the board related to the waiver request. ~~The petitioner must submit all materials for consideration at least three weeks prior to board review.~~

ITEM 10. Amend rule 875—67.1(17A,89A), introductory paragraph, as follows:

**875—67.1(17A,89A) Petitions for rule making.** Any person or agency may file a petition for rule making with the board requesting the adoption, amendment or repeal of a rule. The required form for a petition for rule making is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. The petition shall be filed at the location specified in rule 875—65.5(89A). A petition is deemed filed when it is received by the board office. The board office shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the board an extra copy for this purpose. The petition must be in writing and provide the following information where applicable and known to the ~~requester~~ petitioner:

ITEM 11. Amend subrule 67.1(7) as follows:

**67.1(7)** The board may deny a petition because it does not provide the required information. The petitioner may file a new petition on the same subject that seeks to eliminate the grounds for the board's rejection.

ITEM 12. Amend subrule 68.1(1), introductory paragraph, as follows:

**68.1(1)** The required form for a petition for declaratory order is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. The petition must be in writing and provide the following information where applicable and known to the ~~requester~~ petitioner:

ITEM 13. Amend paragraph **68.1(1)“c”** as follows:

c. ~~The~~ Clear and concise questions the petitioner wants ~~answered, stated clearly and concisely~~ the board to answer.

ITEM 14. Amend subrules 68.3(1) and 68.3(2) as follows:

**68.3(1)** ~~Persons~~ A person who ~~qualify~~ qualifies under any applicable provision of law as an intervenor and who ~~file~~ files a petition for intervention within 20 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

**68.3(2)** ~~Any~~ At the board's discretion, a person who files a petition for intervention ~~at any time more than 20 days after the filing of a petition for declaratory order but prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the board.~~

## LABOR SERVICES DIVISION[875](cont'd)

ITEM 15. Rescind rule 875—68.7(17A,89A) and adopt the following **new** rule in lieu thereof:

**875—68.7(17A,89A) Board review procedures.**

**68.7(1)** Within 30 days after receipt of a petition for a declaratory order, the board shall issue a document that does one of the following:

- a. Declares the applicability of the statute, rule or order to the specified circumstances,
- b. Sets the matter for specific proceedings,
- c. Agrees to issue a declaratory order by a specified time, or
- d. Declines to issue a declaratory order and sets forth the reasons for its actions as provided in subrule 68.9(1).

**68.7(2)** The board may request the petitioner to submit additional information or argument concerning the petition. The board may also solicit comments from any person on the substance of the petition. Also, comments on the substance of the petition may be submitted to the board by any person.

**68.7(3)** The petitioner and all intervenors shall be provided a reasonable opportunity to make a presentation to the board. The length of time allotted for presentation shall be reasonable in light of the complexity and number of issues involved.

ITEM 16. Rescind and reserve rule **875—68.8(17A,89A)**.

ITEM 17. Rescind and reserve paragraph **68.9(1)“b.”**

ITEM 18. Amend rule 875—69.1(17A,89A), introductory paragraph, as follows:

**875—69.1(17A,89A) Reconsideration of inspection report.** The owner or operator of a piece of equipment subject to a written inspection report may, ~~within 30 days of the issuance of the report,~~ petition the commissioner for reconsideration of the report within 30 days of the issuance of the report. Failure to seek timely reconsideration of the inspection report from the commissioner shall be deemed a waiver of all appeal rights under Iowa Code section 89A.13(5). The burden of demonstrating compliance with all applicable statutory provisions, administrative rules, and codes adopted by reference rests upon the petitioning owner or operator.

ITEM 19. Amend subrule 69.1(1), introductory paragraph, as follows:

**69.1(1)** A petition for reconsideration shall be in writing and must be signed by the requesting party or a representative of that party. The required form for a petition for reconsideration is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. A petition for reconsideration shall specify:

ITEM 20. Amend subrule 69.1(2) as follows:

**69.1(2)** A copy of the challenged inspection report shall be attached to the petition for reconsideration. The petitioning party shall also include all relevant documents ~~relevant to the petition for reconsideration~~ that the petitioning party desires the commissioner to consider when evaluating the petition.

ITEM 21. Rescind rule 875—69.2(17A,89A) and adopt the following **new** rule in lieu thereof:

**875—69.2(17A,89A) Appeal to the board.** A decision by the commissioner to deny, suspend, or revoke an operating permit; a decision by the commissioner to deny a petition for reconsideration; and a deemed denial of a petition for reconsideration are subject to appeal to the board. At a minimum, an appeal shall include a short and concise statement of the basis for the appeal. The required form for an appeal to the board is available on the board's Web site at <http://www.iowaworkforce.org/labor/elevatorboard.htm>. An appeal to the board shall be a contested case proceeding subject to the provisions of Iowa Code chapter 17A. The commissioner shall have an automatic right of intervention in any appeal and shall defend the ruling in a contested case proceeding. The deadlines for filing an appeal are set forth below:

**69.2(1) Reconsideration of an inspection report.** An appeal must be filed in writing with the board within 30 calendar days of the earlier of either the issuance of the commissioner's written ruling on a petition for reconsideration or the deemed denial of a petition for reconsideration.

## LABOR SERVICES DIVISION[875](cont'd)

**69.2(2)** *Notification of intent to deny, suspend, or revoke an operating permit.* An appeal must be filed in writing with the board within 30 calendar days of the appellant's receipt of the notification of intent to deny, suspend, or revoke an operating permit.

ITEM 22. Amend rule 875—69.3(17A,89A), introductory paragraph, as follows:

**875—69.3(17A,89A) Informal review.** ~~If the board considers it appropriate, and if requested and consented to by all parties~~ If the appellant requests and the commissioner does not object, the board may ~~grant a voluntary~~ conduct an informal review of the facts and circumstances ~~regarding the inspection report at issue,~~ subject to the provisions of this rule.

ITEM 23. Adopt the following **new** subrule 69.3(3):

**69.3(3)** Rules 875—69.4(17A,89A) through 875—69.31(17A,89A) do not apply during informal review.

ITEM 24. Amend rule 875—69.6(17A,89A) as follows:

**875—69.6(17A,89A) Scope of issues.** Only those issues raised ~~before the commissioner~~ by the petitioner in the petition for reconsideration will be ~~considered~~ preserved for appeal to the board in an appeal from the denial of a petition for reconsideration or an appeal from the deemed denial of a petition for reconsideration.

ITEM 25. Rescind rule 875—69.7(17A,89A) and adopt the following **new** rule in lieu thereof:

**875—69.7(17A,89A) File transmitted to the board.** Within 30 days of the issuance of a notice of hearing, the commissioner shall forward to each board member and all parties of record to the appeal copies of the applicable documents set forth below:

1. Inspection report,
2. Petition for reconsideration with the appellant's attachments,
3. Documents obtained by the commissioner in ruling on the petition for reconsideration,
4. Commissioner's ruling on the petition for reconsideration, and
5. Appeal to the board.

ITEM 26. Amend subrule 69.10(3) as follows:

**69.10(3)** *Filing—when required.* ~~After the notice of hearing, all documents in a contested case proceeding shall be filed with the board office.~~ All documents that are required to be served upon a party shall be filed simultaneously with the board.

ITEM 27. Amend subrules 69.17(1), 69.17(2) and 69.17(4) as follows:

**69.17(1)** ~~The~~ Upon the written request of a party, the presiding officer shall, ~~upon the written request of the appellant or the state,~~ issue a subpoena to compel the attendance of witnesses or to obtain evidence which is deemed necessary in connection with a contested case. A command to produce evidence may be joined with a command to appear at deposition or hearing or may be issued separately.

**69.17(2)** A request for a subpoena shall include the following information, as applicable, ~~unless the subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes:~~

*a. to f.* No change.

**69.17(4)** ~~Unless a subpoena is requested to compel testimony or documents for rebuttal or impeachment purposes, the~~ The presiding officer shall mail or otherwise provide copies of all subpoenas to the parties to the contested case. The person who requested the subpoena is responsible for serving the subpoena upon the subject of the subpoena.

ITEM 28. Amend subrule 69.23(10) as follows:

**69.23(10)** Oral proceedings shall be electronically recorded. Upon request, the board shall provide a copy of the whole or any portion of the audio recording at a reasonable cost. A certified shorthand reporter may be engaged to record the proceeding at the request of a party and at the expense of the party making the request. A transcription of the record of the hearing shall be made at the request of either party at the expense of the party making the request. The parties may agree to divide the cost of

## LABOR SERVICES DIVISION[875](cont'd)

the transcription. A record of the proceedings, which may be either the original recording, a copy, or a transcript, shall be retained by the ~~secretary~~ board for five years after the resolution of the case.

ITEM 29. Amend paragraphs **69.23(11)**“a” and “c” as follows:

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

c. Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final board 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 subrule 69.27(3). A motion to vacate must state all facts relied upon by the moving party ~~which that~~ which that establish ~~that~~ 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 attached, sworn affidavit of a person with personal knowledge of each such fact, ~~which affidavit(s) must be attached to the motion.~~

ITEM 30. Amend paragraph **69.25(6)**“a” as follows:

a. If the presiding officer determines that disqualification is warranted, the following shall be submitted for inclusion in the record under seal by protective order:

- (1) a A copy of any prohibited written communication,
- (2) ~~all~~ All written responses to the communication,
- (3) a A written summary stating the substance of any prohibited oral or other communication not available in written form ~~for disclosure, and all responses made, and~~
- (4) ~~the~~ 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~~

ITEM 31. Rescind the definition of “Agency” in rule **875—70.1(22,89A)**.

ITEM 32. Amend rule **875—70.1(22,89A)**, definitions of “Confidential record,” “Record” and “Record system,” as follows:

“*Confidential record*” in these rules 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~~ board 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.

“*Record*” in these rules means the whole or a part of a “public record,” as defined in Iowa Code section 22.1, that is owned by or in the physical possession of ~~this agency~~ the board.

“*Record system*” in these rules means any group of records under the control of the ~~agency~~ board 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.

ITEM 33. Amend rule **875—70.2(22,89A)** as follows:

**875—70.2(22,89A) Statement of policy.** The purpose of this chapter is to facilitate broad public access to open records and sound ~~agency~~ board determinations with respect to the handling of confidential records and the implementation of the fair information practices Act. ~~This agency~~ The board is committed to the policies set forth in Iowa Code chapter 22; the ~~agency~~ board shall cooperate with members of the public in implementing the provisions of that chapter.

ITEM 34. Amend subrules 70.3(1) and 70.3(5) to 70.3(7) as follows:

**70.3(1) Location of record.** A request for access to a record should be directed to the board at the Department of Workforce Development, Division of Labor Services, 1000 East Grand Avenue, Des

## LABOR SERVICES DIVISION[875](cont'd)

Moines, Iowa 50319. ~~If a request for access to a record is misdirected, the request will be promptly forwarded to the appropriate person within the agency.~~

**70.3(5) Security of record.** No person may, without permission from the custodian, search or remove any record from agency board files. Examination and copying of agency board records shall be supervised by the custodian or a designee of the custodian. Records shall be protected from damage and disorganization.

**70.3(6) Copying.** A reasonable number of copies of an open record may be made in the agency's board's office. If photocopy equipment is not available in the agency board 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.

**70.3(7) Fees.**

*a. When charged.* The agency board 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 board shall be prominently posted in agency board offices. Copies of records may be made by or for members of the public on agency board photocopy machines or from electronic storage systems at cost as determined and posted in agency board 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. Supervisory fee.* An hourly fee may be charged for actual agency board expenses in supervising the examination and copying of requested records when the supervision time required is in excess of 15 minutes. The custodian shall prominently post in agency board offices the hourly fees to be charged for supervision of records during examination and copying. The hourly fee shall be based upon the pay scale of the employee involved and other actual costs incurred. To the extent permitted by law, a search fee may be charged at the same rate as and under the same conditions as are applicable to supervisory fees.

*d. No change.*

ITEM 35. Strike "agency" wherever it appears in rules **875—70.5(22,89A)** and **875—70.6(22,89A)** and insert "board" in lieu thereof.

ITEM 36. Amend rule 875—70.7(22,89A) as follows:

**875—70.7(22,89A) Consent to disclosure by the subject of a confidential record.** 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~~ an attorney before the agency board on behalf of a person who is the subject of a confidential record is deemed to constitute consent for the agency board to disclose records about that person to the person's attorney.

ITEM 37. Amend paragraphs **70.8(2)"b"** and **"c"** as follows:

*b.* To a recipient who has provided the agency board 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

## LABOR SERVICES DIVISION[875](cont'd)

submitted a written request to the agency board specifying the record desired and the law enforcement activity for which the record is sought.

ITEM 38. Strike “agency” wherever it appears in rules **875—70.9(17A,89A)**, **875—70.11(22,89A)** and **875—70.12(21,22,89A)** and insert “board” in lieu thereof.

ITEM 39. Amend rule 875—70.13(22,89A) as follows:

**875—70.13(22,89A) Applicability.** This chapter does not:

**70.13(1)** Require the agency board to index or retrieve records that contain information about individuals by a person’s name or other personal identifier.

**70.13(2)** No change.

**70.13(3)** Govern the maintenance or disclosure of, notification of, or access to records in the possession of the agency board that are governed by the regulations of another agency.

**70.13(4)** No change.

**70.13(5)** Make available records compiled by the agency board in reasonable anticipation of court litigation or formal administrative proceedings. The availability of such records to the general public or to any subject individual or party to such litigation or proceedings shall be governed by applicable legal and constitutional principles, statutes, rules of discovery, evidentiary privileges, and applicable rules of the agency board.

ITEM 40. Strike “agency” wherever it appears in rule **875—70.14(17A,22,89A)** and insert “board” in lieu thereof.

ITEM 41. Amend rule 875—70.15(17A,21,22,89A), introductory paragraph, as follows:

**875—70.15(17A,21,22,89A) Other groups of records.** This rule describes groups of records maintained by the agency board other than record systems. These records are routinely available to the public. However, the agency’s board’s files of these records may contain confidential information. These records may contain information about individuals. These records include:

**ARC 8332B**

## **NATURAL RESOURCE COMMISSION[571]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code sections 461A.35, 461A.41, and 461A.57, the Natural Resource Commission hereby gives Notice of Intended Action to amend Chapter 54, “Restriction on Removal of Plant Life,” Iowa Administrative Code.

These amendments establish a means for the Department to allow the introduction of aquatic plant species in public waters, as defined in 571—13.2(455A,461A,462A), for the purpose of enhancing water quality and aquatic habitats and a means for the removal of aquatic plants from public waters for the purpose of establishing a designated travel lane from a boat dock to open water. These amendments also delete language which relates to the harvesting of American ginseng and references harvesting regulations established in 571—Chapter 78.

Any interested person may make written suggestions or comments on the proposed amendments on or before January 5, 2010. Such written materials should be directed to Martin Konrad, Department of Natural Resources, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa 50319-0034; fax (515)281-6794; or E-mail [Martin.Konrad@dnr.iowa.gov](mailto:Martin.Konrad@dnr.iowa.gov). Persons who wish to convey their views

## NATURAL RESOURCE COMMISSION[571](cont'd)

orally should contact the Fisheries Bureau at (515)281-6976 or at the Bureau offices on the fourth floor of the Wallace State Office Building.

Also, there will be a public hearing on January 5, 2010, at 1 p.m. in the Fourth Floor East Conference Room, Wallace State Office Building, 502 E. 9th Street, Des Moines, Iowa. At the public hearing, persons may present their views either orally or in writing. Participants will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code sections 461A.35, 461A.41 and 461A.57. The following amendments are proposed.

ITEM 1. Amend **571—Chapter 54**, title, as follows:

**RESTRICTION RESTRICTIONS ON INTRODUCTION AND REMOVAL OF PLANT LIFE**

ITEM 2. Amend rule 571—54.1(461A) as follows:

**571—54.1(461A) Mushrooms and asparagus.** Lands under the jurisdiction of the commission shall be open for the ~~taking~~ harvesting of mushrooms and asparagus during the hours the areas are open to the public.

ITEM 3. Amend rule 571—54.2(461A) as follows:

**571—54.2(461A) Fruit.** Lands under the jurisdiction of the commission shall be open for the ~~taking~~ harvesting of all varieties of nuts, fruits, and berries unless signs are posted prohibiting such activity. Nut, fruit, and berry gathering shall be permitted only during the hours the areas are open to the public and shall not be permitted in state preserves unless otherwise allowed by the preserves management plan.

ITEM 4. Amend rule 571—54.3(461A) as follows:

**571—54.3(461A) American ginseng.** The harvesting of American ginseng (*Panax quinquefolius*) is subject to regulation by 571—Chapter 78.

~~**54.3(1)** Lands under the jurisdiction of the commission except state parks and preserves shall be open for the taking of American ginseng (*Panax quinquefolius*) during the season established by 571—78.2(456A).~~

~~**54.3(2)** When digging is done to collect ginseng, the earth is not to be unduly disturbed. The collector shall, immediately upon removal of the plant, restore the disturbed area as nearly as possible to its original condition.~~

~~This rule implements Iowa Code section 461A.41.~~

ITEM 5. Amend rule 571—54.4(461A) as follows:

**571—54.4(461A) Trees.** The commercial harvest of trees from lands under the jurisdiction of the commission shall be done in accordance with 561—8.5(17A,456A,461A) and 561—8.6(455B), according to the department's Forest Ecosystem Management Guide, approved by the natural resource commission on December 8, 1994, and hereby adopted by reference.

~~This rule is intended to implement Iowa Code sections 461A.35 and 461A.41.~~

ITEM 6. Adopt the following new rule 571—54.5(461A):

**571—54.5(461A) Aquatic plants.** This rule applies to the introduction and removal of plants in public waters as those waters are defined by rule 571—13.2(455A,461A,462A). For purposes of this rule, aquatic plants are those listed in subrule 54.5(6) and include vegetation that exists at or below the ordinary high water line of a waterway.

## NATURAL RESOURCE COMMISSION[571](cont'd)

**54.5(1) Permits.** The department may issue permits for the introduction and removal of aquatic plants in public waters. To be considered for a permit under this rule, applicants shall use the department's application form for sovereign lands construction permits, as described in rule 571—13.9(455A,461A,462A), and shall complete all relevant information on that application form. Applicants shall also provide any additional information as may be necessary, as described in rule 571—13.10(455A,461A). The term of the permit shall be stated in the permit. Permits are nontransferable and shall be subject to reevaluation upon expiration. Permits may be issued for between one and five years.

**54.5(2) Evaluation.** The department shall evaluate all permits sought under this rule in accordance with the evaluation criteria enumerated in rule 571—13.6(455A,461A,462A). In addition, the department shall consider the following criteria:

*a.* For aquatic plant introduction:

(1) Unless otherwise approved by the department, all introduced plants shall be included in the list provided in subrule 54.5(6);

(2) Introduced plants shall not include cultivars;

(3) Plants shall be introduced for the purposes of preventing shoreline erosion, stabilizing bottom sediment, providing fish or wildlife habitat, or removing nutrients from the water;

(4) Plants shall be thoroughly rinsed away from the water into which they are being introduced prior to being transported to the site if the plants have not been cultivated on site in a manner to prevent any foreign nonplant or seed material from entering the water prior to introduction; and

(5) Plants shall be obtained from a seed source that is within 50 miles of the introduction area and from stocks of only cultivated material (i.e., material that has not been taken from natural areas), or from a source that is approved by the department. Approval for a seed source may be sought from the department by contacting the area fisheries management biologist.

*b.* For aquatic plant removal:

(1) The plants shall be removed by hand-cutting, hand-pulling, hand-raking or mechanical cutting only;

(2) The plants shall be removed to establish a designated travel lane from a boat dock that has been permitted in accordance with 571—Chapter 16. Such travel lane shall not exceed a 15-foot width, and the placement of such lane shall be subject to the review and approval of the department. A travel lane allowed under these rules may be in the same location during the term of this permit, may be sited by the department to accommodate vegetation, and may not necessarily be the most direct path from the dock to the open water area; and

(3) All plant material removed under the permit must be left in place or collected and composted on the land owned, leased or otherwise subject to use by the applicant that is adjacent to the removal area.

Unless otherwise provided by these rules, in no event may a person be allowed to apply chemicals including, without limitation, pesticides or herbicides to remove aquatic plants from public waters. For nonpublic waters that meet certain designations in 567—Chapter 66, a person may be required to seek a permit under the rules established herein to use pesticides.

**54.5(3) Inspection requirements.** For the purpose of inspecting for compliance with permit conditions, the department shall have the right to enter the property attached to the public water at or near the place of introduction or removal. This inspection shall include, without limitation, identification of introduced species; a determination as to whether the travel lane is being maintained in accordance with the permit conditions; and whether plant material, if removed, is left on site.

**54.5(4) Violations.** Persons in violation of this rule are guilty of a simple misdemeanor as described by Iowa Code section 461A.57.

**54.5(5) Exceptions.**

*a.* Activities accomplished by the department or its agents to introduce or remove aquatic vegetation in public waters shall be deemed appropriate and shall not be subject to the permit requirements of this rule provided the activity is in the public's interest and the activity does not constitute one of the prohibited activities described in 571—subrule 13.6(2).

## NATURAL RESOURCE COMMISSION[571](cont'd)

b. Cities and counties in Iowa may use chemicals, including pesticides and herbicides, to remove aquatic vegetation from water intake structures. However, such cities and counties shall be required to obtain a permit under this rule and rules in 567—Chapter 66, as may be required, for such activities.

c. Aquatic vegetation located in public waters may be removed by persons without a permit under this rule only after the department, in its sole discretion, determines and evidences in writing that a hazard or other detrimental condition exists and the proposed mitigative activity is appropriate. Such activity shall be limited only to the work required to address the immediate hazard or other detrimental activity. Any removal allowed by this rule shall conform to the requirements enumerated by the department regarding such removal, or the removal shall be deemed an unauthorized action resulting in damage to public waters. Persons proposing to remove hazards must contact a local department official and request an exception to a permit. The department official shall inspect the hazard or detrimental condition and provide written authorization to proceed or shall require the person to apply for a permit under this rule.

**54.5(6) Appropriate plants.** The department is committed to maintaining the natural integrity of public waters in the state and strengthening native populations of vegetation and wildlife in those waters. To that end, the following table comprises the plants that may be permitted to be introduced into public waters:

| Scientific name                 | Common name           |
|---------------------------------|-----------------------|
| <i>Acorus americanus</i>        | Sweet Flag            |
| <i>Alisma plantago-aquatica</i> | Water Plantain        |
| <i>Asclepias incarnata</i>      | Marsh Milkweed        |
| <i>Bidens cernua</i>            | Nodding Beggars Ticks |
| <i>Bidens coronata</i>          | Tickseed Sunflower    |
| <i>Brasenia schreberi</i>       | Water Shield          |
| <i>Calamagrostis canadensis</i> | Blue Joint Grass      |
| <i>Caltha palustris</i>         | Marsh Marigold        |
| <i>Carex atherodes</i>          | Wheat Sedge           |
| <i>Carex comosa</i>             | Longhair Sedge        |
| <i>Carex cristatella</i>        | Crested Sedge         |
| <i>Carex hystericina</i>        | Bottlebrush Sedge     |
| <i>Carex lacustris</i>          | Hairy Sedge           |
| <i>Carex normalis</i>           | Greater Straw Sedge   |
| <i>Carex pellita</i>            | Wooly Sedge           |
| <i>Carex prairea</i>            | Prairie Sedge         |
| <i>Carex scoparia</i>           | Broom Sedge           |
| <i>Carex stipata</i>            | Awlfruit Sedge        |
| <i>Carex stricta</i>            | Upright Sedge         |
| <i>Carex tribuloides</i>        | Blunt Broom Sedge     |
| <i>Carex vulpinoidea</i>        | Fox Sedge             |
| <i>Ceratophyllum demersum</i>   | Coontail              |
| <i>Eleocharis acicularis</i>    | Needle Spikerush      |
| <i>Eleocharis obtuse</i>        | Blunt Spikerush       |
| <i>Elodea canadensis</i>        | Canada Waterweed      |
| <i>Eupatorium perfoliatum</i>   | Boneset               |
| <i>Glyceria striata</i>         | Fowl Manna Grass      |
| <i>Iris versicolor</i>          | Blue Flag Iris        |
| <i>Juncus dudleyi</i>           | Dudley's Rush         |
| <i>Juncus torreyi</i>           | Torrey's Rush         |

## NATURAL RESOURCE COMMISSION[571](cont'd)

|                                       |                     |
|---------------------------------------|---------------------|
| <i>Leersia oryzoides</i>              | Rice Cutgrass       |
| <i>Lobelia siphilitica</i>            | Great Lobelia       |
| <i>Lysimachia ciliate</i>             | Fringed Loosestrife |
| <i>Lythrum alatum</i>                 | Winged Loosestrife  |
| <i>Muhlenbergia mexicana</i>          | Leafy Satin Grass   |
| <i>Muhlenbergia racemosa</i>          | Marsh Muhly         |
| <i>Nymphaea tuberosa</i>              | White Water Lily    |
| <i>Poa palustris</i>                  | Fowl Bluegrass      |
| <i>Polygonum amphibium</i>            | Water Smartweed     |
| <i>Pontederia cordata</i>             | Pickeralweed        |
| <i>Potamogeton nodosus</i>            | Longleaf Pondweed   |
| <i>Ranunculus secleratus</i>          | Cursed Crowfoot     |
| <i>Sagittaria latifolia</i>           | Broadleaf Arrowhead |
| <i>Schoenoplectus acutus</i>          | Hardstem Bulrush    |
| <i>Schoenoplectus fluviatilis</i>     | River Bulrush       |
| <i>Schoenoplectus tabernaemontani</i> | Soft-Stem Bulrush   |
| <i>Scirpus atrovirens</i>             | Green Bulrush       |
| <i>Sparganium eurycarpum</i>          | Giant Burreed       |
| <i>Spartina pectinata</i>             | Prairie Cord Grass  |
| <i>Stuckenia pectinatus</i>           | Sago Pondweed       |
| <i>Typha latifolia</i>                | Broadleaf Cattail   |

In addition, an applicant may propose, as part of the application, species that do not appear on this list, which the department will consider. The department's consideration of species not on this list will be based on the commitment described above as well as the potential impact of the proposed species to the public water and ecosystem.

ITEM 7. Adopt the following new implementation sentence in **571—Chapter 54**:  
These rules are intended to implement Iowa Code chapter 461A.

**ARC 8334B**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.53, the Professional Licensure Division hereby gives Notice of Intended Action to amend Chapter 4, “Board Administrative Processes,” and to rescind Chapter 14, “Child Support Noncompliance,” and Chapter 15, “Noncompliance of Loan Repayment,” Iowa Administrative Code.

The proposed amendments incorporate into Chapter 4 the adoption by reference of Department of Public Health administrative rules relating to child support noncompliance, noncompliance of loan repayment and nonpayment of state debt. The amendments also rescind and reserve Chapters 14 and 15.

Any interested person may make written comments on the proposed amendments no later than December 22, 2009, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [pwilson@idph.state.ia.us](mailto:pwilson@idph.state.ia.us).

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

A public hearing will be held on December 22, 2009, from 8 to 8:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views either orally or in writing. It is requested that, if possible, oral presentations also be shared in writing; however, this is not required. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 147, 148A, 148B, 148C, 149, 151, 152A, 152B, 152C, 152D, 155, 157, 156, 154A, 154, 154B, 154C, 154D, 154E, 154F, 158, 252J, 261, 272D and 272C.

The following amendments are proposed.

ITEM 1. Adopt the following new rule 645—4.16(252J,261,272D):

**645—4.16(252J,261,272D) Noncompliance rules regarding child support, loan repayment and nonpayment of state debt.**

**4.16(1) *Child support noncompliance.*** The board hereby adopts by reference 641—Chapter 192, “Child Support Noncompliance,” Iowa Administrative Code.

**4.16(2) *Noncompliance of loan repayment.*** The board hereby adopts by reference 641—Chapter 195, “Student Loan Default/Noncompliance with Agreement for Payment of Obligation,” Iowa Administrative Code.

**4.16(3) *Nonpayment of state debt.*** The board hereby adopts by reference 641—Chapter 194, “Nonpayment of State Debt,” Iowa Administrative Code.

ITEM 2. Amend **645—Chapter 4**, implementation sentence, as follows:

These rules are intended to implement Iowa Code chapters 17A, 21, 147, 252J, 261, and 272C and 272D.

ITEM 3. Rescind and reserve **645—Chapter 14 and Chapter 15.**

**ARC 8330B**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Cosmetology Arts and Sciences hereby gives Notice of Intended Action to amend Chapter 60, “Licensure of Cosmetologists, Electrologists, Estheticians, Manicurists, Nail Technologists, and Instructors of Cosmetology Arts and Sciences,” and Chapter 61, “Licensure of Salons and Schools of Cosmetology Arts and Sciences”; and to rescind Chapter 63, “Sanitation for Salons and Schools of Cosmetology Arts and Sciences,” Iowa Administrative Code, and adopt a new chapter with the same title.

The proposed amendments reorganize and clarify the application requirements for new cosmetology schools. The amendments also revise the definition of a salon and clarify the responsibilities of salon owners and licensees who work in those salons to be consistent with today’s business practices of independent owners operating smaller areas within a larger salon. Sanitation requirements have been updated to be more consistent with national standards. Only technical amendments are proposed for the continuing education rules.

Interested parties were provided an opportunity to comment on the proposed amendments prior to their publication. The proposed amendments were pre-noticed on August 9, 2009, and sent to cosmetology schools and to individuals who have requested to be notified of revisions to the Board’s administrative rules. Comments were due on the pre-noticed amendments by September 1, 2009. The Board received

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

written comments from the Iowa Cosmetology School Association (ICSA). The Board reviewed the ICSA's comments prior to noticing the rules. ICSA did not object to the majority of the proposed amendments. Comments received by ICSA included:

- Question as to why the Board wished to delete the phrase "make every effort" in subrule 61.15(3). In the Board's opinion, it is important that there always be two instructors on duty to ensure that students are receiving adequate supervision and instruction.

- Concern about losing the 10 percent excused absences when accounting for attendance. After discussions with the Iowa Department of Education and with the Board's legal counsel, the Board is moving forward with amending subrule 61.18.(1) to remove the 10 percent allowance for excused absences because Iowa Code section 157.10 requires that students complete 2,100 clock hours or 70 semester credit hours. Allowing a 10 percent absence does not fulfill Iowa Code requirements.

- Preference that the rules allow for disinfectants to be stored in the dispensary or at the work station. The Board believes that it is extremely important to public safety that students have disinfectant solution quickly available at the work station to instill good sanitation practices in students before they enter the salon environment.

- Proposal that nippers, tweezers, and comedone extractors be added to subrule 63.13(1) for public protection. Nippers, tweezers, and comedone extractors are implements and tools of the profession and it is not necessary to identify the implements by name.

- Concern about the requirement to disinfect curling irons and hair dryers with an antimicrobial spray. The Board agreed with ICSA that it could be unsafe to spray electrically based items that generate heat with potential flammable sprays and amended subrule 63.13(5) accordingly.

Any interested person may make written comments on the proposed amendments no later than December 22, 2009, addressed to Ella Mae Baird, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail [ebaird@idph.state.ia.us](mailto:ebaird@idph.state.ia.us).

A public hearing will be held on Tuesday, December 22, 2009, from 1 to 1:30 p.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 157 and 272C.

The following amendments are proposed.

ITEM 1. Rescind the definition of "Trainee" in rule **645—60.1(157)**.

ITEM 2. Rescind rule 645—60.7(157) and adopt the following **new** rule in lieu thereof:

**645—60.7(157) Licensure by endorsement.** The board may issue a license by endorsement to any applicant from the District of Columbia or another state, territory, province or foreign country who has held an active license under the laws of another jurisdiction for at least 12 months during the past 24 months.

**60.7(1)** Applicants shall submit to the board a completed application and pay the licensure fee specified in 645—subrule 5.5(1).

**60.7(2)** Applicants shall provide verification of license(s) in a cosmetology practice discipline from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification from a jurisdiction's board office if the verification includes:

- a. Licensee's name;
- b. Date of initial licensure;
- c. Current licensure status; and
- d. Any disciplinary action taken against the license.

**60.7(3)** Applicants who graduated from a cosmetology school prior to January 1, 2000, shall have passed the state written and practical examination required by the state in which the applicants were originally licensed.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**60.7(4)** Applicants who graduated from a cosmetology school after January 1, 2000, shall have passed a national theory examination.

ITEM 3. Amend rule 645—61.2(157) as follows:

**645—61.2(157) Salon licensing.** No person shall operate a salon unless the owner has obtained a license issued by the board. A separate enclosed area inside a salon that is operated as an independent business for the purpose of providing cosmetology services shall be considered its own salon and shall not operate unless a salon license is obtained.

**61.2(1) to 61.2(6)** No change.

ITEM 4. Rescind rule 645—61.5(157) and adopt the following **new** rule in lieu thereof:

**645—61.5(157) Display requirements for salons.**

**61.5(1)** Every salon shall have a sign visible outside the entrance designating the place of business.

**61.5(2)** The most current salon renewal card shall be posted in the front entrance area at eye level so that it is visible to the public.

**61.5(3)** The most current license renewal card for each licensee working in the salon shall be visibly displayed in the front entrance area at eye level.

**61.5(4)** If the licensee works in more than one salon, the current renewal card shall be posted in the primary place of practice, and the licensee shall have the current wallet card in the licensee's possession.

**61.5(5)** Each licensee shall have a valid U.S. government-issued photo ID to provide to an agent of the board upon request as proof of identity.

ITEM 5. Rescind rule 645—61.7(157) and adopt the following **new** rule in lieu thereof:

**645—61.7(157) Licensure for schools of cosmetology arts and sciences.**

**61.7(1)** An application for a school license shall be submitted 90 days prior to the anticipated opening day of the school to the Board of Cosmetology Arts and Sciences, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075. The application shall include:

*a.* A complete plan of the physical facilities and an explanation detailing how the facilities will be utilized relative to classrooms, clinic space, and a mentoring program;

*b.* A list of the names of licensed instructors for the proposed school if the instructors have been hired by the school; and

*c.* Copies of the catalog, brochure, enrollment contract, student policies, and cancellation and refund policies that will be used by the school or distributed by the school to students and the public.

**61.7(2)** Prior to the issuance of the school license, the school shall:

*a.* Submit a final list of licensed instructors for the school. The number of instructors must meet the requirement outlined in Iowa Code section 157.8 with the exception of instructors for the mentoring program;

*b.* Submit the school's course of study, which shall meet the requirements outlined in rule 645—61.14(157); and

*c.* Meet the requirements of this chapter and 645—Chapter 63 and pass the board's inspection of the facility.

**61.7(3)** The school owner may be interviewed by the board.

**61.7(4)** After all criteria have been met, the school license shall be granted for the location(s) identified in the school's application.

**61.7(5)** Instruction of students shall not begin until the school license is issued and has been approved by the college student aid commission.

**61.7(6)** Incomplete applications that have been on file in the board office for more than two years shall be considered invalid and shall be destroyed. The records will be maintained after two years only if the applicant submits a written request to the board.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**61.7(7)** A change of location shall require submission of an application for a new school license and payment of the license fee. A change of address without a change of actual location shall not be construed as a new site.

**61.7(8)** A school license is not transferable. A change in ownership of a school shall require the issuance of a new license. "Change in ownership" means any change of controlling interest in any corporation or any change of name of sole proprietorship or partnership.

- a. A school cannot be sold if disciplinary actions are pending.
- b. The board may request legal proof of the ownership transfer.
- c. If a school owner sells the school, that owner must send the license certificate and a report of the sale to the board within 10 days of the date on which the sale is final. The owner of the school on record shall retain responsibility for the school until the notice of sale is received in the board office.
- d. The owner shall notify the board in writing of a change of name or address within 30 days after the occurrence and, in addition, shall return the current certificate and pay the reissued certificate fee as specified in rule 645—5.5(147,157).

ITEM 6. Adopt the following new paragraph **61.8(2)"c"**:

- c. Schools shall successfully complete the annual inspection pursuant to Iowa Code sections 157.6 and 157.8.

ITEM 7. Amend subrule 61.15(3) as follows:

**61.15(3)** The number of instructors for each school of cosmetology arts and sciences shall be based upon total enrollment, with a minimum of 2 instructors employed on a full-time basis for up to 30 students and an additional instructor for each additional 15 students. The school shall ~~make every effort to~~ have 2 instructors on duty during school hours. A student instructor shall not be used to meet licensed instructor-to-student ratios. However, a A school operated by an area community college prior to September 1, 1982, with only 1 instructor per 15 students is not subject to this subrule and may continue to operate with the ratio of 1 instructor to 15 students. A student instructor shall not be used to meet licensed instructor-to-student ratios.

ITEM 8. Amend subrule 61.18(1) as follows:

**61.18(1)** ~~When determining student hours, a school may define its attendance requirements to include 100 percent attendance for the course length or may allow excused absences for not more than 10 percent of the course length for satisfactory completion.~~ Schools shall ensure:

- a. Students complete the hours required for each course of study set forth by rule 645—61.14(157).
- ~~a. b.~~ Student attendance policies shall be are applied uniformly and fairly.
- ~~b. c.~~ Appropriate credit shall be is given for all hours earned.
- ~~c. d.~~ All retake tests, projects to be redone and makeup work shall be are completed without benefit of additional hours earned, and it shall be at the Time scheduled for such work will be scheduled at the school's discretion to schedule the time.
- ~~d. e.~~ Hours or credit shall is not be added to the accumulative student record as an award, or deducted from the accumulative student record as a penalty.

ITEM 9. Amend subrule 61.22(3) as follows:

**61.22(3)** Prior to closure, the controlling school shall establish agreements with another school to maintain student and graduate transcripts and records. Prior to closure, the controlling school shall also notify the board in writing of the location of student records as established by the maintenance agreements and shall submit a copy of the maintenance agreements to the board. Provisions in the agreement must include maintenance of student transcript records for a period of no less than two years.

ITEM 10. Rescind 645—Chapter 63 and adopt the following new chapter in lieu thereof:

## CHAPTER 63

### SANITATION FOR SALONS AND SCHOOLS OF COSMETOLOGY ARTS AND SCIENCES

**645—63.1(157) Definitions.** For purposes of these rules, the following definitions shall apply:

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

*“Disinfectant”* means an agent intended to destroy or irreversibly inactivate specific viruses, bacteria, or pathogenic fungi, but not necessarily their spores, on inanimate surfaces.

*“Disinfection”* means the procedure that kills pathogenic microorganisms, but not necessarily their spores.

*“Dispensary”* means a separate area to be used for the storing and dispensing of supplies and sanitizing of all implements.

*“FDA”* means the federal Food and Drug Administration.

*“Germicide”* means an agent that destroys germs.

*“Sanitization”* means the procedure that reduces the level of microbial contamination so that the item or surface is considered safe.

*“School”* means a school of cosmetology arts and sciences.

*“Sterilization”* means the procedure that kills all microorganisms, including their spores.

*“Universal precautions”* means practices consistently used to prevent exposure to blood-borne pathogens and the transmission of disease.

**645—63.2(157) Posting of sanitation rules and inspection report.** A copy of the most current sanitation rules and the most recent inspection report shall be posted in the front entrance area at eye level in the salon or school for the information and guidance of all persons employed or studying therein and the general public.

**645—63.3(157) Responsibilities of salon owners.** Each salon owner shall ensure the following:

1. Individuals employed for cosmetology arts and sciences services or other licensees working in the salon hold a current and active license issued by either the board of cosmetology arts and sciences or the board of barbering;
2. Licensees employed by the salon or other licensees working in the salon do not exceed their scope of practice; and
3. License renewal cards are properly displayed in the front entrance area at eye level. No license which has expired or become invalid for any reason shall be displayed in connection with the practices of the salon.

**645—63.4(157) Responsibilities of licensees.** Licensees are responsible for:

1. Their own permanently assigned station areas;
2. Holding a current and active license issued by the board of cosmetology arts and sciences or the board of barbering; and
3. Ensuring that they do not exceed their scope of practice.

**645—63.5(157) Joint responsibility.** Salon owners and licensees are jointly responsible for all common areas and employee areas.

**645—63.6(157) Building standards.** Salons and schools shall have and maintain:

1. A service area that is equipped with exhaust fans or air filtration equipment that is of sufficient capacity to be capable of removing chemical fumes from the air;
2. An area for the storing and dispensing of supplies and sanitizing of all implements;
3. A reception area;
4. Hot and cold running water and clean lavatory facilities;
5. Safe drinking water;
6. Hand-washing facilities;
7. Adequate lighting;
8. Work surfaces that are easily cleaned; and
9. A complete first-aid kit in a readily accessible location on the premises. At a minimum, the first-aid kit must include adhesive dressings, gauze and antiseptic, tape, triple antibiotics, eyewash, and gloves.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**645—63.7(157) Salons in residential buildings.**

**63.7(1)** A salon located in a residential building shall comply with all requirements in rule 645—63.5(157).

**63.7(2)** A separate entrance shall be maintained for salon rooms in a residential building. An exception is that an entrance may allow passage through a nonliving area of the residence, i.e., hall, garage or stairway. Any door leading directly from the licensed salon to any portion of the living area of the residence shall be closed at all times during business hours.

**645—63.8(157) Salons adjacent to other businesses.** A salon operated adjacent to any other business shall be separated by at least a partial partition. When the salon is operated immediately adjacent to a business where food is handled, the business shall be entirely separated, and any doors between the salon and the business shall be rendered unusable except in an emergency.

**645—63.9(157) Smoking.** All salons licensed by the board shall comply with the smokefree air Act found in Iowa Code chapter 142D.

**645—63.10(157) Personal cleanliness.** All licensees and students who engage in serving the public shall be neat and clean in person and attire.

**645—63.11(157) Universal precautions.** All licensees and students shall practice universal precautions consistently by observing the following.

**63.11(1)** Students and licensees shall thoroughly wash hands and the exposed portions of arms up to the elbow with antibacterial soap and water before providing services to each client.

**63.11(2)** Every salon shall have a sharps container for disposing of used needles, razor blades and other sharp instruments. These containers shall be located as close to the use area as is practical.

**63.11(3)** Disposable material that will release blood or other potentially infectious materials in a liquid or semiliquid state if compressed shall be placed in a red hazardous waste bag and disposed of in accordance with the regulations for removal of hazardous waste.

**63.11(4)** Licensees and students shall wear disposable gloves to prevent exposure to blood, bodily fluids containing visible blood, or bodily fluids to which universal precautions apply.

**63.11(5)** Licensees and students shall refrain from all direct client care and from handling client-care equipment if the licensee has weeping dermatitis or draining lesions.

**63.11(6)** Instruments and implements shall be disinfected pursuant to rule 645—63.12(157).

**63.11(7)** Instruments and supplies that have been used on a client or soiled in any manner shall be placed in the proper receptacles.

**63.11(8)** Disinfectant solution shall be stored in the dispensary and at each work station.

**645—63.12(157) Blood spill procedures.**

**63.12(1)** If a student or licensee injury occurs, the following steps shall be taken before the student or licensee returns to service.

- a. Clean the injured area.
- b. Apply antiseptic or liquid or spray styptic and cover the injury with the appropriate adhesive dressing.
- c. Cover injured area with finger guard or glove as appropriate.
- d. Clean client and station.
- e. Dispose of all contaminated objects in accordance with subrules 63.10(2) and 63.10(3).
- f. Clean hands with antimicrobial cleanser.

**63.12(2)** If a client injury occurs, the following steps shall be taken:

- a. Stop service.
- b. Glove hands of students or licensees.
- c. Clean injured area as appropriate and apply antiseptic or liquid or spray styptic as appropriate.
- d. Cover the injury with the appropriate dressing to prevent further blood exposure.
- e. Clean station.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

- f. Dispose of all contaminated objects in accordance with subrules 63.10(2) and 63.10(3).
- g. Clean hands with antimicrobial cleanser before returning to service.

**645—63.13(157) Disinfecting instruments and equipment.**

**63.13(1)** All tools and implements must be disinfected by complete immersion in an EPA-registered, bactericidal, virucidal, fungicidal, pseudomonacidal, and tuberculocidal that is effective against HIV-1 and human Hepatitis B virus. The disinfectant shall be mixed and used according to the manufacturer's directions.

**63.13(2)** Disinfected implements shall be stored in a disinfected, dry, covered container and shall be isolated from contaminants.

**63.13(3)** Disinfectant solutions shall be changed at least once per week or whenever visibly dirty.

**63.13(4)** If instruments and equipment specified in this rule are sterilized in accordance with the requirements outlined in rule 645—63.15(157), the requirements of this rule shall be fulfilled.

**63.13(5)** Scissors, trimmers, clippers, handles of hair dryers and curling irons, and other implements that cannot be immersed in a disinfectant shall be cleaned and disinfected after each use.

**63.13(6)** Cleaning and disinfection standards for electric file bits are as follows:

- a. After each use, diamond, carbide, natural and metal bits shall be cleaned by using either an ultrasonic cleaner or immersing each bit in acetone for five to ten minutes.
- b. Debris, diamond, carbide, natural and metal bits shall be disinfected by complete immersion in an appropriate disinfectant immediately after removal of all visible debris and before use on the next client.
- c. Buffing bits shall be cleaned with soap and water or washed with detergent in a dishwasher or washing machine following use on each client.
- d. Arbor or sanding bands or sleeves are single-use items and shall be discarded immediately after use.

**645—63.14(157) Instruments and supplies that cannot be disinfected.** Instruments and supplies that come into direct contact with a patron and cannot be disinfected, for example, cotton pads, sponges, applicators, emery boards, nail buffers, arbor or sanding bands, sleeves, toe separators and neck strips, shall be disposed of in a waste receptacle immediately after use.

**645—63.15(157) Sterilizing instruments.** Before use upon a patron in schools and salons, cuticle nippers, tweezers and comedone extractors shall first be cleaned with detergent and water and then sterilized by one of the following methods:

1. Steam sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions;
2. Dry heat sterilizer, registered and listed with the FDA and used according to the manufacturer's instructions; or
3. Sterilization equipment, calibrated to ensure that it reaches the temperature required by the manufacturer's instructions.

**645—63.16(157) Sanitary methods for creams, cosmetics and applicators.**

**63.16(1)** Liquids, creams, powders and cosmetics used for patrons must be kept in closed, labeled containers.

**63.16(2)** All fluids, semifluids and powders must be dispensed with an applicator or from a shaker, dispenser pump, or spray-type container.

- a. Applicators made of a washable, nonabsorbent material shall be sanitized before being used again; and
- b. Applicators made of wood shall be discarded after one use.

**645—63.17** Reserved.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**645—63.18(157) Prohibited hazardous substances and use of products and equipment.**

**63.18(1)** No salon or school shall have on the premises cosmetic products containing substances which have been banned or otherwise deemed hazardous or deleterious by the FDA for use in cosmetic products. Prohibited products include, but are not limited to, any product containing liquid methyl methacrylate monomer and methylene chloride. No product shall be used in a manner that is not approved by the FDA. Presence of a prohibited product in a salon or school is prima facie evidence of that product's use in the salon or school.

**63.18(2)** No salon or school shall have on the premises any razor-edged device or tool which is designed to remove skin. The presence of such equipment shall be prima facie evidence of the equipment's use.

**63.18(3)** Fish pedicures are prohibited in salons and schools.

**63.18(4)** No salon or school shall have chamois buffers. If chamois buffers are observed in the workplace, their presence shall be prima facie evidence of their use.

**645—63.19(157) Proper protection of neck.** A shampoo apron, haircloth, or similar article shall not be placed directly against the neck of a patron but shall be kept from direct contact with the patron by means of a paper neckband or clean towel. A neckband of paper shall not be used more than once. Towels or cloth neckbands shall not be used more than once without proper laundering.

**645—63.20(157) Proper laundering and storage.** All cloth towels, robes and similar items shall be laundered in a washing machine with laundry detergent used according to the manufacturer's directions. A clean storage area shall be provided for clean towels and linen, and a hamper or receptacle shall be provided for all soiled towels, robes and linens.

**645—63.21(157) Pets.** Dogs (except dogs providing assistance to individuals with physical disabilities), cats, birds, or other animals shall not be permitted in a salon. This rule does not apply to fish in an aquarium provided the aquarium is maintained in a sanitary condition.

**645—63.22(157) General maintenance.** All areas of the salon and school shall be clean and in good repair.

**63.22(1)** Walls, floors, and fixtures must be kept clean and in good repair at all times.

**63.22(2)** After January 1, 2010, carpeting is not permitted in the working area of the establishment unless the carpeting was installed prior to January 1, 2010. Carpeting shall only be allowed in the reception and hooded dryer areas.

**645—63.23(157) Records.** Client records and appointment records shall be maintained for a period of no less than three years following the last date of entry. Proper safeguards shall be provided to ensure the safety of these records from destructive elements.

**645—63.24(157) Salons and schools providing electrology or esthetics.** A salon or school in which electrology or esthetics is practiced shall follow the sanitation rules and requirements pertaining to all salons and schools and shall also meet the following requirements:

1. The electrology or esthetics room shall have adequate space, lighting and ventilation.
2. The floors in the immediate area where the electrology or esthetics is performed shall have an impervious, smooth, washable surface.
3. All service table surfaces shall be constructed of impervious, easily cleanable material.
4. Needles, probes and lancets shall be single-client use and disposable.

**645—63.25(157) Cleaning and disinfecting circulating and noncirculating tubs, bowls, and spas.**

**63.25(1)** After use for each client:

- a. Drain the water and remove any visible debris;
- b. Clean the surfaces according to the manufacturer's instructions, remove all film, and rinse the tub, bowl, or spa basin;

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

c. Fill the tub, bowl, or spa basin with water and add an EPA-registered, bactericidal, virucidal, fungicidal, pseudomonacidal, and tuberculocidal that is effective against HIV-1 and human Hepatitis B virus. The disinfectant shall be mixed and used according to the manufacturer's directions.

d. Allow the disinfectant to stand for noncirculating tubs, bowls, or basins or to circulate for circulating tubs, bowls, or basins for the time specified according to the manufacturer's instructions.

e. After disinfection, drain and rinse with clean water.

**63.25(2)** At the end of the day, remove all removable parts, such as filters, screens, drains, and jets, and clean and disinfect the removable parts as follows:

a. Scrub with a brush and soap or detergent until free from debris, and then rinse.

b. Completely immerse in an EPA-registered, bactericidal, virucidal, fungicidal, pseudomonacidal, and tuberculocidal that is effective against HIV-1 and human Hepatitis B virus. The disinfectant shall be mixed and used according to the manufacturer's directions.

c. Rinse and air dry.

d. Replace the disinfected parts into the tubs, bowl, or basin or store the parts in a disinfected, dry, covered container that is isolated from contaminants.

**63.25(3)** For each pedicure station, a record shall be made of the date and time of the daily cleaning and disinfecting. This record shall be made at or near the time of cleaning and disinfecting. Records of cleaning and disinfecting shall be made available upon request by a patron, inspector or investigator. The record must be signed by a licensee and include the licensee's license number beside each recorded cleaning event. Foot spa records shall be maintained for two years from the date of the cleaning.

**645—63.26(157) Paraffin wax.** Paraffin wax shall be used according to the manufacturer's instructions and shall be used in such a manner so as not to contaminate the remaining wax in the paraffin bath. The following procedures apply:

1. The client shall be free of broken skin or any skin disorder;
2. Hands or feet of a client shall be cleaned and sanitized before being dipped into paraffin wax;
3. Paraffin wax that has been removed from a client's hands or feet shall be discarded after each use; and
4. Paraffin wax shall be kept free of any debris and kept covered when not in use.

These rules are intended to implement Iowa Code section 147.7 and chapter 157.

ITEM 11. Amend paragraph **64.2(3)"a"** as follows:

a. A licensee in this state shall be required to complete a minimum of 8 hours of ~~board-approved~~ continuing education, ~~of which~~ that meets the requirements of rule 645—64.3(157,272C). A minimum of 4 hours of the 8 hours shall be in the prescribed practice discipline. ~~A and a~~ and a minimum of 2 hours of the 8 hours shall be in the content areas of Iowa cosmetology law and rules and sanitation. Individuals holding more than one active license shall obtain 4 hours of ~~board-approved~~ continuing education in each prescribed practice discipline and an additional 2 hours in the content areas of Iowa cosmetology law and rules and sanitation.

ITEM 12. Rescind paragraph **64.3(2)"c"** and adopt the following **new** paragraph in lieu thereof:

c. Excluded content areas for continuing education include, but are not limited to, any program or training that is outside the scope of practice in accordance with the definitions found in Iowa Code section 157.1 or that does not enhance professional competency relating to the practice discipline. Bloodletting, cupping and ear candling are excluded content areas.

ITEM 13. Amend subrule 65.2(12) as follows:

**65.2(12)** Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee's ability to practice. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

**ARC 8318B****PUBLIC EMPLOYMENT RELATIONS BOARD[621]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board hereby gives Notice of Intended Action to amend Chapter 7, “Impasse Procedures,” Iowa Administrative Code.

Chapter 7 implements the system set out in Iowa Code chapter 20 for resolving impasses in collective bargaining negotiations between public employers and the employee organizations certified to represent groups of the public employer’s employees. Parties are not required to utilize the statutory process, which is initiated by a request that the Board provide them with a mediator, but most do employ the statutory scheme or an agreed-upon variant which includes Board-provided mediation. These amendments implement a filing fee payable by a party who chooses to request a Board-appointed mediator and a processing fee payable by parties who actually schedule a mediation session with a Board-appointed mediator. These amendments, as well as other revenue-generating and expense-reduction measures, are necessary in order to ensure the Board’s ability to provide qualified mediators on request, notwithstanding the most recent across-the-board reductions in agency spending.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 22, 2009. Written suggestions or comments should be directed to James R. Riordan, Chairperson, Public Employment Relations Board, 510 E. 12th Street, Des Moines, Iowa 50319.

Persons who wish to convey their views orally should contact the office of the Public Employment Relations Board by telephone at (515)281-4414 or in person at the Board’s office at the address noted above. Requests for a public hearing must be received by December 22, 2009.

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8317B**. The purpose of this Notice is to solicit comment on that submission, the content of which is incorporated by reference.

These amendments are intended to implement Iowa Code sections 20.1(5), 20.6(3) and 20.20.

**ARC 8337B****PUBLIC EMPLOYMENT RELATIONS BOARD[621]****Notice of Termination**

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board terminates the rule making initiated by its Notice of Intended Action, published herein as **ARC 8318B**, to amend Chapter 7, “Impasse Procedures,” Iowa Administrative Code. Those amendments were also Adopted and Filed Emergency as **ARC 8317B**, and became effective November 1, 2009. The amendments, part of the Board’s plan to deal with the most recent across-the-board reductions in agency budgets, implemented a filing fee payable by a party who chooses to request a Board-appointed mediator and a processing fee payable by parties who actually schedule a mediation session with a Board-appointed mediator.

Because questions and controversy have ensued concerning the Board’s authority to adopt and ability to retain and utilize the fees collected, the Board has determined that it is in the best interests of the agency, its regulated community and the public to effectively rescind the fees adopted in **ARC 8317B** and return to the status quo which existed prior to their adoption, and has done so by amendments Adopted and Filed Emergency which are published herein as **ARC 8338B**. The rule making commenced by **ARC**

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

**8318B**, the purpose of which was to solicit comment on **ARC 8317B**, is thus no longer necessary and is terminated.

**ARC 8360B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to amend Chapter 27, “Plumbing and Mechanical Systems Examining Board—Administrative and Regulatory Authority,” Iowa Administrative Code.

The rules in Chapter 27 describe the purpose and organization of the Plumbing and Mechanical Systems Board. These amendments reflect the changes mandated by 2009 Iowa Acts, Senate File 224.

Consideration will be given to all written suggestions or comments on the proposed amendments on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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Ottumwa Regional Health Center  
1001 E. Pennsylvania  
Ottumwa

Public Library Information Ctr., Kelinson Rm.  
2950 Learning Campus Drive  
Bettendorf

Hoover State Office Building, First Floor  
1305 East Walnut  
Des Moines

Iowa Western Community College – 2  
923 East Washington  
Clarinda

Mason City National Guard Armory  
1160 19th Street SW  
Mason City

Crestwood High School  
1000 4th Avenue East  
Cresco

Archdiocesan Pastoral Center  
1229 Mount Loretta  
Dubuque

Spirit Lake High School  
2701 Hill Avenue  
Spirit Lake

Prairie Lakes Area Education Agency  
1 Triton Circle, Library Bldg.  
Fort Dodge

Kirkwood Community College  
Room 117  
1816 Lower Muscatine Road  
Iowa City

Burlington High School  
421 Terrace Drive  
Burlington

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

These amendments are intended to implement Iowa Code chapter 105 and 2009 Iowa Acts, Senate File 224.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 27**, title, as follows:  
**PLUMBING AND MECHANICAL SYSTEMS EXAMINING BOARD—ADMINISTRATIVE AND REGULATORY AUTHORITY**

ITEM 2. Amend rule **641—27.1(17A,105)**, definitions of “Board,” “License” and “Licensee,” as follows:

“*Board*” means the plumbing and mechanical systems ~~examining~~ board.

“*License*” means a license to operate as a contractor or work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade disciplines or work as a certified medical gas system installer or install geothermal heat pump systems or work in the specialty license disciplines developed by the board.

“*Licensee*” means a person or entity licensed to operate as a contractor or work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade disciplines or work as a certified medical gas system installer or install geothermal heat pump systems or work in the specialty license disciplines developed by the board.

ITEM 3. Rescind the definition of “Overpayment” in rule **641—27.1(17A,105)**.

ITEM 4. Amend rule 641—27.2(17A,105) as follows:

**641—27.2(17A,105,83GA,SF224) Purpose of board.** The purpose of the board is to administer and enforce the provisions of Iowa Code chapters 17A and 105 with regard to the licensing and regulation of plumbers, ~~and~~ mechanical professionals, and contractors. The mission of the board is to protect the public health, safety and welfare by licensing qualified individuals who provide services to consumers and by fair and consistent enforcement of the statutes and regulations of the licensure board. Responsibilities include, but are not limited to:

**27.2(1)** Licensing of qualified applicants to operate as a contractor or work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade disciplines or work as a certified medical gas system installer or install geothermal heat pump systems or work in the specialty license disciplines developed by the board by examination, renewal, endorsement, and reciprocity.

**27.2(2) and 27.2(3)** No change.

ITEM 5. Amend subrule 27.3(1) as follows:

**27.3(1)** The board shall be composed of 11 members appointed by the governor ~~and confirmed by the senate.~~ The board members identified in subrule 27.3(2), paragraphs “c” to “i,” are subject to confirmation by the senate.

ITEM 6. Amend paragraph **27.3(8)“e”** as follows:

*e.* Investigate alleged violations of statutes or rules that relate to operation as a contractor; work in the plumbing trade, HVAC trade, refrigeration trade, or hydronic trade disciplines; work as a certified medical gas system installer; installation of geothermal heat pump systems; or work in the specialty license disciplines developed by the board upon receipt of a complaint or upon the board’s own initiation. The investigation will be based on information or evidence received by the board.

ITEM 7. Amend rule 641—27.4(17A,105) as follows:

**641—27.4(17A,105) Official communications.**

**27.4(1)** All official communications, including submissions and requests, may be addressed to the Plumbing and Mechanical Systems ~~Examining~~ Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

**27.4(2) and 27.4(3)** No change.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 8. Amend subrule 27.6(1) as follows:

**27.6(1)** At every regularly scheduled board meeting, time will be designated for public comment. During the public comment period, any person may speak for up to two minutes. ~~Requests to speak for two minutes per person later in the meeting when a particular topic comes before the board should be made at the time of the public comment period and may be granted at the discretion of the chairperson. No more than ten minutes will be allotted for public comment at any one time unless the chairperson stipulates otherwise.~~ Any additional time allowances will be at the discretion of the chairperson or acting chairperson.

**ARC 8361B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to amend Chapter 28, “Plumbing and Mechanical Systems Licensure Fees,” Iowa Administrative Code.

The rules in Chapter 28 describe the fees applicable to the various licenses issued by the Plumbing and Mechanical Systems Board. The amendments reflect the changes mandated by 2009 Iowa Acts, Senate File 224.

Consideration will be given to all written suggestions or comments on the proposed amendments on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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Archdiocesan Pastoral Center  
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Spirit Lake High School  
2701 Hill Avenue  
Spirit Lake

Prairie Lakes Area Education Agency  
1 Triton Circle, Library Bldg.  
Fort Dodge

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Hoover State Office Building, First Floor  
1305 East Walnut  
Des Moines

Iowa Western Community College – 2  
923 East Washington  
Clarinda

Kirkwood Community College  
Room 117  
1816 Lower Muscatine Road  
Iowa City

Burlington High School  
421 Terrace Drive  
Burlington

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

These amendments are intended to implement Iowa Code chapter 105 and 2009 Iowa Acts, Senate File 224.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 28**, title, as follows:

**PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSURE FEES**

ITEM 2. Amend subrule 28.1(1) as follows:

**28.1(1)** License fee for:

*a.* to *c.* No change.

~~*d.* A combined license is the sum total of each of the separate license fees.~~

~~*e.* *d.* A medical gas pipe certificate as defined in 641—29.3(105) is \$50.~~

~~*f.* *e.* An inactive license as defined in 641—subrule 29.2(4) subrules 29.2(5) and 29.2(6) is \$50.~~

~~*f.* A contractor license as defined in 641—subrule 29.2(4) is \$250.~~

~~*g.* A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is \$50.~~

~~*h.* A geothermal heat pump systems installer license as defined in 641—subrule 29.2(7) is \$100.~~

ITEM 3. Rescind paragraphs **28.1(2)“d”** and **“e.”**

ITEM 4. Amend subrule 28.1(3) as follows:

**28.1(3)** Renewal license fee for:

*a.* to *c.* No change.

~~*d.* A combined license is the sum total of each of the separate license fees.~~

~~*e.* *d.* A medical gas pipe certificate as defined in 641—29.3(105) is \$50.~~

~~*f.* *e.* An inactive license as defined in 641—subrule 29.2(4) subrules 29.2(5) and 29.2(6) is \$50.~~

~~*f.* A contractor license as defined in 641—subrule 29.2(4) is \$250.~~

~~*g.* A special restricted license as defined in 641—subrules 29.2(8), 29.2(9), 29.2(10), and 29.2(11) is \$50.~~

~~*h.* A geothermal heat pump systems installer license as defined in 641—subrule 29.2(7) is \$100.~~

ITEM 5. Amend paragraph **28.1(5)“c”** as follows:

*c.* A licensee who allows a license to lapse for more than two months is required to retake and pass the applicable licensing examination and pay the appropriate renewal of license fee in order to obtain reinstatement. A licensee whose license has lapsed continues to hold the privilege of licensure in Iowa, but may not work as a plumbing or mechanical professional or contractor in Iowa until the license is renewed. A licensee who works as a plumbing or mechanical professional, including under a special restricted license, works as a geothermal heat pump installer, or operates as a contractor in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code section 147.83, criminal sanctions pursuant to Iowa Code section 147.86, and other available legal remedies.

ITEM 6. Adopt the following **new** subrule 28.1(11):

**28.1(11)** Combined license.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

- a.* For purposes of this subrule, “combined license” shall mean more than one active master or journey person license under subrules 28.1(1) through 28.1(3) in one or multiple disciplines.
- b.* A license fee for a combined license shall be the sum total of each of the separate license fees reduced by 30 percent.
- c.* In order to be eligible for the combined license fee reduction, all individual licenses must be purchased in a single transaction.

## ARC 8362B

### PUBLIC HEALTH DEPARTMENT[641]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to amend Chapter 29, “Plumbing and Mechanical Systems Professionals—Application, Licensure, and Examination,” Iowa Administrative Code.

The rules in Chapter 29 define the type of licenses and the requirements for licensure. Guidelines are provided for applicants to follow when they apply for the initial license, apply for renewal, or apply for examination. The rules also outline procedures to follow when licensure is denied. The proposed amendments reflect the changes mandated by 2009 Iowa Acts, Senate File 224.

Consideration will be given to all written suggestions or comments on the proposed amendments on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

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## PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

These amendments are intended to implement Iowa Code chapter 105 and 2009 Iowa Acts, Senate File 224.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 29**, title, as follows:

**PLUMBING AND MECHANICAL SYSTEMS PROFESSIONALS BOARD—  
APPLICATION, LICENSURE, AND EXAMINATION**

ITEM 2. Amend rule **641—29.1(105)**, definitions of “Board,” “HVAC,” “Hydronic,” “Inactive license,” “Licensee” and “Routine maintenance,” as follows:

“*Board*” means the plumbing and mechanical systems ~~examining~~ board.

“*HVAC*” means heating, ventilation, ~~and~~ air conditioning, ~~in~~ and ducted systems. “HVAC” includes all natural, propane, liquid propane, or other gas lines associated with any component of an HVAC system.

“*Hydronic*” means a heating or cooling system that transfers heating or cooling by circulating fluid through a closed system, including boilers, pressure vessels, refrigerated equipment in connection with chilled water systems, all steam piping, hot or chilled water piping together with all control devices and accessories, installed as part of, or in connection with, any comfort heating or comfort cooling system or appliance using a liquid water or steam as the heating or cooling media. “Hydronic” includes all low-pressure and high-pressure systems and all natural, propane, liquid propane, or other gas lines associated with any component of a hydronic system.

“*Inactive license*” means a license that is available for a plumbing, HVAC, refrigeration, or hydronic professional who is not actively engaged in running a business or working in the business in the corresponding discipline, ~~in cases such as a retirement, military deployment, or medical leave at that license level.~~

“*Licensee*” means a person or entity licensed by the board as an apprentice, journey person, or master who provides services to operate as a contractor or work in the plumbing, HVAC, refrigeration, or hydronics hydronic disciplines or work as a certified medical gas system installer or install geothermal heat pump systems, or work in the specialty license disciplines developed by the board.

“*Routine maintenance*,” ~~as the term applies in Iowa Code section 105.11(9), is the regular upkeep of plumbing, HVAC, refrigeration, and hydronic systems and equipment, including recurring, preventive and ongoing maintenance necessary to delay or prevent failure, for which no changes in original design or construction are made. Examples of routine maintenance include replacing wax seals, gaskets, washers, air filters, or belts; oiling a blower motor; cleaning a condensing coil; and repairing damaged ductwork.~~ “Routine maintenance” shall not be interpreted to allow the repair or replacement of furnaces, condensing units, blower motors, boilers, chillers, ductwork systems, water heaters, water pipe systems, waste and vent systems or similar work means the maintenance, repair, or replacement of existing fixtures or parts of plumbing, HVAC, refrigeration, or hydronic systems in which no changes in original design are made. Fixtures or parts do not include smoke and fire dampers or water, gas or steam piping permanent repairs except for traps or strainers. Routine maintenance shall include emergency repairs. “Routine maintenance” does not include the replacement of furnaces, boilers, cooling appliances, or water heaters more than 100 gallons in size.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 3. Adopt the following **new** definitions in rule **641—29.1(105)**:

*“Disconnect/reconnect plumbing technician specialty license”* means a sublicense under a plumbing license to perform work from the appliance shutoff valve or fixture shutoff valve to the appliance or fixture and any part or component of the appliance or fixture, including the disconnection and reconnection of the existing appliance or fixture to the water or sewer piping and the installation of a shutoff valve no more than 3 feet from the appliance or fixture.

*“Emergency repairs”* means the repair of water pipes to prevent imminent damage to property.

*“Geothermal heat pump system”* means the geothermal earth connection subsystem, the geothermal heat pump subsystem, and the geothermal heat distribution subsystem.

*“Hearth specialty license”* means a sublicense under an HVAC license to perform work in the installation of gas burning and solid fuel appliances that offer a decorative view of the flames, from the connector pipe to the shutoff valve located within 3 feet of the appliance. This sublicense is further allowed to perform work in the venting systems, log lighters, gas log sets, fireplace inserts, and freestanding stoves.

*“Service technician HVAC specialty license”* means a sublicense under an HVAC license to perform work from the appliance shutoff valve to the appliance and any part and component of the appliance, including the disconnection and reconnection of the existing appliance to the gas piping and the installation of a shutoff valve no more than 3 feet away from the appliance.

*“Surety bond”* means a performance bond written by an entity licensed to do business in this state which guarantees that a contractor will fully perform the contract and which guarantees against breach of that contract.

ITEM 4. Rescind rule 641—29.2(105) and adopt the following **new** rule in lieu thereof:

**641—29.2(105) Available licenses and general requirements.** Subject to the general requirements set forth herein and the minimum qualifications for licensure set forth in rule 641—29.4(105), the following licenses are available:

**29.2(1) Apprentice license.** An applicant for an apprentice license shall:

- a. File an application and pay application fees in accordance with 641—29.5(105).
- b. Be enrolled in an applicable apprentice program which is registered with the United States Department of Labor Office of Apprenticeship.
- c. Certify that the applicant will work under the supervision of a licensed journeyman or master in the applicable discipline by providing the department with the United States Department of Labor Office of Apprenticeship identification number and sponsor identification number.

**29.2(2) Journeyman license.**

a. An applicant for a journeyman license shall:

- (1) File an application and pay application fees in accordance with rule 641—29.5(105).
- (2) Pass the state journeyman licensing examination in the applicable discipline.
- (3) Provide the board with evidence that the applicant has completed at least four years of practical experience as an apprentice. Commencing January 1, 2010, the four years of practical experience required by this paragraph must be an apprenticeship training program registered by the United States Department of Labor Office of Apprenticeship. Documentation must be submitted on a form provided by the board.

b. Notwithstanding the journeyman licensure requirements set forth in paragraph 29.2(2)“a,” an applicant who possesses a master level license and who seeks a journeyman license in the same discipline shall file an application and pay application fees in accordance with rule 641—29.5(105).

**29.2(3) Master license.** An applicant for a master license shall:

- a. File an application and pay application fees in accordance with rule 641—29.5(105).
- b. Pass the state master licensing examination for the applicable discipline.
- c. Provide the board with evidence that the applicant:
  - (1) Has previously been licensed as a master in the applicable discipline; or
  - (2) Has previously been licensed as a journeyman in the applicable discipline and has at least two years of journeyman experience in the applicable discipline.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**29.2(4) Contractor license.** An applicant for a contractor license shall:

- a. File an application and pay application fees in accordance with rule 641—29.5(105).
- b. Provide the applicant's Iowa Workforce Development Contractor registration number.
- c. Provide the board with evidence that the applicant maintains a permanent place of business.
- d. Provide the board with evidence of a public liability insurance policy issued by an entity licensed to do business in this state with a minimum coverage amount of \$500,000 and:
  - (1) If the applicant operates the contractor business as a sole proprietorship, provide the board with evidence that the applicant personally obtained the policy, or
  - (2) If the applicant operates the contractor business as an employee or owner of a legal entity, provide the board with evidence that the insurance policy is obtained by the entity and that the insurance covers all plumbing or mechanical work performed by the entity.
- e. Provide the board with evidence of a surety bond issued by an entity licensed to do business in this state in a minimum amount of \$5,000 and:
  - (1) If the applicant operates the contractor business as a sole proprietorship, provide the board with evidence that the applicant personally obtained the surety bond, or
  - (2) If the applicant operates the contractor business as an employee or owner of a legal entity, provide the board with evidence that the surety bond was obtained by the entity and that the surety bond covers all plumbing or mechanical work performed by the entity.
- f. Provide a certificate to the board that the public liability insurance policy required under paragraph 29.2(4)“d” and the surety bond required under paragraph 29.2(4)“e” shall not be canceled without the entity first giving 15 days' written notice to the board.
- g. Provide the board with evidence that the applicant holds an active master license or employs at least one person who holds an active master license issued under Iowa Code chapter 105, or, if the applicant provides plumbing, HVAC, refrigeration, or hydronic system service exclusively in connection with geothermal heat pump systems, provide evidence that the applicant holds a geothermal heat pump systems installer license or employs at least one person who holds a geothermal heat pump systems installer license.

**29.2(5) Active journey person license/inactive master license combination.** An applicant for an active journey person license and an inactive master license in the same discipline shall:

- a. File an application and pay application fees for both an active journey person license and an inactive master license in accordance with rule 641—29.5(105).
- b. Provide the board with evidence that the applicant meets the requirements for master licensure under subrule 29.2(3).
- c. Provide evidence that the applicant is not performing plumbing, HVAC, refrigeration, or hydronic work for which a master license is required.
- d. Acknowledge awareness that the applicant is unable to perform any plumbing, HVAC, refrigeration, or hydronic work for which a master license is required so long as the applicant's master license is held in inactive status.

**29.2(6) Inactive license.** An applicant for an inactive license that does not fall within subrule 29.2(5) shall:

- a. File an application and pay application fees in accordance with rule 641—29.5(105).
- b. Provide the board with evidence that the applicant meets the requirements for licensure under rule 641—29.2(105) at the applicable licensure level.
- c. Provide the board with evidence that the applicant is not actively engaged working in the plumbing, HVAC, refrigeration, or hydronic disciplines for which licensure is required.
- d. Acknowledge awareness that the applicant is unable to perform any plumbing, HVAC, refrigeration, or hydronic work for which licensure is required so long as the applicant's license is held in inactive status.

**29.2(7) Geothermal heat pump systems installer license.** An applicant for a geothermal heat pump systems installer license shall:

- a. File an application and pay application fees in accordance with rule 641—29.5(105).

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

b. Provide the board with evidence that the applicant possesses a valid certification from the International Ground Source Heat Pump Association or possesses a valid certification issued from an industry-accredited installer certification standards recognized by the United States Department of Energy.

**29.2(8) Service technician HVAC specialty license.** An applicant for a service technician HVAC specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that:

(1) The applicant possesses a valid certification from the North American Technical Excellence, Inc. or an equivalent authority approved by the board, or

(2) The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

**29.2(9) Disconnect/reconnect plumbing technician specialty license.** An applicant for a disconnect/reconnect plumbing technician specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that:

(1) The applicant is receiving or has previously received industry training to perform work covered under this specialty license, or

(2) The applicant completed a Service Technician Associate degree or equivalent educational or similar training approved by the board.

**29.2(10) Private school or college routine maintenance specialty license.** An applicant for a private school or college routine maintenance specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant is currently employed by a private school or college.

c. Provide the board with evidence that the applicant is performing routine maintenance within the scope of employment with the private school or college.

**29.2(11) Hearth systems specialty license.** An applicant for a hearth systems specialty license shall:

a. File an application and pay application fees in accordance with rule 641—29.5(105).

b. Provide the board with evidence that the applicant possesses a valid certification issued by the National Fireplace Institute or equivalent authority approved by the board.

ITEM 5. Amend rule 641—29.3(105), introductory paragraph, as follows:

**641—29.3(105) Medical gas piping certification.** ~~For the plumbing discipline, the~~ The following certification is required for a person who performs work as a medical gas system installer. An applicant for a medical gas certificate shall:

ITEM 6. Rescind subrule **29.4(4)**.

ITEM 7. Amend paragraph **29.5(1)“b”** as follows:

b. Applications ~~should~~ can be completed on-line ~~since paper applications will incur an additional processing fee or on a paper application. However, paper~~ Paper applications are available to download at <http://www.idph.state.ia.us/eh/plumbing.asp> or to request from the board office by writing to: Plumbing and Mechanical Systems Examining Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319-0075, or by calling 1-866-280-1521.

ITEM 8. Amend paragraph **29.5(2)“b”** as follows:

b. A paper application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Plumbing and Mechanical Systems Examining Board.

ITEM 9. Amend subrule 29.5(3) as follows:

**29.5(3)** If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. The board may be contacted at: Plumbing and Mechanical Systems

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Examining Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319, or by calling 1-866-280-1521.

ITEM 10. Amend subrule 29.5(5) as follows:

**29.5(5)** Complete applications shall be filed with the plumbing and mechanical systems examining board. Incomplete applications shall be considered invalid and after 90 days shall be destroyed.

ITEM 11. Amend subrule **29.6(1)**, introductory paragraph, as follows:

**29.6(1)** An applicant for licensure as a plumbing or mechanical system professional ~~shall that~~ requires a state licensing examination must successfully pass the licensing examination for the discipline.

ITEM 12. Rescind paragraph **29.6(1)“c.”**

ITEM 13. Amend paragraph **29.6(3)“b”** as follows:

b. Examination applications ~~should~~ can be completed on-line since paper applications will incur an additional processing fee or on a paper application. ~~However, paper~~ Paper applications are available to download at <http://www.idph.state.ia.us/eh/plumbing.asp> or to request from the board office by writing to: Plumbing and Mechanical Systems Examining Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319-0075, or by calling 1-866-280-1521.

ITEM 14. Amend subparagraph **29.6(3)“c”(2)** as follows:

(2) A paper examination application shall be accompanied by the appropriate fees payable by check or money order to the Iowa Plumbing and Mechanical Systems Examining Board.

ITEM 15. Amend paragraph **29.6(3)“f”** as follows:

f. If the applicant is notified that the application is incomplete, the applicant must contact the board office within 90 days. The board may be contacted at: Plumbing and Mechanical Systems Examining Board, Iowa Department of Public Health, 312 E. 12th Street, 5th Floor, Des Moines, Iowa 50319, or by calling 1-866-280-1521.

ITEM 16. Amend paragraph **29.6(3)“k”** as follows:

k. A master examination applicant ~~shall be licensed with the state of Iowa as a journey person in the discipline for a minimum of two years prior to application for examination.~~ not receive permission to sit for a master examination unless the applicant establishes that the applicant:

- (1) Has previously been licensed as a master in the applicable discipline; or
- (2) Has previously been licensed as a journey person in the applicable discipline and has at least two years of journey person experience in the applicable discipline.

ITEM 17. Amend paragraph **29.6(3)“l”** as follows:

l. A journey person examination applicant may apply to sit for the examination up to 60 days prior to completion of the 48 months of required apprentice credit which shall include the granting of advanced standing or credit for previously acquired experience, training, or skills. ~~The application for licensure will not be processed until all required criteria are complete and the certificate of completion from the United States Department of Labor Office of Apprenticeship has been issued.~~

ITEM 18. Amend subrule 29.7(1), introductory paragraph, as follows:

**29.7(1)** The period of licensure to ~~practice as an apprentice, journey person, or master in the plumbing, HVAC, refrigeration, or hydronics disciplines~~ operate as a contractor or work as a master, journey person or apprentice in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or install geothermal heat pump systems, or work in the specialty license disciplines developed by the board shall be biennial (every two years).

ITEM 19. Amend subparagraph **29.7(2)“a”(1)** as follows:

(1) Meet the continuing education requirements, ~~at least eight classroom hours of instruction during each two-year licensing term as set forth in rule 641—30.2(105).~~ A licensee whose license was

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

reactivated during the current renewal compliance period may use continuing education credit earned during the compliance period for the first renewal following reactivation; and

ITEM 20. Adopt the following **new** subparagraph **29.7(2)“a”(3)**:

(3) Provide evidence that the licensee continues to meet the general requirements for licensure under rule 641—29.2(105).

ITEM 21. Amend paragraph **29.7(2)“b,”** introductory paragraph, as follows:

*b.* Failure to renew a license within ~~a reasonable time~~ two months after the expiration of the license shall not invalidate the license, but a reasonable penalty may be assessed as adopted by rule, in addition to the license renewal fee, to allow reinstatement of the license.

ITEM 22. Amend subparagraphs **29.7(2)“c”(2)** and **(3)** as follows:

(2) A licensee whose license is lapsed may not ~~practice as a plumbing or mechanical professional~~ operate as a contractor or work in the plumbing, HVAC, refrigeration, or hydronic disciplines or work as a certified medical gas system installer or install geothermal heat pump systems, or work in the specialty license disciplines developed by the board until the license is reinstated and renewed.

(3) A licensee who ~~practices as a plumbing or mechanical professional~~ operates as a contractor or works in the plumbing, HVAC, refrigeration, or hydronic disciplines or works as a certified medical gas system installer or install geothermal heat pump systems, or works in the specialty license disciplines developed by the board in the state of Iowa with a lapsed license may be subject to disciplinary action by the board, injunctive action pursuant to Iowa Code chapter 105, criminal sanctions pursuant to Iowa Code chapter 105, and other available legal remedies.

ITEM 23. Rescind and reserve rule **641—29.8(105)**.

**ARC 8363B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt new Chapter 32, “Plumbing and Mechanical Systems Board—Licensee Discipline,” Iowa Administrative Code.

The rules in Chapter 32 describe the Iowa Plumbing and Mechanical Systems Board’s grounds and method for discipline. The chapter also identifies civil penalties, unlawful practices, investigations, subpoenas, requests for hearings, factors the Board may consider, enforcement options and judicial review.

Consideration will be given to all written suggestions or comments on the proposed rules on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Public Library  
529 Pierce Street  
Sioux City

Public Library  
400 Willow Avenue  
Council Bluffs

Public Library, Meeting Room C  
415 Commercial Street  
Waterloo

Ottumwa Regional Health Center  
1001 E. Pennsylvania  
Ottumwa

Public Library Information Ctr., Kelinson Rm.  
2950 Learning Campus Drive  
Bettendorf

Hoover State Office Building, First Floor  
1305 East Walnut  
Des Moines

Iowa Western Community College – 2  
923 East Washington  
Clarinda

Mason City National Guard Armory  
1160 19th Street SW  
Mason City

Crestwood High School  
1000 4th Avenue East  
Cresco

Archdiocesan Pastoral Center  
1229 Mount Loretta  
Dubuque

Spirit Lake High School  
2701 Hill Avenue  
Spirit Lake

Prairie Lakes Area Education Agency  
1 Triton Circle, Library Bldg.  
Fort Dodge

Kirkwood Community College  
Room 117  
1816 Lower Muscatine Road  
Iowa City

Burlington High School  
421 Terrace Drive  
Burlington

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

These rules are intended to implement Iowa Code chapter 105.

The following amendment is proposed.

Adopt the following new 641—Chapter 32:

## CHAPTER 32

## PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSEE DISCIPLINE

**641—32.1(105,272C) Definitions.** For purposes of this chapter, the following definitions apply:

*“Board”* means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

*“Discipline”* means any sanction the board may impose upon licensees.

*“Licensee”* means any person licensed to practice pursuant to Iowa Code chapter 105.

**641—32.2(105,272C) Grounds for discipline.** The board may impose any of the disciplinary sanctions provided in rule 641—32.3(105,272C) when the board determines that the licensee is guilty of any of the following acts or offenses:

**32.2(1)** Fraud in procuring a license. Fraud in procuring a license includes, but is not limited to, an intentional perversion of the truth in making application for a license to practice in this state, which includes the following:

*a.* 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 license in this state, or

*b.* Attempting to file or filing with the board or the department of public health any false or forged diploma, certificate, affidavit, identification or qualification in making an application for a license in this state.

**32.2(2)** Professional incompetence. Professional incompetence includes, but is not limited to:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*a.* A substantial lack of knowledge or ability to discharge professional obligations within the scope of the applicable licensed trade.

*b.* A substantial deviation from the standards of learning or skill ordinarily possessed and applied by others licensed in the applicable trade in the state of Iowa acting in the same or similar circumstances.

*c.* A failure to exercise the degree of care which is ordinarily exercised by the average licensee in the applicable trade acting in the same or similar circumstances.

*d.* Failure to conform to the minimal standard of acceptable and prevailing practice of a licensee in the applicable trade in this state.

*e.* Inability to practice in the trade with reasonable skill and safety by reason of illness, drunkenness, excessive use of drugs, narcotics, chemicals, or other type of material or as a result of a mental or physical condition.

*f.* Being adjudged mentally incompetent by a court of competent jurisdiction.

**32.2(3)** 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.

**32.2(4)** Habitual intoxication or addiction to the use of drugs.

**32.2(5)** Conviction of a felony related to the profession or occupation of the licensee or the conviction of any felony that would affect the licensee's ability to practice within the profession. A copy of the record or conviction or plea of guilty shall be conclusive evidence of such conviction.

**32.2(6)** Fraud in representations as to skill or ability.

**32.2(7)** Use of untruthful or improbable statements in advertisements.

**32.2(8)** Willful or repeated violations of Iowa Code chapter 105 or 272C.

**32.2(9)** Violation of a board rule.

**32.2(10)** Nonpayment of a state debt as evidenced by a certificate of noncompliance issued pursuant to Iowa Code chapter 272D and 641—Chapter 194.

**32.2(11)** Permitting another person to use the licensee's wall certificate, wallet card, or license number for any purpose.

**32.2(12)** Failure to cooperate with a board audit.

**32.2(13)** Failure to meet the continuing education requirements for licensure.

**32.2(14)** Submission of a false report of continuing education.

**32.2(15)** Failure to pay any outstanding fees or costs owed to the board.

**32.2(16)** Acceptance of any fee by fraud or misrepresentation.

**32.2(17)** Negligence by the licensee in the practice of the trade. Negligence by the licensee in the practice of the trade includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions which impair the ability to safely and skillfully practice the trade.

**32.2(18)** Violation of a law, ordinance, or regulation of this state, or a political subdivision therein, another state, or the United States, which relates to the practice of the profession.

**32.2(19)** Revocation, suspension, or other disciplinary action taken by a licensing authority of this state, another state, territory, or country; or failure by the licensee to report in writing to the board revocation, suspension, or other disciplinary action taken by a licensing authority within 30 days of the final action. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

**32.2(20)** Failure of a licensee or an applicant for licensure in this state to report any voluntary agreements restricting the practice in the trade in another state, district, territory, or country.

**32.2(21)** Failure to notify the board of a criminal conviction within 30 days of the action, regardless of the jurisdiction where it occurred.

**32.2(22)** Failure to notify the board within 30 days after the occurrence of any judgment or settlement of professional negligence claim or action.

**32.2(23)** Engaging in any conduct that subverts or attempts to subvert a board investigation.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**32.2(24)** Failure to comply with a subpoena issued by the board or otherwise fail to cooperate with an investigation of the board.

**32.2(25)** Failure to comply with the terms of a board order or the terms of a settlement agreement or consent order.

**32.2(26)** Failure to report another licensee to the board for any violations listed in these rules, pursuant to Iowa Code section 272C.9.

**32.2(27)** Knowingly aiding, assisting, procuring, or advising a person to unlawfully practice a trade included in Iowa Code chapter 105.

**32.2(28)** Failure to report a change in name or address within 30 days after it occurs.

**32.2(29)** Representing oneself as a licensed tradesperson when one's license has been suspended or revoked or when the license is on inactive status.

**32.2(30)** Permitting another person to use the licensee's license for any purpose.

**32.2(31)** Permitting an unlicensed employee or person under the licensee's control to perform activities that require a license.

**32.2(32)** Failure to apply and obtain a permit prior to performing work, if required by the state or a political subdivision therein.

**32.2(33)** Failure to pay all inspection fees, if required by the state or a political subdivision therein.

**32.2(34)** Failure to pay a permit fee, if required by the state or a political subdivision therein.

**641—32.3(105,272C) Method of discipline.** The board has the authority to impose the following disciplinary sanctions:

1. Revocation of license.
2. Suspension of license until further order of the board or for a specific period.
3. Prohibit permanently, until further order of the board or for a specific period, the licensee's engaging in specified procedures, methods, or acts.
4. Probation.
5. Require additional education or training.
6. Require a reexamination.
7. Order a physical or mental evaluation, or order alcohol and drug screening within a time specified by the board.
8. Impose civil penalties not to exceed \$5000.
9. Issue a citation and warning.
10. Such other sanctions allowed by law as may be appropriate.

**641—32.4(272C) Discretion of board.** The following factors may be considered by the board in determining the nature and severity of the disciplinary sanction to be imposed:

1. The relative serious nature of the violation as it relates to ensuring a high standard of professional care to the citizens of this state;
2. The facts of the particular violation;
3. Any extenuating facts or other countervailing considerations;
4. The number of prior violations or complaints;
5. The seriousness of prior violations or complaints;
6. Whether remedial action has been taken; and
7. Such other factors as may reflect upon the competency, ethical standards, and professional conduct of the licensee.

**641—32.5(105) Civil penalties.** The board may impose civil penalties by order against a person who is not licensed by the board based on the unlawful practices specified in Iowa Code section 105.27(1). In addition to the procedures set forth in Iowa Code chapter 105, this chapter shall apply.

**32.5(1) Unlawful practices.** Practices by an unlicensed person which are subject to civil penalties include, but are not limited to:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- a.* Acts or practices by unlicensed persons which require licensure to install or repair plumbing, HVAC, refrigeration, or hydronic systems under Iowa Code chapter 105.
- b.* Acts or practices by unlicensed persons which require certification to install or repair medical gas piping systems under Iowa Code chapter 105.
- c.* Engaging in the business of designing, installing, or repairing plumbing, HVAC, refrigeration, or hydronic systems without employing a licensed master.
- d.* Use or attempted use of a licensee's certificate or wallet card or use or attempted use of an expired, suspended, revoked, or nonexistent certificate.
- e.* Falsely impersonating a person licensed under Iowa Code chapter 105.
- f.* Providing false or forged evidence of any kind to the board in obtaining or attempting to obtain a license.
- g.* Other violations of Iowa Code chapter 105.
- h.* Knowingly aiding or abetting an unlicensed person or establishment in any activity identified in this rule.

**32.5(2) Investigations.** The board is authorized by Iowa Code subsection 17A.13(1) and Iowa Code chapter 105 to conduct such investigations as are needed to determine whether grounds exist to impose civil penalties against a nonlicensee. Complaint and investigatory files concerning nonlicensees are not confidential except as may be provided in Iowa Code chapter 22.

**32.5(3) Subpoenas.** Pursuant to Iowa Code section 17A.13(1) and Iowa Code chapter 105, the board is authorized in connection with an investigation of an unlicensed person to issue subpoenas to compel persons to testify and to compel persons to produce books, papers, records and any other real evidence, whether or not privileged or confidential under law, which the board deems necessary as evidence in connection with the civil penalty proceeding or relevant to the decision of whether to initiate a civil penalty proceeding. Board procedures concerning investigative subpoenas are set forth in rule 641—34.5(105).

**32.5(4) Notice of intent to impose civil penalties.** The notice of the board's intent to issue an order to require compliance with Iowa Code chapter 105 and to impose a civil penalty shall be served upon the nonlicensee by restricted certified mail, return receipt requested, or by personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the nonlicensee may accept service personally or through authorized counsel. The notice shall include the following:

- a.* A statement of the legal authority and jurisdiction under which the proposed civil penalty would be imposed.
- b.* Reference to the particular sections of the statutes and rules involved.
- c.* A short, plain statement of the alleged unlawful practices.
- d.* The dollar amount of the proposed civil penalty and the nature of the intended order to require compliance with Iowa Code chapter 105.
- e.* Notice of the nonlicensee's right to a hearing and the time frame in which the hearing must be requested.
- f.* The address to which written request for hearing must be made.

**32.5(5) Requests for hearings.**

*a.* Nonlicensees must request a hearing within 30 days of the date the notice is received if served through restricted certified mail, or within 30 days of the date of service if service is accepted or made in accordance with Iowa Rule of Civil Procedure 1.305. A request for hearing must be in writing and is deemed made on the date of the nonmetered United States Postal Service postmark or the date of personal service.

*b.* If a request for hearing is not timely made, the board chairperson or the chairperson's designee may issue an order imposing the civil penalty and requiring compliance with Iowa Code chapter 105, as described in the notice. The order may be mailed by regular first-class mail or served in the same manner as the notice of intent to impose a civil penalty.

*c.* If a request for hearing is timely made, the board shall issue a notice of hearing and conduct a hearing in the same manner as applicable to disciplinary cases against licensees.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

d. A nonlicensee may waive the right to hearing and all attendant rights and enter into a consent order imposing a civil penalty and requiring compliance with Iowa Code chapter 105 at any stage of the proceeding upon mutual consent of the board.

e. The notice of intent to issue an order and the order are public records available for inspection and copying in accordance with Iowa Code chapter 22. Copies may be published. Hearings shall be open to the public.

**32.5(6) Factors for board consideration.** The board may consider the following when determining the amount of civil penalty to impose, if any:

- a. Whether the amount imposed will be a substantial economic deterrent to the violation.
- b. The circumstances leading to or resulting in the violation.
- c. The severity of the violation and the risk of harm to the public.
- d. The economic benefits gained by the violator as a result of noncompliance.
- e. The welfare or best interest of the public.

**32.5(7) Enforcement options.** In addition, or as an alternative, to the administrative process described in these rules, the board may seek an injunction in district court, refer the matter for criminal prosecution, or enter into a consent agreement.

**32.5(8) Judicial review.**

a. A person aggrieved by the imposition of a civil penalty under this rule may seek a judicial review in accordance with Iowa Code section 17A.19.

b. The board shall notify the attorney general of the failure to pay a civil penalty within 30 days after entry of an order or within 10 days following final judgment in favor of the board if an order has been stayed pending appeal.

c. The attorney general may commence an action to recover the amount of the penalty, including reasonable attorney fees and costs.

d. An action to enforce an order under this rule may be joined with an action for an injunction pursuant to Iowa Code section 105.27(4).

These rules are intended to implement Iowa Code chapters 105 and 272C.

**ARC 8364B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt Chapter 34, “Plumbing and Mechanical Systems Board—Complaints and Investigations,” Iowa Administrative Code.

The rules in Chapter 34 describe how to submit a complaint to the Iowa Plumbing and Mechanical Systems Board. The rules also detail how an investigation will be conducted and how the review process will proceed.

Consideration will be given to all written suggestions or comments on the proposed rules on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. This

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

|                                                                                           |                                                                                     |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Public Library<br>529 Pierce Street<br>Sioux City                                         | Mason City National Guard Armory<br>1160 19th Street SW<br>Mason City               |
| Public Library<br>400 Willow Avenue<br>Council Bluffs                                     | Crestwood High School<br>1000 4th Avenue East<br>Cresco                             |
| Public Library, Meeting Room C<br>415 Commercial Street<br>Waterloo                       | Archdiocesan Pastoral Center<br>1229 Mount Loretta<br>Dubuque                       |
| Ottumwa Regional Health Center<br>1001 E. Pennsylvania<br>Ottumwa                         | Spirit Lake High School<br>2701 Hill Avenue<br>Spirit Lake                          |
| Public Library Information Ctr., Kelinson Rm.<br>2950 Learning Campus Drive<br>Bettendorf | Prairie Lakes Area Education Agency<br>1 Triton Circle, Library Bldg.<br>Fort Dodge |
| Hoover State Office Building, First Floor<br>1305 East Walnut<br>Des Moines               | Kirkwood Community College<br>Room 117<br>1816 Lower Muscatine Road<br>Iowa City    |
| Iowa Western Community College – 2<br>923 East Washington<br>Clarinda                     | Burlington High School<br>421 Terrace Drive<br>Burlington                           |

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

These rules are intended to implement Iowa Code chapter 105.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 34:

## CHAPTER 34

## PLUMBING AND MECHANICAL SYSTEMS BOARD—COMPLAINTS AND INVESTIGATIONS

**641—34.1(272C) Complaints.**

**34.1(1)** A complaint shall be made in writing and shall be mailed or delivered to the Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075. The complaint shall include the name and address of the complainant, the name of the licensee, and a concise statement of the allegations against the licensee. A complaint may also be initiated upon the board's own motion pursuant to evidence received by the board. Timely filing of complaints is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

**34.1(2)** A person shall not be civilly liable as a result of filing a complaint with the board, or for disclosure to the board or its agents or employees, whether or not pursuant to a subpoena of records, documents, testimony or other forms of information which constitute privileged matter concerning a recipient of health care services or some other person, in connection with the duties of the board. However, such immunity from civil liability shall not apply if such act is done with malice.

**641—34.2(272C) Report of malpractice claims or actions or disciplinary actions.** Each licensee shall submit a copy of any judgment or settlement in a malpractice claim or any disciplinary action taken by

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

another licensing authority in another state or jurisdiction to the board within 30 days of the date of occurrence.

**641—34.3(272C) Report of acts or omissions.** Each licensee with first-hand knowledge of acts or omissions in violation of statute or the board's administrative rules shall report to the board those acts or omissions when committed by another person licensed to practice by the board. The report shall include the name and address of the licensee and the date, time, and place of the incident.

**641—34.4(272C) Investigation of complaints or reports.** The chairperson of the board may assign an investigation of a complaint or report to a member of the board or to an investigator. The investigating board member or the investigator may request information from any peer review committee which may be established to assist the board. The investigating board member or investigator may consult an assistant attorney general concerning the investigation or evidence produced from the investigation. A board member who has personally investigated a complaint is disqualified from participating in any contested case proceeding resulting from the investigation.

**641—34.5(17A,272C) Issuance of investigatory subpoenas.**

**34.5(1)** The board executive officer or designee may, upon the written request of a board investigator or on the executive officer's own initiative, subpoena books, papers, records, and other real evidence which are necessary for the board to decide whether to initiate a contested case proceeding. In the case of a subpoena for mental health records, each of the following conditions shall be satisfied prior to the issuance of the subpoena:

- a. The nature of the complaint reasonably justifies the issuance of a subpoena;
- b. Adequate safeguards have been established to prevent unauthorized disclosure;
- c. An express statutory mandate, articulated public policy, or other recognizable public interest favors access; and
- d. An attempt was made to notify the patient and to secure an authorization from the patient for release of the records at issue.

**34.5(2)** A written request for a subpoena or the executive officer's written memorandum in support of the issuance of a subpoena shall contain the following:

- a. The name and address of the person to whom the subpoena will be directed;
- b. A specific description of the books, papers, records or other real evidence requested;
- c. An explanation of why the documents sought to be subpoenaed are necessary for the board to determine whether it should initiate a contested case proceeding; and
- d. In the case of a subpoena request for mental health records, confirmation that the conditions described in subrule 34.5(1) have been satisfied.

**34.5(3)** Each subpoena shall contain:

- a. The name and address of the person to whom the subpoena is directed;
- b. A description of the books, papers, records or other real evidence requested;
- c. The date, time and location for production or inspection and copying;
- d. The time within which a motion to quash or modify the subpoena must be filed;
- e. The signature, address and telephone number of the board executive officer or designee;
- f. The date of issuance;
- g. A return of service.

**34.5(4)** Any person who is aggrieved or adversely affected by compliance with the subpoena and who desires to challenge the subpoena must, within 14 days after service of the subpoena, or before the time specified for compliance if such time is less than 14 days, file with the board a motion to quash or modify the subpoena. The motion shall describe the legal reasons why the subpoena should be quashed or modified and may be accompanied by legal briefs or factual affidavits.

**34.5(5)** Upon receipt of a timely motion to quash or modify a subpoena, the board may request an administrative law judge to issue a decision, or the board may issue a decision. Oral argument may be

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

scheduled at the discretion of the board or the administrative law judge. The administrative law judge or the board may quash or modify the subpoena, deny the motion, or issue an appropriate protective order.

**34.5(6)** A person who is aggrieved by a ruling of an administrative law judge and who desires to challenge that ruling must appeal the ruling to the board by serving on the board executive officer, either in person or by certified mail, a notice of appeal within ten days after service of the decision of the administrative law judge.

**34.5(7)** If the person contesting the subpoena is not the person under investigation, the board's decision is final for purposes of judicial review. If the person contesting the subpoena is the person under investigation, the board's decision is not final for purposes of judicial review until either (1) the person is notified the investigation has been concluded with no formal action, or (2) there is a final decision in the contested case.

**641—34.6(272C) Peer review committees.**

**34.6(1)** A complaint may be assigned to a peer review committee for review, investigation, or report to the board.

**34.6(2)** The board shall determine which peer review committee will review a case and what complaints or other matters shall be referred to a peer review committee for investigation, review, or report to the board.

**34.6(3)** Members of the peer review committees shall not be liable for acts, omissions, or decisions made in connection with service on the peer review committee. However, such immunity from civil liability shall not apply if such act is done with malice.

**34.6(4)** The peer review committees shall observe the requirements of confidentiality imposed by Iowa Code section 272C.6.

**641—34.7(17A) Appearance.** The board may request that a licensee appear before a committee of the board to discuss a pending investigation. By electing to participate in the committee appearance, the licensee waives any objection to a board member both participating in the appearance and later participating as a decision maker in a contested case proceeding. By electing to participate in the committee appearance, the licensee further waives any objection to the board executive officer assisting the board in the contested case proceeding.

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.

**ARC 8365B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt Chapter 35, “Plumbing and Mechanical Systems Board—Licensure of Nonresident Applicant—Reciprocity,” Iowa Administrative Code.

The rules in Chapter 35 describe how an out-of-state applicant would apply for a license issued by the Iowa Plumbing and Mechanical Systems Board.

Consideration will be given to all written suggestions or comments on the proposed rules on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

|                                                                                           |                                                                                     |
|-------------------------------------------------------------------------------------------|-------------------------------------------------------------------------------------|
| Public Library<br>529 Pierce Street<br>Sioux City                                         | Mason City National Guard Armory<br>1160 19th Street SW<br>Mason City               |
| Public Library<br>400 Willow Avenue<br>Council Bluffs                                     | Crestwood High School<br>1000 4th Avenue East<br>Cresco                             |
| Public Library, Meeting Room C<br>415 Commercial Street<br>Waterloo                       | Archdiocesan Pastoral Center<br>1229 Mount Loretta<br>Dubuque                       |
| Ottumwa Regional Health Center<br>1001 E. Pennsylvania<br>Ottumwa                         | Spirit Lake High School<br>2701 Hill Avenue<br>Spirit Lake                          |
| Public Library Information Ctr., Kelinson Rm.<br>2950 Learning Campus Drive<br>Bettendorf | Prairie Lakes Area Education Agency<br>1 Triton Circle, Library Bldg.<br>Fort Dodge |
| Hoover State Office Building, First Floor<br>1305 East Walnut<br>Des Moines               | Kirkwood Community College<br>Room 117<br>1816 Lower Muscatine Road<br>Iowa City    |
| Iowa Western Community College – 2<br>923 East Washington<br>Clarinda                     | Burlington High School<br>421 Terrace Drive<br>Burlington                           |

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

These rules are intended to implement Iowa Code chapter 105.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 35:

## CHAPTER 35

PLUMBING AND MECHANICAL SYSTEMS BOARD—LICENSURE OF NONRESIDENT  
APPLICANT—RECIPROCITY

**641—35.1(105) Definition.** For purposes of this chapter, the following definition applies:

“*Board*” means the plumbing and mechanical systems board as established pursuant to Iowa Code section 105.3.

**641—35.2(105) Reciprocity agreements.**

**35.2(1)** The board may enter into reciprocity agreements with other states that have plumbing, HVAC, refrigeration, and hydronic licensing requirements similar to those set forth under Iowa law.

**35.2(2)** The board shall not enter into a reciprocity agreement with another state unless the other state grants the same reciprocity licensing privileges to residents of Iowa who have obtained Iowa plumbing, HVAC, refrigeration, or hydronic licenses under Iowa Code chapter 105.

**641—35.3(105) Application by reciprocity.** A nonresident of Iowa seeking a reciprocal license under Iowa Code chapter 105 shall apply on forms provided by the board.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**35.3(1) *Registration requirements.*** The board may issue a reciprocal license if:

- a. The applicant is a nonresident of Iowa;
- b. The applicant possesses a valid plumbing, HVAC, refrigeration, or hydronic license issued from a state with which the board has entered into a reciprocity agreement;
- c. The applicant has paid the appropriate fee or fees required in 641—Chapter 28;
- d. The applicant meets the minimum qualifications for licensure in rule 641—29.4(105); and
- e. The applicant agrees to comply with all provisions of Iowa law and rules.

**35.3(2) *Denial of reciprocal license.*** The board may refuse to issue a reciprocal license to an applicant otherwise qualified based upon a suspension, revocation, or other disciplinary action taken against the applicant by a licensing authority in this or another jurisdiction. For purposes of this subrule, a “disciplinary action” includes the voluntary surrender of a license to resolve a pending disciplinary investigation or proceeding.

These rules are intended to implement Iowa Code chapter 105.

**ARC 8366B****PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 105.4, the Iowa Plumbing and Mechanical Systems Board hereby gives Notice of Intended Action to adopt Chapter 36, “Plumbing and Mechanical Systems Board—Petitions for Rule Making,” Iowa Administrative Code.

The rules in Chapter 36 describe the process for filing a petition for rule making with the Iowa Plumbing and Mechanical Systems Board.

Consideration will be given to all written suggestions or comments on the proposed rules on or before December 22, 2009. Such written comments should be directed to Cindy Houlson, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)281-4529 or by E-mail to [choulson@idph.state.ia.us](mailto:choulson@idph.state.ia.us).

Also, there will be a public hearing on December 22, 2009, from 11 a.m. to 1 p.m., at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules. This hearing will originate from the Iowa Communications Network (ICN) and will be accessible over the ICN from the following locations:

Public Library  
529 Pierce Street  
Sioux City

Public Library  
400 Willow Avenue  
Council Bluffs

Public Library, Meeting Room C  
415 Commercial Street  
Waterloo

Ottumwa Regional Health Center  
1001 E. Pennsylvania  
Ottumwa

Mason City National Guard Armory  
1160 19th Street SW  
Mason City

Crestwood High School  
1000 4th Avenue East  
Cresco

Archdiocesan Pastoral Center  
1229 Mount Loretta  
Dubuque

Spirit Lake High School  
2701 Hill Avenue  
Spirit Lake

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Public Library Information Ctr., Kelinson Rm.  
2950 Learning Campus Drive  
Bettendorf

Hoover State Office Building, First Floor  
1305 East Walnut  
Des Moines

Iowa Western Community College – 2  
923 East Washington  
Clarinda

Prairie Lakes Area Education Agency  
1 Triton Circle, Library Bldg.  
Fort Dodge

Kirkwood Community College  
Room 117  
1816 Lower Muscatine Road  
Iowa City

Burlington High School  
421 Terrace Drive  
Burlington

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

These rules are intended to implement Iowa Code chapter 105.

The following amendment is proposed.

Adopt the following **new** 641—Chapter 36:

## CHAPTER 36

## PLUMBING AND MECHANICAL SYSTEMS BOARD—PETITIONS FOR RULE MAKING

The Iowa plumbing and mechanical systems board hereby adopts the petitions for rule making segment of the Uniform Rules of Agency Procedure which are printed in the first volume of the Iowa Administrative Code, with the following amendments:

**641—36.1(17A) Petition for rule making.** In lieu of the words “(designate office)”, insert “Iowa Plumbing and Mechanical Systems Board.” A request for access to a record should be addressed to the Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.

In lieu of the words “(AGENCY NAME)”, the heading of the Petition should read:

“BEFORE THE IOWA PLUMBING AND MECHANICAL SYSTEMS BOARD”

**641—36.3(17A) Inquiries.** In lieu of the words “(designate official by full title and address)”, insert “Iowa Plumbing and Mechanical Systems Board, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319-0075.”

These rules are intended to implement Iowa Code section 17A.7.

**ARC 8355B**

## PUBLIC HEALTH DEPARTMENT[641]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 135.105C, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 69, “Renovation, Remodeling, and Repainting—Lead Hazard Notification Process,” Iowa Administrative Code.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

This chapter implements a program to require individuals who perform renovation, remodeling, or repainting of target housing for compensation to provide an approved lead hazard information pamphlet to the owner and occupant of the housing prior to commencing the work. The Department of Public Health was required to obtain authorization from the U.S. Environmental Protection Agency (EPA) for the Department's program to require lead hazard notification prior to renovation, remodeling, or repainting of target housing. Iowa's program was authorized by the EPA on July 13, 1999. 2009 Iowa Acts, House File 314, as passed by the 83rd General Assembly, directs the Department of Public Health to expand the requirements of this chapter to cover child-occupied facilities because this change is required by EPA.

The proposed amendments make a number of changes to incorporate guidance issued by the Department and the federal government. In addition, the Department has made changes to its administrative enforcement procedures. The Department has added provisions to implement the mandates of 2009 Iowa Acts, House File 314. Finally, the Department has changed the name of the federal pamphlet from "Protect Your Family from Lead in Your Home" to "Renovate Right."

The Department has added definitions for "child-occupied facility," "compensation," "housing for the elderly," and "person."

The Department has determined that these rules are not subject to waiver or variance because Iowa's program must be as protective as EPA regulations, which do not allow variances or waivers.

Consideration will be given to all written suggestions or comments on the proposed amendments received on or before December 22, 2009. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; E-mail to [rgergely@idph.state.ia.us](mailto:rgergely@idph.state.ia.us); fax (515)281-4529.

Also, there will be a public hearing on December 22, 2009, at 10 a.m. over the Iowa Communications Network (ICN), at which time persons may present their views. The sites for the public hearing are as follows:

Atlantic Public Library  
507 Poplar  
Atlantic

Great Prairie Area Education Agency Regional Office  
3601 West Ave.  
Burlington

DMACC – Carroll Campus  
906 North Grant Rd., Room 144  
Carroll

Department of Human Services  
411 3rd St. SE  
5th Floor, Room 550  
Cedar Rapids

Centerville National Guard Armory  
Dewey Road, RR 1  
Centerville

Chariton High School  
501 N. Grand, Room 116  
Chariton

Clinton Community College  
1000 Lincoln Blvd., Room 105  
Clinton

Keystone Area Education Agency 1  
2310 Chaney Rd., Room 2  
Dubuque

Fort Dodge Public Library  
424 Central Ave.  
Fort Dodge

Area Education Agency 267 Regional Office  
909 S. 12th St.  
Marshalltown

North Iowa Area Community College – 1  
500 College Dr.  
Activity Center, Room 106  
Mason City

Muscatine Community College  
152 Colorado St.  
Larson Hall, Room 60  
Muscatine

Onawa-West Monona Jr.-Sr. High School  
1314 15th St.  
Onawa

Orange City Public Library  
112 Albany Ave. SE  
Rieckhoff Room  
Orange City

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

Colo-Nesco Senior High School  
Box 215, 919 West St.  
Colo

Loess Hills Area Education Agency 13  
24997 Hwy. 92  
Council Bluffs

Green Valley Area Education Agency 14  
1405 N. Lincoln, Turner Room  
Creston

Kimberly Center  
1002 W. Kimberly, Room 119  
Davenport

Decorah High School  
100 East Claiborne Dr.  
Decorah

Department of Public Health  
Lucas State Office Building  
321 E. 12th St., 6th Floor  
Des Moines

Great Prairie Area Education Agency – 1  
2814 N. Court St.  
Ottumwa

Southwestern Community College – 1  
2300 N. 4th St.  
Red Oak Center, Room 116  
Red Oak

Northwest Area Education Agency  
1520 Morningside Ave., Room 206  
Sioux City

Iowa Lakes Community College  
1900 N. Grand Ave.  
Spencer Attendance Center, Fiber Optic Rm. 118  
Spencer

Hawkeye Community College – 1  
1501 E. Orange Rd.  
Tama Hall, Room 110  
Waterloo

These amendments are intended to implement Iowa Code section 135.105C and 2009 Iowa Acts, House File 314.

The following amendments are proposed.

ITEM 1. Amend rule 641—69.1(135) as follows:

**641—69.1(135) Applicability.** This chapter applies to all persons who perform renovation, remodeling, ~~and~~ or repainting for compensation in target housing or a child-occupied facility.

ITEM 2. Amend rule **641—69.2(135)**, definition of “Emergency renovation, remodeling, and repainting,” as follows:

*“Emergency renovation, remodeling, ~~and~~ or repainting”* means renovation, remodeling, ~~and~~ or repainting activities necessitated by nonroutine failures of equipment or a structure that were not planned but resulted from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens equipment or property with significant damage.

ITEM 3. Adopt the following **new** definitions in rule **641—69.2(135)**:

*“Child-occupied facility”* means a building, or portion of a building, constructed prior to 1978, that is described by all of the following: (1) The building is visited on a regular basis by the same child, who is less than six years of age, on at least two different days within any week. For purposes of this chapter, a week is a Sunday through Saturday period. (2) Each day’s visit by the child lasts at least 3 hours, and the combined annual visits total at least 60 hours. A child-occupied facility may include, but is not limited to, a child care center, preschool, or kindergarten classroom. A child-occupied facility also includes common areas that are routinely used by children who are less than six years of age, such as restrooms and cafeterias, and the exterior walls and adjoining space of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under the age of six years. “Child-occupied facility” also includes any building where lead-based paint activities are conducted immediately prior to or during the conversion of the building to a child-occupied facility.

*“Compensation”* means payment or reimbursement for services performed. Compensation is not limited to monetary considerations and includes payment of rent for rental units, receipt of a salary from the owner or manager of target housing, and receipt of a salary from the owner or operator of a child-occupied facility.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

*“Housing for the elderly”* means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or older or an age recognized as elderly by a specific federal housing assistance program.

*“Person”* means individual, corporation, limited liability company, government or governmental subdivision or agency, business trust, estate, trust, partnership, or association, or any other legal entity.

ITEM 4. Amend rule 641—69.3(135) as follows:

**641—69.3(135) Notification required in target housing.** ~~Beginning on June 1, 1999, individuals~~ A person who ~~perform~~ performs renovation, remodeling, ~~and or~~ and or repainting of target housing for compensation, except for emergency renovation, remodeling, ~~and or~~ and or repainting of target housing, and except for minor repair and maintenance activities that disrupt less than 0.1 square feet ~~or less~~ of painted surface, must do the following ~~no more than 60 days~~ prior to commencing the work:

**69.3(1)** Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the owner and adult occupant of each dwelling unit where renovation, remodeling, ~~and or~~ and or repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

**69.3(2)** Obtain a signed, dated acknowledgment from the owner and known adult occupant of each dwelling unit where renovation, remodeling, ~~and or~~ and or repainting will be performed affirming that they have received the pamphlet prior to the start of renovation, remodeling, or repainting and are aware of the potential health hazards from remodeling, renovating, or repainting housing containing lead-based paint. The acknowledgment shall be obtained no more than 60 days prior to commencing the work.

a. No change.

b. The acknowledgment shall include the following language:

I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting housing containing lead-based paint or lead-based paint hazards.

c. No change.

d. If a signature cannot be obtained from an adult occupant, the ~~individual~~ person must certify in writing that the pamphlet has been delivered to the dwelling and that a written acknowledgment could not be obtained from an adult occupant. Such certification must include the address of the unit to be remodeled, renovated, or repainted, the date and method of delivery of the pamphlet, the name of the person delivering the pamphlet, the reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the person conducting the renovating, remodeling, or repainting, and the date of signature.

e. to g. No change.

**69.3(3)** No change.

**69.3(4)** If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, ~~and or~~ and or repainting change after the initial notification has been conducted, the ~~individual~~ person conducting the renovation, remodeling, ~~and or~~ and or repainting shall provide further notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the ~~individual~~ person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

ITEM 5. Amend rule 641—69.4(135) as follows:

**641—69.4(135) Notification required in multifamily housing.** ~~Beginning on June 1, 1999, individuals~~ A person who ~~perform~~ performs renovation, remodeling, ~~and or~~ and or repainting of common areas for compensation, except for emergency renovation, remodeling, ~~and or~~ and or repainting of target housing,

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

and except for minor repair and maintenance activities that disrupt less than 0.1 square feet ~~or less of~~ painted surface, must do the following ~~no more than 60 days~~ prior to commencing the work:

**69.4(1)** Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the owner of the multifamily target housing where renovation, remodeling, ~~and~~ or repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

**69.4(2)** Obtain a signed, dated acknowledgment from the owner of the multifamily target housing where renovation, remodeling, ~~and~~ or repainting will be performed affirming that the owner has received the pamphlet prior to the start of renovation, remodeling, or repainting and is aware of the potential health hazards from remodeling, renovating, or repainting housing containing lead-based paint. The acknowledgment shall be obtained no more than 60 days prior to commencing the work.

a. No change.

b. The acknowledgment shall include the following language:

I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting housing containing lead-based paint or lead-based paint hazards.

c. to f. No change.

g. Notify each occupant of the multifamily housing, in writing, of the intended remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each occupant of the target housing. The notice shall describe:

(1) The general nature and location of the planned renovation, remodeling, ~~and~~ or repainting activity.

(2) The expected starting and ending dates of the planned renovation, remodeling, ~~and~~ or repainting activity.

(3) A statement of how the owners and occupants can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge from the ~~individual person~~ conducting the renovation, remodeling, ~~and~~ or repainting activity.

h. These activities shall be conducted by the ~~individual person~~ planning to perform the renovation, remodeling, ~~and~~ or repainting, or by the owner on behalf of this ~~individual person~~.

i. The ~~individual person~~ planning to perform the renovation, remodeling, ~~and~~ or repainting must prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation, remodeling, ~~and~~ or repainting, and to provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge upon request. Regardless of who performs the notification activities required in this subrule, the ~~individual person~~ planning to conduct the renovation, remodeling, ~~and~~ or repainting shall be responsible for ensuring compliance with this subrule and shall be liable for any failures to comply with the notification requirements in this subrule.

**69.4(3)** No change.

**69.4(4)** If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, ~~and~~ or repainting change after the initial notification has been conducted, the ~~individual person~~ conducting the renovation, remodeling, ~~and~~ or repainting shall provide further notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the ~~individual person~~ conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 6. Amend rule 641—69.5(135) as follows:

**641—69.5(135) Emergency renovation, remodeling, and or repainting in target housing.** Beginning on June 1, 1999, individuals A person who perform performs emergency renovation, remodeling, ~~and or~~ repainting of target housing for compensation, except for minor repair and maintenance activities that disrupt less than 0.1 square feet ~~or less~~ of painted surface, must do the following as soon as reasonably possible:

**69.5(1)** Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the owner of the target housing where renovation, remodeling, ~~and or~~ repainting are is performed.

**69.5(2)** Notify each owner and occupant of the target housing, in writing, of the remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each owner and occupant of the target housing. The notice shall describe:

- a. The general nature and location of the renovation, remodeling, ~~and or~~ repainting activity.
- b. The starting and ending dates of the renovation, remodeling, ~~and or~~ repainting activity.
- c. A statement of how the owners and occupants can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge from the ~~individual person~~ conducting the renovation, remodeling, ~~and or~~ repainting activity.

**69.5(3)** These activities shall be conducted by the ~~individual person~~ performing the renovation, remodeling, ~~and or~~ repainting, or by the owner on behalf of this ~~individual person~~. The ~~individual person~~ planning to perform the renovation, remodeling, ~~and or~~ repainting must prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation, remodeling, ~~and or~~ repainting, and to provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, at no charge upon request. Regardless of who performs the notification activities required in this ~~subrule~~ rule, the ~~individual person~~ conducting the renovation, remodeling, ~~and or~~ repainting shall be responsible for ensuring compliance with this rule and shall be liable for any failures to comply with the notification requirements in this rule.

ITEM 7. Amend rule 641—69.6(135) as follows:

**641—69.6(135) Certification of attempted delivery in target housing.** When an adult occupant is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the ~~individual person~~ conducting the renovating, remodeling, or repainting is permitted by subrule 69.3(2) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, remodeling, or repainting, the date and method of delivery of the pamphlet, ~~names name~~ of the ~~persons person~~ delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the ~~individual person~~ conducting the renovation, remodeling, ~~and or~~ repainting, and the date of signature.

**69.6(1)** *Unavailable for signature.*

a. If an adult occupant is unavailable for signature, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the unit listed below at the dates and times indicated, and that an adult occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

b. Below the statement, the certification shall require the printed name and signature of the ~~individual person~~ conducting the renovating, remodeling, or repainting, the address of the unit, the attempted delivery dates and times, and the date of signature.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**69.6(2) *Refused to sign.***

a. If the occupant refuses to sign the acknowledgment, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, ~~Protect Your Family from Lead in Your Home~~ Renovate Right, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit.

b. Below the statement, the certification shall require the printed name and signature of the ~~individual person~~ conducting the renovating, remodeling, or repainting, the address of the unit, the attempted delivery dates and times, the location where the pamphlet was left at the unit (e.g., taped to the door, slipped under the door), and the date of signature.

ITEM 8. Renumber rules **641—69.7(135)** to **641—69.11(135)** as **641—69.11(135)** to **641—69.15(135)**.

ITEM 9. Adopt the following new rules 641—69.7(135) to 641—69.10(135):

**641—69.7(135) Notification required in child-occupied facilities.** A person who performs renovation, remodeling, or repainting of child-occupied facilities for compensation, except for emergency renovation, remodeling, or repainting of child-occupied facilities, and except for minor repair and maintenance activities that disrupt less than 0.1 square feet of painted surface, must do the following prior to commencing the work:

**69.7(1)** Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the owner of the building where renovation, remodeling, or repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

**69.7(2)** Obtain a signed, dated acknowledgment from the owner of the building where renovation, remodeling, or repainting will be performed affirming that the owner has received the pamphlet prior to the start of renovation, remodeling, or repainting and is aware of the potential health hazards from remodeling, renovating, or repainting buildings containing lead-based paint. The acknowledgment shall be obtained no more than 60 days prior to commencing the work.

a. The acknowledgment shall include the owner's name and the address of the child-occupied facility undergoing renovation, remodeling, or repainting.

b. The acknowledgment shall include the following language:

I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, Renovate Right, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting buildings containing lead-based paint or lead-based paint hazards.

c. Below the statement, the acknowledgment shall require the signature of the owner along with the date of signature.

d. If a signature cannot be obtained from the owner, the person must certify in writing that the pamphlet has been delivered to the building and that a written acknowledgment could not be obtained from an owner. Such certification must include the address of the building to be remodeled, renovated, or repainted, the date and method of delivery of the pamphlet, the name of the person delivering the pamphlet, the reason for lack of acknowledgment (e.g., owner refuses to sign, owner not available), the signature of the person conducting the renovating, remodeling, or repainting, and the date of signature.

e. The type shall be clear and legible.

f. The acknowledgment may be included as a separate sheet or as a part of any written contract or service agreement. The acknowledgment must be completed prior to commencing the work.

g. If the parties use a written contract or agreement which is written in a language other than English, the acknowledgment text shall be written in the same language as the text of the contract or agreement.

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**69.7(3)** In lieu of delivering the pamphlet and written acknowledgment, the person conducting the renovating, remodeling, or repainting may obtain a certificate of mailing the pamphlet and written acknowledgment to the owner at least 7 days prior to beginning the work.

**69.7(4)** If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, or repainting change after the initial notification has been conducted, the person conducting the renovation, remodeling, or repainting shall provide further notification to the owners providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

**69.7(5)** If the operator of the child-occupied facility is not the owner of the building, provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the operator of the child-occupied facility where renovation, remodeling, or repainting will be performed. The pamphlet shall be provided no more than 60 days prior to commencing the work.

**69.7(6)** If the operator of the child-occupied facility is not the owner of the building, obtain a signed, dated acknowledgment from the operator of the child-occupied facility where renovation, remodeling, or repainting will be performed affirming that the operator has received the pamphlet prior to the start of renovation, remodeling, or repainting and is aware of the potential health hazards from remodeling, renovating, or repainting buildings containing lead-based paint. The acknowledgment shall be obtained no more than 60 days prior to commencing the work.

*a.* The acknowledgment shall include the name of the operator of the child-occupied facility and the address of the child-occupied facility undergoing renovation, remodeling, or repainting.

*b.* The acknowledgment shall include the following language:

I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, Renovate Right, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting buildings containing lead-based paint or lead-based paint hazards.

*c.* Below the statement, the acknowledgment shall require the signature of the operator of the child-occupied facility along with the date of signature.

*d.* If a signature cannot be obtained from the operator of the child-occupied facility, the person must certify in writing that the pamphlet has been delivered to the building and that a written acknowledgment could not be obtained from the operator of the child-occupied facility. Such certification must include the address of the building to be remodeled, renovated, or repainted, the date and method of delivery of the pamphlet, the name of the person delivering the pamphlet, the reason for lack of acknowledgment (e.g., operator of the child-occupied facility refuses to sign, operator of the child-occupied facility not available), the signature of the person conducting the renovating, remodeling, or repainting, and the date of signature.

*e.* The type shall be clear and legible.

*f.* The acknowledgment may be included as a separate sheet or as a part of any written contract or service agreement. The acknowledgment must be completed prior to commencing the work.

*g.* If the parties use a written contract or agreement which is written in a language other than English, the acknowledgment text shall be written in the same language as the text of the contract or agreement.

**69.7(7)** In lieu of delivering the pamphlet and written acknowledgment, the person conducting the renovating, remodeling, or repainting may obtain a certificate of mailing the pamphlet and written acknowledgment to the operator of the child-occupied facility at least 7 days prior to beginning the work.

**69.7(8)** If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, or repainting change after the initial notification has been conducted, the person conducting the renovation, remodeling, or repainting shall provide further notification to the operator of the child-occupied facility providing revised information on the ongoing or planned activities. This

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

subsequent notification must be provided before the person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

**69.7(9)** Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, and information regarding the general nature and locations of the renovation, remodeling, or repainting and the anticipated completion date to the parents and guardians of children using the child-occupied facility where renovation, remodeling, or repainting will be performed. The pamphlet and information shall be provided no more than 60 days prior to commencing the work. The person conducting the renovating, remodeling, or repainting shall provide this information using one of the following methods:

*a.* Mail or hand-deliver the pamphlet and information to each parent or guardian of each child using the child-occupied facility (the pamphlet and information may not be sent home with the child); or

*b.* While the renovation, remodeling, or repainting is ongoing, post informational signs describing the general nature and locations of the renovation, remodeling, or repainting and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the person conducting the renovation, remodeling, or repainting at no cost to the parents or guardians.

**69.7(10)** The activities in subrule 69.7(9) shall be conducted by the person planning to perform the renovation, remodeling, or repainting or by the owner or operator of the child-occupied facility on behalf of this person. Regardless of who performs the notification activities required in subrule 69.7(9), the person conducting the renovation, remodeling, or repainting shall be responsible for ensuring compliance with this rule and shall be liable for any failures to comply with the notification requirements in this rule.

**69.7(11)** The person conducting the renovation, remodeling, or repainting shall prepare, sign, and date a statement describing the steps performed to notify all parents and guardians of the intended renovation, remodeling, or repainting and to provide the pamphlet to them.

**69.7(12)** If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, or repainting change after the initial notification has been conducted, the person conducting the renovation, remodeling, or repainting shall provide revised information on the ongoing or planned activities to the parents and guardians of children frequenting the child-occupied facility providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the person conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

**641—69.8(135) Emergency renovation, remodeling, or repainting in child-occupied facilities.** A person who performs emergency renovation, remodeling, or repainting of child-occupied facilities for compensation, except for minor repair and maintenance activities that disrupt less than 0.1 square feet of painted surface, must do the following as soon as reasonably possible:

**69.8(1)** Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the owner of the building where renovation, remodeling, or repainting is performed.

**69.8(2)** Notify each owner and, if different, the operator of the child-occupied facility, in writing, of the remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each owner and, if different, operator of the child-occupied facility. The notice shall describe:

- a.* The general nature and location of the renovation, remodeling, or repainting activity.
- b.* The starting and ending dates of the renovation, remodeling, or repainting activity.
- c.* A statement of how the owners and, if different, the operator of the child-occupied facility can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, at no charge from the person conducting the renovation, remodeling, or repainting activity.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

**69.8(3)** Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, and information regarding the general nature and locations of the renovation, remodeling, or repainting and the anticipated completion date to the parents and guardians of children using the child-occupied facility where renovation, remodeling, or repainting will be performed. The person conducting the renovating, remodeling, or repainting shall provide this information using one of the following methods:

- a.* Mail or hand-deliver the pamphlet and information to each parent or guardian of each child using the child-occupied facility (the pamphlet and information may not be sent home with the child); or
- b.* While the renovation, remodeling, or repainting is ongoing, post informational signs describing the general nature and locations of the renovation, remodeling, or repainting and the anticipated completion date. These signs must be posted in areas where they can be seen by the parents or guardians of the children frequenting the child-occupied facility. The signs must be accompanied by a posted copy of the pamphlet or information on how interested parents or guardians can review a copy of the pamphlet or obtain a copy from the person conducting the renovation, remodeling, or repainting at no cost to the parents or guardians.

**69.8(4)** The activities in subrule 69.8(3) shall be conducted by the person planning to perform the renovation, remodeling, or repainting or by the owner or operator of the child-occupied facility on behalf of this person. Regardless of who performs the notification activities required in subrule 69.8(3), the person conducting the renovation, remodeling, or repainting shall be responsible for ensuring compliance with this rule and shall be liable for any failures to comply with the notification requirements in this rule.

**641—69.9(135) Certification of attempted delivery for child-occupied facilities.** When the owner and, if different, operator of a child-occupied facility are unavailable for signature or refuse to sign the acknowledgment of receipt of the pamphlet, the person conducting the renovating, remodeling, or repainting is permitted by subrule 69.3(2) to certify delivery for each instance. The certification shall include the address of the child-occupied facility undergoing renovation, remodeling, or repainting, the date and method of delivery of the pamphlet, name of the person delivering the pamphlet, reason for lack of acknowledgment (e.g., owner and, if different, operator refuse to sign), the signature of the individual conducting the renovation, remodeling, or repainting, and the date of signature.

**69.9(1)** *Unavailable for signature.*

- a.* If the owner and, if different, operator of the child-occupied facility are unavailable for signature, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the child-occupied facility listed below at the dates and times indicated, and that the owner and, if different, operator of the child-occupied facility were unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the child-occupied facility with the owner and, if different, operator.

- b.* Below the statement, the certification shall require the printed name and signature of the person conducting the renovating, remodeling, or repainting, the address of the child-occupied facility, the attempted delivery dates and times, and the date of signature.

**69.9(2)** *Refused to sign.*

- a.* If the owner and, if different, operator refuse to sign the acknowledgment, the certification shall contain the following language:

I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Renovate Right, to the child-occupied facility listed below at the dates and times indicated, and that the owner and, if different, operator refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the child-occupied facility.

- b.* Below the statement, the certification shall require the printed name and signature of the person conducting the renovating, remodeling, or repainting, the address of the child-occupied facility, the

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attempted delivery dates and times, the location where the pamphlet was left at the child-occupied facility (e.g., taped to the door, slipped under the door), and the date of signature.

**641—69.10(135) Subcontracts.** In cases where renovation, remodeling, or repainting activities involve subcontracts, it is the responsibility of the person receiving the compensation from the property owner, or other party on behalf of the property owner, to provide the notification(s) described in 641—69.3(135), 641—69.4(135), 641—69.5(135), and 641—69.6(135) of this chapter.

ITEM 10. Amend renumbered rule 641—69.11(135) as follows:

**641—69.11(135) Exemption.** Renovation, remodeling, ~~and or~~ repainting in target housing or a child-occupied facility in which a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified pursuant to 641—Chapter 70 has made a written determination that the components affected by the renovation are free of lead-based paint and where the person conducting the renovation, remodeling, or repainting has obtained a copy of the written determination ~~are~~ is exempt from the provisions of 641—Chapter 69.

ITEM 11. Amend renumbered rule 641—69.12(135) as follows:

**641—69.12(135) Record-keeping requirements.** ~~Beginning on June 1, 1999, individuals~~ A person who ~~conduct~~ conducts renovation, remodeling, ~~and or~~ repainting for compensation in target housing or a child-occupied facility shall retain all records necessary to demonstrate compliance with this chapter for a minimum of three years following completion of the renovation, remodeling, ~~and or~~ repainting. The records shall include:

**69.12(1)** The address or location of the target housing or child-occupied facility where remodeling, renovation, or repainting was conducted.

**69.12(2) to 69.12(4)** No change.

**69.12(5)** Copies of all signed, dated statements of notification, as well as copies of all notification materials given to all owners and occupants and acknowledgments as required by subrule 69.4(2) from each owner and occupant of multifamily target housing where renovation, remodeling, or repainting was conducted in common areas.

**69.12(6)** Copies of signed, dated acknowledgments as required by 641—69.7(135) from the owner and, if different, operator of a child-occupied facility where renovation, remodeling, or repainting was conducted.

**69.12(7)** Copies of all notification materials given to the parents or guardians of children using a child-occupied facility or the signs posted in areas where the signs can be seen by the parents or guardians of children using the child-occupied facility as required by subrule 69.7(9).

~~69.12(6)~~ **69.12(8)** Reports showing that a lead inspector/risk assessor or elevated blood level (EBL) inspector/risk assessor certified pursuant to 641—Chapter 70 has made a written determination that the components affected by the renovation are free of lead-based paint.

**69.12(7)** ~~69.12(9)~~ Certifications of attempted delivery as described in 641—69.6(135).

~~69.12(8)~~ **69.12(10)** Certificates of mailing as described in subrules 69.3(3) and 69.4(3).

ITEM 12. Amend renumbered rule 641—69.13(135) as follows:

**641—69.13(135) Compliance inspections.**

~~69.13(1)~~ The department may enter the place of business of ~~an individual~~ a person who conducts renovation, remodeling, ~~and or~~ repainting for the purpose of enforcing the notification required by this chapter.

~~69.13(2)~~ Rescinded IAB 3/31/04, effective 5/5/04.

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ITEM 13. Amend renumbered rule 641—69.14(135) as follows:

**641—69.14(135) Enforcement.**

**69.14(1)** The department may impose a civil penalty pursuant to Iowa Code section 135.105C and this rule ~~or~~ and may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that a person has committed any of the following acts:

- a.* and *b.* No change.
- c.* Failed or refused to permit entry or inspection as described in subrule ~~69.9(1)~~ 69.14(1).
- d.* and *e.* No change.
- f.* Failed to respond within ~~30~~ 20 days of receipt of communication sent by the department by registered or certified mail.
- g.* to *i.* No change.

**69.14(2)** Complaints and other requests for action under this rule. Complaints regarding a person who performs renovation, remodeling, or repainting for compensation in target housing or a child-occupied facility shall be submitted in writing to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide the name of the person who performs renovation, remodeling, or repainting for compensation in target housing or a child-occupied facility and the specific details of the person's action(s) that did not comply with the rules.

**69.14(3) Civil penalties.**

*a.* Before instituting any proceeding to impose a civil penalty under Iowa Code section 135.105C, the department shall serve a written notice of violation upon the person charged. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and shall identify specifically the particular provision or provisions of the law, rule, regulation, ~~certification, approval,~~ or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the department, if any, unless compromised, remitted, or mitigated, the fee shall be collected by civil action, pursuant to Iowa Code section 135.105C.

*b.* No change.

*c.* If the person charged with a violation fails to answer within the time specified in paragraph ~~69.10(3)“b,”~~ 69.14(3)“b,” an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph ~~69.10(3)“a.”~~ 69.14(3)“a.”

*d.* to *f.* No change.

*g.* The department may compromise any civil penalty. If the civil penalty is not compromised or is not remitted by the presiding officer or the department or if the time for requesting a hearing described in paragraph ~~69.10(3)“d”~~ 69.14(3)“d” has expired, the department may refer the matter to the attorney general for collection.

*h.* No change.

**69.14(4) Appeals.**

*a.* Notice of the civil penalty shall be sent to the affected person by certified mail, return receipt requested, or by personal service. The affected person shall have a right to appeal the civil penalty.

*b.* An appeal of a civil penalty shall be submitted by certified mail, return receipt requested, to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075, within 20 days of receipt of the department's notice. If such a request is made within the 20-day time period, the notice of civil penalty 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 civil penalty has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

administrative law judge shall affirm, modify or set aside the civil penalty. If no appeal is submitted within 20 days, the civil penalty shall become the department's final agency action.

c. Upon receipt of an appeal that meets contested case status, the appeal shall be transmitted to the department of inspections and appeals within 5 working days of receipt pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the civil penalty is based shall be provided to the department of inspections and appeals.

d. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

e. 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. The proposed decision and order then becomes the department's final agency action without further proceedings 10 days after it is received by the aggrieved party unless an appeal to the director is taken as provided in paragraph 69.14(4) "f."

f. 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 10 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 appeal shall state the reason for appeal.

g. Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing or submission to the director. The record shall include the following:

- (1) All pleadings, motions, and rulings.
- (2) All evidence received or considered and all other submissions by recording or transcript.
- (3) A statement of all matters officially noticed.
- (4) All questions and offers of proof, objection, and rulings thereon.
- (5) All proposed findings and exceptions.
- (6) The proposed findings and order of the administrative law judge.

h. 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.

~~a. i.~~ i. 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.

~~b. j.~~ j. Any petition for judicial review of a decision and order shall be filed in the district court within 30 20 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075.

~~c. k.~~ k. 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.

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**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.105A as amended by 2009 Iowa Acts, House File 314, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 70, “Lead-Based Paint Activities,” Iowa Administrative Code.

Iowa Code section 135.105A directs the Department to establish a program for the training and certification of lead inspectors and lead abaters and states that a person shall not perform lead abatement or lead inspections unless the person has completed a training program approved by the Department and has obtained certification. Property owners are required to be certified only if the property in which they will perform lead inspections or lead abatement is occupied by a person other than the owner or a member of the owner’s immediate family while the measures are being performed. A person may be certified as both a lead inspector and a lead abater. However, a person who is certified as both shall not provide both lead inspection and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

The Department was required to obtain authorization from the U.S. Environmental Protection Agency (EPA) for the Department’s program to train and certify lead inspectors and abaters. The Department obtained this authorization from EPA on July 13, 1999.

Iowa Code section 135.105A as amended by 2009 Iowa Acts, House File 314, directs the Department to establish a program for the training and certification of those who perform renovation as lead-safe renovators.

The proposed amendments make a number of changes to incorporate guidance issued by the Department and the federal government and to incorporate material that is covered in approved training programs. In addition, the Department has made changes to its administrative enforcement procedures. Finally, the Department has added provisions to implement the mandates of 2009 Iowa Acts, House File 314.

The Department has added definitions for “certified lead-safe renovator,” “cleaning verification card,” “dry disposable cleaning cloth,” “dry sanding,” “dry scraping,” “emergency renovation,” “HEPA vacuum,” “HEPA exhaust control,” “housing for the elderly,” “lead-based paint hazard reduction activity,” “minor repair and maintenance activities,” “painted component,” “paint sample,” “postrenovation cleaning verification,” “recognized test kit,” “reevaluation,” “renovation,” “wet disposable cleaning cloth,” “wet sanding,” “wet scraping,” “wet mopping system,” “windowsill,” and “worksite” or “work area.” The definitions of “certified firm,” “certified lead professional,” “child-occupied facility,” “clearance level,” “clearance testing,” “containment,” “discipline,” “firm,” “lead abatement,” “lead-based paint activities,” “lead professional,” “lead-safe work practices,” “NIST 1.02 standard film,” “paint testing,” “standard treatments,” and “training program” have been modified. The definitions of “lead-safe work practices contractor” and “registered lead-safe work practices contractor” have been deleted.

Work practice standards for conducting reevaluation and renovation have been added. The work practice standards for conducting lead inspections, elevated blood lead (EBL) inspections, risk assessments, lead hazard screens, lead abatement, and clearance testing have been modified. The content of training courses for lead inspector/risk assessors, elevated blood lead (EBL) inspector/risk assessors, sampling technicians, lead abatement contractors, and lead abatement workers has been modified to clarify course content and administrative procedures for courses as well to incorporate

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

content regarding work practice standards for conducting renovation. The fee for certification of individuals has been increased from \$50 per year to \$60 per year.

The new definitions, modified definitions, modifications to work practice standards, and other clarifications are not substantive changes because they have all been included in guidance documents issued by the Department and the federal government and have been covered in the courses that individuals must take to become certified lead professionals. These items have been changed in Chapter 70 to allow certified lead professionals to find in one place all of the information that they need to comply with Iowa rules. Also, the revisions to the administrative enforcement procedures in Chapter 70 are not substantive changes.

The requirement that persons and firms performing renovation be certified by the Department and the addition of work practice standards for renovation are substantive changes. The Department has added these provisions to Chapter 70 because they are mandated by 2009 Iowa Acts, House File 314, and because the Department must add these provisions to maintain authorization from the EPA for its lead-based paint activities training and certification program. EPA regulations require persons and firms conducting renovation to be certified by April 22, 2010, which is the date included in these amendments. Through this Notice of Intended Action, the Department gives notice of its intention to seek EPA authorization for these provisions to certify those who perform renovation and to mandate work practice standards for renovation.

The Department has determined that these rules are not subject to waiver or variance because Iowa's program must be as protective as the EPA regulations, which do not allow variances or waivers.

Consideration will be given to all written comments received on or before December 22, 2009. Such written materials should be sent to the Lead Poisoning Prevention Program, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; E-mail to [rgergely@idph.state.ia.us](mailto:rgergely@idph.state.ia.us); fax (515)281-4529.

Also, there will be a public hearing on December 22, 2009, at 10 a.m. over the Iowa Communications Network (ICN) at which time persons may present their views. The sites for the public hearing are as follows:

Atlantic Public Library  
507 Poplar  
Atlantic

Great Prairie Area Education Agency Regional Office  
3601 West Ave.  
Burlington

DMACC – Carroll Campus  
906 North Grant Rd., Room 144  
Carroll

Department of Human Services  
411 3rd St. SE  
5th Floor, Room 550  
Cedar Rapids

Centerville National Guard Armory  
Dewey Road, RR 1  
Centerville

Chariton High School  
501 N. Grand, Room 116  
Chariton

Clinton Community College  
1000 Lincoln Blvd., Room 105  
Clinton

Keystone Area Education Agency 1  
2310 Chaney Rd., Room 2  
Dubuque

Fort Dodge Public Library  
424 Central Ave.  
Fort Dodge

Area Education Agency 267 Regional Office  
909 S. 12th St.  
Marshalltown

North Iowa Area Community College – 1  
500 College Dr.  
Activity Center, Room 106  
Mason City

Muscatine Community College  
152 Colorado St.  
Larson Hall, Room 60  
Muscatine

Onawa-West Monona Jr.-Sr. High School  
1314 15th St.  
Onawa

Orange City Public Library  
112 Albany Ave. SE  
Rieckhoff Room  
Orange City

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Colo-Nesco Senior High School  
Box 215, 919 West St.  
Colo

Loess Hills Area Education Agency 13  
24997 Hwy. 92  
Council Bluffs

Green Valley Area Education Agency 14  
1405 N. Lincoln, Turner Room  
Creston

Kimberly Center  
1002 W. Kimberly, Room 119  
Davenport

Decorah High School  
100 East Claiborne Dr.  
Decorah

Department of Public Health  
Lucas State Office Building  
321 E. 12th St., 6th Floor  
Des Moines

Great Prairie Area Education Agency – 1  
2814 N. Court St.  
Ottumwa

Southwestern Community College – 1  
2300 N. 4th St.  
Red Oak Center, Room 116  
Red Oak

Northwest Area Education Agency  
1520 Morningside Ave., Room 206  
Sioux City

Iowa Lakes Community College  
1900 N. Grand Ave.  
Spencer Attendance Center, Fiber Optic Rm. 118  
Spencer

Hawkeye Community College – 1  
1501 E. Orange Rd.  
Tama Hall, Room 110  
Waterloo

These amendments are intended to implement Iowa Code section 135.105A as amended by 2009 Iowa Acts, House File 314.

The following amendments are proposed.

ITEM 1. Amend rule 641—70.1(135) as follows:

**641—70.1(135) Applicability.** ~~Prior to March 1, 2000, this chapter applied to all persons who were certified lead professionals in Iowa. Beginning March 1, 2000, this~~ This chapter applies to all persons who are lead professionals in Iowa, all firms that perform lead professional activities in Iowa, and training providers that offer training for lead professionals. ~~Beginning July 1, 2004, this chapter also applies to agencies that provide lead-safe work practices training programs in Iowa and to those who are registered lead-safe work practices contractors in Iowa. This chapter requires lead professionals and firms to be certified and establishes specific requirements for how to perform lead-based paint activities must be performed if a property owner, manager, or occupant chooses to undertake them. However, nothing in this chapter requires a property owner, manager, or occupant to undertake any particular lead-based paint activity. This chapter also provides for the approval of lead-safe work practices courses and the voluntary registration of lead-safe work practices contractors courses that provide training for lead professionals.~~

ITEM 2. Amend the following definitions in rule **641—70.2(135)**:

*“Certified firm”* means a firm that employs certified lead professionals and has met the requirements of 641—70.7(135) for certification and has been certified by the department.

*“Certified lead professional”* means a person who has been certified by the department as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, lead abatement worker, project designer, ~~or~~ sampling technician, or lead-safe renovator.

*“Child-occupied facility”* means a building, or portion of a building, constructed prior to 1978, ~~that is described by all of the following: (1) The building is visited on a regular basis by the same child, who is under the age of less than six years of age, on at least two different days within any week (Sunday through Saturday period, provided that each day’s visit lasts at least three hours and the combined weekly visits last at least six hours).~~ For purposes of this chapter, a week is a Sunday through Saturday period. (2) Each day’s visit by the child lasts at least three hours, and the combined annual visits total at least 60 hours. A child-occupied facility ~~Child-occupied facilities may include, but are is~~ not limited to;

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day-care centers, preschools and kindergarten classrooms a child care center, preschool, or kindergarten classroom. A child-occupied facility also includes common areas that are routinely used by children who are less than six years of age, such as restrooms and cafeterias, and the exterior walls and adjoining space of the building that are immediately adjacent to the child-occupied facility or the common areas routinely used by children under the age of six years. "Child-occupied facility" also includes any building where lead-based paint activities are conducted immediately prior to or during the conversion of the building to a child-occupied facility.

"*Clearance level*" means the value at which the amount of lead in dust on a surface following completion of interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, ~~or~~ rehabilitation, or renovation is a dust-lead hazard and fails clearance testing. The clearance level for a single-surface dust sample from a floor is greater than or equal to 40 micrograms per square foot. The clearance level for a single-surface dust sample from an interior windowsill is greater than or equal to 250 micrograms per square foot. The clearance level for a single-surface dust sample from a window trough is greater than or equal to 400 micrograms per square foot.

"*Clearance testing*" means an activity conducted following interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, ~~or~~ rehabilitation, or renovation to determine that the hazard reduction activities are complete. Clearance testing includes a visual assessment, the collection and analysis of environmental samples, the interpretation of sampling results, and the preparation of a report.

"*Containment*" means a ~~process~~ system of temporary barriers to protect workers, residents, and the environment by controlling exposures to the dust-lead hazards and debris created during renovation or lead abatement.

"*Discipline*" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training from approved courses and become certified by the department. For example, "lead inspector/risk assessor" is a discipline, and "lead-safe renovator" is a discipline.

"*Firm*" means a company, partnership, corporation, sole proprietorship, individual doing business, association, or other business entity; a federal, state, tribal, or local government agency; or a nonprofit organization that performs or offers to perform lead-based paint activities.

"*Lead abatement*" means any measure or set of measures designed to permanently eliminate lead-based paint hazards in a residential dwelling or child-occupied facility. Lead abatement includes, but is not limited to, (1) the removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of soil-lead hazards and (2) all preparation, cleanup, disposal, repainting or refinishing, and postabatement clearance testing activities associated with such measures. "Lead abatement" specifically includes projects for which there is a written contract or other documentation, which provides that an individual will be conducting lead abatement in or around a residential dwelling or child-occupied facility.

In addition, "lead abatement" includes, but is not limited to, (1) projects for which there is a written contract or other document, which provides that an individual will be conducting activities in or to a residential dwelling or child-occupied facility that shall result in or are designed to permanently eliminate lead-based paint hazards, (2) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by firms or individuals certified under 641—70.5(135), (3) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing ~~lead-based paint~~ abatement, and (4) projects resulting in the permanent elimination of lead-based paint that are conducted in response to a lead abatement order. However, in the case of items (1) through (4) of this definition, "lead abatement" does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction

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or elimination of lead-based paint hazards. Furthermore, “lead abatement” does not include interim controls, operations and maintenance activities, renovation, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

“*Lead-based paint activities*” means, in the case of target housing and child-occupied facilities, lead-free inspection, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, lead abatement, visual risk assessment, clearance testing conducted after lead abatement, clearance testing conducted after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340, and ~~lead-safe work practices~~ renovation.

“*Lead professional*” means a person who conducts lead abatement, renovation, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, or clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

“*Lead-safe work practices*” means methods that are used to minimize hazards when conducting renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation.

“*NIST 1.02 standard film*” means the National Institute of Standards and Technology 1.02 milligrams of lead per square centimeter standard reference material. If the specific 1.02 milligrams of lead per square centimeter standard is not available from NIST, then the inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the closest available standard from NIST (1.0X).

“*Paint testing*” means the process of determining, ~~by a certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor,~~ the presence or the absence of lead-based paint on ~~deteriorated paint surfaces or painted surfaces to be disturbed or replaced pursuant to 24 CFR Part 35~~ a specific component or surface. Paint testing shall only be conducted by certified lead inspector/risk assessors or certified elevated blood lead (EBL) inspector/risk assessors using approved methods for testing. Approved methods for paint testing are XRF analysis and laboratory analysis.

“*Standard treatments*” means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a residential dwelling without the benefit of a risk assessment or other evaluation pursuant to 24 CFR 35.1335. Standard treatments consist of the stabilization of all deteriorated interior and exterior paint, the provision of smooth and cleanable horizontal hard surfaces, the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known to or presumed to be coated with lead-based paint), and the treatment of ~~base~~ bare soil to control known or presumed soil-lead hazards.

“*Training program*” means a person or organization sponsoring a lead professional training ~~course~~ course(s).

ITEM 3. Adopt the following new definitions in rule **641—70.2(135)**:

“*Certified lead-safe renovator*” means a person who has met the requirements of 641—70.5(135) for certification and who has been certified by the department.

“*Cleaning verification card*” means a card developed and distributed, or otherwise approved, by the U.S. Environmental Protection Agency (EPA) for the purpose of determining, through comparison of wet and dry disposable cleaning cloths with the card, whether postrenovation cleaning has been properly completed.

“*Dry disposable cleaning cloth*” means a commercially available dry, electrostatically charged, white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or countertops.

“*Dry sanding*” means sanding a surface that is partially coated with paint or other surface coating without moisture and includes hand and mechanical methods of sanding.

“*Dry scraping*” means scraping a surface that is partially coated with paint or other surface coating without moisture and includes hand and mechanical methods of scraping.

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*“Emergency renovation”* means renovation, remodeling, or repainting activities necessitated by nonroutine failures of equipment or of a structure that were not planned but resulted from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens equipment or property with significant damage. “Emergency renovation” includes interim controls, renovation, remodeling, or repainting activities that are conducted in response to an elevated blood lead (EBL) inspection.

*“HEPA exhaust control”* means a HEPA vacuum attached to the machine in such a manner that it captures the air, dust, and debris disturbed by the machine.

*“HEPA vacuum”* means a vacuum cleaner which has been designed, operated, and maintained with a high-efficiency particulate air (HEPA) filter as the last filtration stage. A HEPA filter is a filter that is capable of capturing particles of 0.3 microns with 99.97 percent efficiency. The vacuum cleaner must be designed, operated, and maintained so that all of the air drawn into the machine is expelled through the HEPA filter with none of the air leaking past it. A vacuum must have sufficient suction to capture the dust that must be collected. A vacuum that complies with ANSI/IESO Standard 4310-2009 for Portable High Efficiency Air Filtration Device Field Testing and Validation Standard as a Class 3, 4, or 5 device is considered a HEPA vacuum.

*“Housing for the elderly”* means retirement communities or similar types of housing reserved for households composed of one or more persons 62 years of age or older or an age recognized as elderly by a specific federal housing assistance program.

*“Lead-based paint hazard reduction activity”* means an activity that permanently or temporarily reduces or eliminates lead-based paint hazards. “Lead-based paint hazard reduction activity” includes lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, rehabilitation, or renovation.

*“Minor repair and maintenance activities”* means activities, including minor heating, ventilation or air conditioning work, electrical work, and plumbing, that disrupt less than 0.1 square feet of a painted surface where none of the work practices prohibited or restricted by this chapter are used and where the work does not involve window replacement or demolition of painted surface areas. When painted components or portions of painted components are removed, the entire surface area removed is the amount of painted surface disturbed. Projects, other than emergency renovation, performed in the same room within the same 30 days must be considered the same project for the purpose of determining whether the project is a minor repair and maintenance activity.

*“Painted component”* means a component or building component that is at least partially covered with paint or other surface coating.

*“Paint sample”* means a sample collected in a representative location using ASTM E1729, “Standard Practice for Field Collection of Dried Paint Samples for Lead Determination by Atomic Spectrometry Techniques,” or equivalent method.

*“Postrenovation cleaning verification”* means the use of a wet or dry disposable cleaning cloth to wipe the interior windowsill, uncarpeted floor and countertops of the renovation work area and compare them to a cleaning verification card to determine if the work area has been adequately cleaned.

*“Recognized test kit”* means a commercially available kit recognized by the EPA under 40 CFR 745.88 as being capable of allowing a user to determine the presence of lead at levels equal to or in excess of 1.0 milligrams per square centimeter, or more than 0.5 percent by weight, in a paint chip, paint, powder, or painted surface.

*“Reevaluation”* means a visual assessment of painted surfaces and limited dust and soil sampling conducted periodically following a lead-based paint hazard reduction activity where lead-based paint is still present and the provision of a written report explaining the results of the reevaluation.

*“Renovation”* means the modification of any existing structure, or portion thereof, that results in the disturbance of painted surfaces, unless that activity is performed as part of lead abatement as defined by this chapter. The term “renovation” includes, but is not limited to the removal, modification, or repair of painted surfaces or painted components such as modification of painted doors, surface restoration, and window repair; surface preparation activity such as sanding, scraping, or other such activities that may generate paint dust; the partial or complete removal of building components such as walls, ceilings, and

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windows; weatherization projects such as cutting holes in painted surfaces to install blown-in insulation or to gain access to attics and planing thresholds to install weatherstripping; and interim controls that disturb painted surfaces. Renovation does not include minor repair and maintenance activities.

*“Wet disposable cleaning cloth”* means a commercially available, premoistened white disposable cloth designed to be used for cleaning hard surfaces such as uncarpeted floors or countertops.

*“Wet mopping system”* means a device with the following characteristics: a long handle, a mop head designed to be used with disposable absorbent cleaning pads, a reservoir for cleaning solution, and a built-in mechanism for distributing or spraying the cleaning solution onto a floor, or a method of equivalent efficiency.

*“Wet sanding”* means a process of removing loose paint in which a surface that is partially coated with paint or other surface coating is kept wet or moist during sanding to minimize the dispersal of paint chips and airborne dust.

*“Wet scraping”* means a process of removing loose paint in which a surface that is partially coated with paint or other surface coating is kept wet or moist during scraping to minimize the dispersal of paint chips and airborne dust.

*“Windowsill”* means the portion of the horizontal window ledge that protrudes into the interior of the room when the window is closed.

*“Worksite”* or *“work area”* means an interior or exterior area where lead-based paint hazard reduction activity or renovation takes place. There may be more than one worksite in a dwelling unit or at a residential property.

ITEM 4. Rescind the definitions of “Lead-safe work practices contractor” and “Registered lead-safe work practices contractor” in rule **641—70.2(135)**.

ITEM 5. Amend rule 641—70.3(135) as follows:

**641—70.3(135) Certification Lead professional certification.** ~~Prior to March 1, 2000, lead professionals could be certified by the department. Beginning March 1, 2000, a~~ A person or a firm shall not conduct lead abatement, clearance testing after lead abatement, lead-free inspections, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, ~~and~~ visual risk assessments, ~~or clearance testing after renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 unless the person or firm has been certified by the department in the appropriate discipline. Beginning April 22, 2010, a person or firm shall not conduct renovation unless the person or firm has been certified by the department in the appropriate discipline.~~ However, persons who perform these activities within residential dwellings that they own are not required to be certified, unless the residential dwelling is occupied by a person other than the owner or a member of the owner’s immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with a certified elevated blood lead (EBL) inspection agency. In addition, persons who perform renovation under the supervision of a certified lead-safe renovator, certified lead abatement contractor, or certified lead abatement worker and who have completed on the job training are not required to be certified. ~~Beginning September 15, 2000, clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted only by certified sampling technicians, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspector/risk assessors.~~ Lead professionals and firms shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department. ~~Prior to March 1, 2000, elevated blood lead (EBL) inspection agencies could be certified by the department. Beginning March 1, 2000, elevated~~ Elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department.

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ITEM 6. Amend rule 641—70.4(135) as follows:

**641—70.4(135) Course approval and standards.** ~~Prior to March 1, 1999, lead professional training courses for initial certification and refresher training could be approved by the department. Beginning March 1, 1999, All~~ lead professional training courses for initial certification and refresher training must be approved by the department. Training programs shall not state that they have been approved by the state of Iowa unless they have met the requirements of 641—70.4(135) and been issued a letter of approval by the department. Lead-safe work practices training programs that were approved by the department prior to January 13, 2010, must reapply for approval.

**70.4(1)** Training courses shall meet the following requirements:

a. The training program offering the course shall employ a training manager who has the following qualifications:

(1) No change.

(2) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, lead-safe work practices, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

b. The training manager shall designate a qualified principal instructor for each course who has the following qualifications:

(1) No change.

(2) Certification as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, or lead abatement contractor. In the case of a course for training lead-safe renovators, the principal instructor may be certified as a sampling technician.

(3) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, lead-safe work practices, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

c. and d. No change.

e. The training manager shall maintain the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in subrules 70.4(3) to ~~70.4(16)~~ 70.4(17).

f. No change.

g. The course test shall be developed in accordance with the test blueprint submitted with the course approval application. Training programs may use course tests developed by the department.

h. The training program shall issue unique course completion certificates to each individual who passes the course. The course completion certificate shall be issued in color. The course completion certificate shall include:

(1) The name and address of the individual, a photograph of the individual, and a unique identification number.

(2) to (5) No change.

i. The training manager shall develop and implement a quality control ~~program~~ plan. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(1) No change.

(2) Procedures for the training manager to conduct an annual review of the competency of the principal instructor and all other instructors.

j. to m. No change.

n. The training program shall maintain, and make available to the department, upon request, the following records:

(1) to (5) No change.

(6) A file for each student who has completed a course. Each student file shall contain the following:

1. to 4. No change.

5. A photograph of the student as taken by the training program.

(7) A file for each individual course that has been offered. Each file shall include the following:

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1. to 3. No change.

4. A paper or electronic copy of the curriculum used for the course.

5. to 7. No change.

(8) No change.

*o.* and *p.* No change.

*q.* A training program shall notify the department in writing at least ~~30~~ 14 days in advance of offering an approved course. The notification shall include the date(s), time(s), and location(s) where the approved course will be held. A training program shall notify the department at least 24 hours in advance of canceling an approved course.

*r.* The training program shall take a digital photograph of each student. The digital photograph shall be the same photograph that appears on the training certificate and is submitted to the department. The photograph shall meet the following specifications:

(1) The individual shall be facing the camera.

(2) The individual's head shall not be tilted.

(3) The individual's head shall cover approximately half of the photo area.

(4) The individual shall be in front of a neutral or light-colored background.

(5) The individual shall not wear any items that detract from the face, such as hats or sunglasses.

Only head coverings worn for religious reasons may be worn. Religious head coverings may not cover the face of the individual.

(6) Photographs shall be 24-bit color depth.

*s.* A training program shall provide the following information to the department electronically in a format specified by the department within 30 days of the conclusion of an approved course for each student who has taken the approved course:

(1) to (3) No change.

(4) The electronic photograph of each student as taken by the training program.

**70.4(2)** If a training program desires approval of a course by the department, the training program shall apply to the department for approval of the course at least 90 days before the initial offering of the course if the training program will use materials developed by the training program. If the training program will use materials developed by the department, the training program shall apply to the department for approval of the course at least 30 days before the initial offering of the course. The application shall include:

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

*e.* A copy of each reference material, text, student and instructor manuals, and audio-visual material used in the course. These materials may also be provided by the department.

*f.* No change.

*g.* A copy of the course test blueprint. The course test may also be provided by the department.

*h.* to *k.* No change.

**70.4(3)** To be approved for the training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors ~~prior to March 1, 1999, a course was required to be at least 24 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999,~~ a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on training activities. Lead inspector/risk assessor and elevated blood lead (EBL) inspector/risk assessor training courses shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

*a.* to *k.* No change.

*l.* Reevaluation protocol.

*m.* In the case of renovation, procedures for using recognized test kits to determine whether paint is lead-based paint.\*

*n.* In the case of renovation, methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.\*

~~*l.*~~ *o.* Sampling for other sources of lead exposure.\*

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~~h. p.~~ p. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.\*

~~h. q.~~ q. Development of lead hazard control options, ~~the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.~~

~~r.~~ r. The role of interim controls, operation and maintenance activities, and renovation in reducing lead-based paint hazards.

~~o. s.~~ s. Approved methods for conducting lead-based paint abatement, ~~and~~ interim controls, operation and maintenance activities, and renovation.

~~p. t.~~ t. Prohibited methods for conducting lead-based paint abatement, ~~and~~ interim controls, operation and maintenance activities, and renovation.

~~q. u.~~ u. Interior dust abatement and cleanup.

~~r. v.~~ v. Soil and exterior dust abatement and cleanup.

~~s. w.~~ w. Preparation of the final ~~inspection report~~ reports for lead inspections, lead-free inspections, risk assessments, visual assessments, lead hazard screens, clearance testing after lead abatement, clearance testing after renovation, reevaluation, and clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340.

~~t. x.~~ x. Record keeping.

~~h. y.~~ y. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

~~v. z.~~ z. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

aa. All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

**70.4(4)** To be approved for the training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors who have already completed an approved sampling technician course, a course must be at least 20 training hours with a minimum of 8 hours devoted to hands-on training activities. The training course shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

a. to d. No change.

e. ~~Visual risk assessment protocol~~ Reevaluation protocol.

f. and g. No change.

h. Development of lead hazard control options, ~~the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards~~ including lead abatement.\*

i. The role of interim controls, operation and maintenance activities, and renovation in reducing lead-based paint hazards.

j. Approved methods for conducting lead abatement, interim controls, operation and maintenance activities, and renovation.

k. Prohibited methods for conducting lead abatement, interim controls, operation and maintenance activities, and renovation.

l. Preparation of the final ~~inspection report~~ reports for lead inspections, lead-free inspections, risk assessments, lead hazard screens, reevaluation, and clearance testing after lead abatement.

m. Record keeping.

n. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course

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test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

~~l. o.~~ The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

~~p.~~ All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

**70.4(5) to 70.4(7)** No change.

**70.4(8)** To be approved for the training of lead abatement contractors, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

~~a.~~ to ~~c.~~ No change.

~~d.~~ Liability and insurance issues relating to lead abatement, interim controls, and renovation.

~~e.~~ and ~~f.~~ No change.

~~g.~~ Development and implementation of an occupant protection plan, and lead abatement report, and renovation report.

~~h.~~ and ~~i.~~ No change.

~~j.~~ Approved methods for conducting lead abatement, and interim controls, and renovation.\*

~~k.~~ Prohibited methods for conducting lead abatement, and interim controls, and renovation.

~~l.~~ to ~~n.~~ No change.

~~o.~~ Cleanup, waste handling, and waste disposal.

~~p.~~ In the case of renovation, interior and exterior containment and cleanup methods.\*

~~q.~~ In the case of renovation, providing on-the-job training to other workers.\*

~~r.~~ In the case of renovation, procedures for using recognized test kits to determine whether paint is lead-based paint, including preparation of the required report.\*

~~s.~~ In the case of renovation, methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.\*

~~t.~~ In the case of renovation, record preparation and record keeping.

~~u.~~ Record keeping for lead abatement.

~~v.~~ The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

~~w.~~ The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

~~x.~~ All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

**70.4(9)** To be approved for the training of lead abatement contractors who have already completed an approved lead abatement worker course, a course must be at least 16 training hours with a minimum of 4 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

~~a.~~ to ~~f.~~ No change.

~~g.~~ Record keeping for lead abatement.

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*h.* The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

*i.* The instructor shall provide each student with instructions and forms needed to apply to the department for certification and with information provided by the department regarding the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

*j.* All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

**70.4(10)** To be approved for the training of lead abatement workers, a course must be at least 24 training hours with a minimum of 8 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

*a. to d.* No change.

*e.* Approved methods for conducting lead-based paint abatement, and interim controls, and renovation.\*

*f.* Prohibited methods for conducting lead-based paint abatement, and interim controls, and renovation.

*g. and h.* No change.

*i.* Cleanup, waste handling, and waste disposal.

*j. and k.* No change.

*l.* In the case of renovation, interior and exterior containment and cleanup methods.\*

*m.* In the case of renovation, providing on-the-job training to other workers.\*

*n.* In the case of renovation, procedures for using recognized test kits to determine whether paint is lead-based paint, including preparation of the required report.\*

*o.* In the case of renovation, methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.\*

*p.* In the case of renovation, record preparation and record keeping.

*q.* The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

~~*r.*~~ *r.* The instructor shall provide each student with instructions and forms needed to apply to the department for certification. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

*s.* All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

**70.4(11)** To be approved for the training of sampling technicians ~~prior to September 15, 2000, a course was required to be at least 16 training hours with a minimum of 4 hours devoted to hands-on activities. Beginning September 15, 2000, a course must be at least 20 training hours with a minimum of 4 hours devoted to hands-on training activities.~~ The training course shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

*a. to e.* No change.

*f.* In the case of renovation, procedures for using recognized test kits to determine whether paint is lead-based paint.\*

~~*g.*~~ *g.* Clearance standards and testing, including random sampling.\*

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- ~~g.~~ h. Identification of lead-based paint hazards.\*
  - ~~h.~~ i. Sources of environmental lead contamination such as paint, surface dust and soil, and water.
  - ~~i.~~ j. Visual inspection to identify lead-based paint hazards.\*
  - ~~j.~~ k. Approved methods for conducting lead abatement, ~~and~~ interim controls, operation and maintenance activities, and renovation.
  - ~~k.~~ l. Prohibited methods for conducting lead abatement, ~~and~~ interim controls, operation and maintenance activities, and renovation.
  - ~~l.~~ m. Methods of interim controls and lead abatement for interior dust and cleanup.
  - ~~m.~~ n. Methods of interim controls and lead abatement for exterior dust and soil and cleanup.
  - ~~n.~~ o. Preparation of the final visual assessment report.
  - ~~o.~~ p. Preparation of clearance testing reports for ~~interim controls~~ clearance testing after renovation and clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340.
  - ~~p.~~ q. Record keeping.
  - ~~q.~~ r. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.
  - ~~r.~~ s. The instructor shall provide each student with instructions and forms needed to apply to the department for certification. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.
  - t. All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.
- 70.4(12)** To be approved for the training of project designers, a course must be at least 48 instructional training hours with a minimum of 12 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):
- a. to c. No change.
  - d. Liability and insurance issues relating to ~~lead abatement~~ project design.
  - e. and f. No change.
  - g. Development and implementation of an occupant protection plan, ~~and~~ lead abatement report, and renovation report.
  - h. and i. No change.
  - j. Approved methods for conducting lead-based ~~paint~~ abatement, ~~and~~ interim controls, and renovation.\*
  - k. Prohibited methods for conducting lead-based ~~paint~~ abatement, ~~and~~ interim controls, and renovation.
  - l. to n. No change.
  - o. Cleanup, waste handling, and waste disposal.
  - p. In the case of renovation, providing on-the-job training to other workers.\*
  - q. In the case of renovation, procedures for using recognized test kits to determine whether paint is lead-based paint, including preparation of the required report.\*
  - r. In the case of renovation, methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.\*
  - s. In the case of renovation, record preparation and record keeping.
  - ~~p.~~ t. Record keeping for lead abatement.
  - ~~q.~~ u. Role and responsibilities of a project designer.
  - ~~r.~~ v. Development and implementation of an occupant protection plan for large-scale lead abatement projects.

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~~s. w.~~ Lead abatement and lead hazard reduction methods, including restricted practices for large-scale lead abatement projects.

~~t. x.~~ Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale lead abatement projects.

~~u. y.~~ Clearance standards and testing for large-scale lead abatement projects.

~~v. z.~~ Integration of lead abatement methods with modernization and rehabilitation projects for large-scale lead abatement projects.

~~w. aa.~~ The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

~~x. ab.~~ The instructor shall provide each student with instructions and forms needed to apply to the department for certification and with information provided by the department regarding the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

ac. All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

**70.4(13)** To be approved for the training of project designers who have already completed an approved lead abatement contractor course, a course must be at least 8 instructional training hours and shall cover at least the following subjects:

a. to f. No change.

g. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

h. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

i. All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

**70.4(14)** To be approved for the training of project designers who have already completed an approved lead abatement worker course, a course must be at least 24 instructional training hours with a minimum of 4 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

a. to m. No change.

n. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

o. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

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p. All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

70.4(15) To be approved for the training of lead-safe renovators, a course must be at least 8 instructional training hours with a minimum of 2 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (\*) indicate areas that require hands-on activities as an integral component of the course):

a. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

b. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint, lead-based paint activities, and renovation activities.

c. Procedures for using recognized test kits to determine whether paint is lead-based paint, including preparation of the required report.\*

d. Renovation methods to minimize the creation of dust and lead-based paint hazards.\*

e. Prohibited methods of renovation.

f. Interior and exterior containment and cleanup methods.\*

g. Methods to ensure that the renovation has been properly completed, including cleaning verification and clearance testing.\*

h. Waste handling and disposal.

i. Providing on-the-job training to other workers.\*

j. Record preparation and record keeping.

k. The course shall conclude with a course test and, if applicable, a hands-on skills assessment.

The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

l. The instructor shall provide each student with instructions and forms needed to apply to the department for certification. The instructor shall also provide each student with a current copy of this chapter and 641—Chapter 69.

m. All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

70.4(15) 70.4(16) To be approved for refresher training of sampling technicians, lead abatement contractors, lead abatement workers, and project designers, a course must be at least 8 training hours. To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors who completed an approved 24-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors to meet the recertification requirements of subrule 70.5(6), a course must be at least 16 training hours. To be approved for refresher training of lead-safe renovators, a course must be at least 4 hours. All refresher training courses shall cover at least the following topics:

a. A review of the curriculum topics of the initial certification course for the appropriate discipline as listed in subrules 70.4(3) to ~~70.4(14)~~ 70.4(15).

b. to d. No change.

e. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course. The student may take the course test no more than three times within six months of completing the course. If an individual does not pass the course test within six months of completing the course, the individual must retake the appropriate approved course.

f. All of the course materials including instructions, applications, and forms must be provided on paper unless an individual student requests that the materials be provided electronically.

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~~70.4(16)~~ **70.4(17)** Approvals of training courses shall expire three years after the date of issuance. The training manager shall submit the following at least 90 days prior to the expiration date for a course to be reapproved:

*a.* to *e.* No change.

~~70.4(17)~~ **70.4(18)** The department shall consider a request for approval of a training course that has been approved by a state or tribe authorized by the U.S. Environmental Protection Agency.

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

ITEM 7. Amend rule 641—70.5(135) as follows:

**641—70.5(135) Certification, interim certification, and recertification.**

**70.5(1)** A person wishing to become a certified lead professional shall apply on forms supplied by the department. The applicant must submit:

*a.* to *c.* No change.

*d.* If wishing to become a certified elevated blood lead (EBL) inspector/risk assessor, documentation of successful completion of 8 hours of training from the department's childhood lead poisoning prevention program. This training shall cover the roles and responsibilities of an elevated blood lead (EBL) inspector/risk assessor and the environmental and medical case management of elevated blood lead (EBL) children. ~~The training shall conclude with a written examination. The applicant must achieve a score of at least 80 percent on the examination to successfully complete the training.~~

*e.* Documentation that the applicant meets the additional experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):

(1) and (2) No change.

*f.* ~~Beginning March 1, 2000, to~~ To become certified as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, or project designer, a certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

*g.* A \$50 60 nonrefundable fee.

*h.* A person may receive interim certification from the department as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, or project designer by submitting the items required by paragraphs 70.5(1) "*a*" to "*e*" and "*g*" to the department. ~~If the applicant completed an approved course prior to September 1, 1999, the interim certification expired on March 1, 2000. If the applicant completed an approved course on or after September 1, 1999, the interim~~ Interim certification shall expire six months from the date of completion of an approved course. An applicant shall upgrade an interim certification to a certification by submitting a certificate to the department showing that the applicant has passed the state certification examination as required by paragraph 70.5(1) "*f*." Interim certification is equivalent to certification.

*i.* Beginning April 22, 2010, lead-safe renovators must be certified by the department. A person who completed an approved course conducted by an approved lead-safe work practices training provider prior to [insert the effective date of this amendment] must complete a lead-safe renovator refresher course to obtain certification.

**70.5(2)** ~~Beginning September 1, 1999, to~~ To become certified by the department as a lead professional, an applicant must meet the education and experience requirements for the appropriate discipline:

*a.* to *e.* No change.

*f.* No additional education or experience is required for lead-safe renovators.

**70.5(3)** ~~Reserved. Certifications issued prior to September 1, 1999, expired on February 29, 2000. By March 1, 2000, lead professionals certified prior to September 1, 1999, were required to be recertified by submitting the following:~~

*a.* ~~A completed application form.~~

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~~b. For lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3) and the completion of an 8-hour refresher course.~~

~~c. Reserved.~~

~~d. Documentation that the applicant meets the experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):~~

~~(1) Official transcripts or diplomas as evidence of meeting the education requirements.~~

~~(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.~~

~~e. For lead abatement contractors, lead abatement workers, project designers, and sampling technicians, if the date on which the applicant completed an approved training course is three years or more before the date of recertification, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline.~~

~~f. A certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.~~

~~g. A \$50 nonrefundable fee.~~

~~70.5(4) Reserved. By September 15, 2000, sampling technicians certified prior to July 1, 2000, were required to be recertified by submitting a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(11) and the completion of an 8-hour refresher course.~~

~~70.5(5) All agencies that perform or offer to perform elevated blood lead (EBL) inspections after September 15, 2000, must be certified by the department. An agency wishing to become a certified elevated blood lead (EBL) inspection agency shall apply on forms supplied by the department. The agency must submit:~~

~~a. to d. No change.~~

~~70.5(6) Beginning March 1, 2000, individuals Individuals certified as lead professionals must be recertified each year. To be recertified, lead professionals must submit the following:~~

~~a. No change.~~

~~b. A \$50 60 nonrefundable fee.~~

~~c. No change.~~

~~d. If a certified individual taking a refresher training course is also an approved instructor for that particular refresher training course and has access to the testing materials, the certified individual must take a refresher training course test supplied by the department in lieu of the normal refresher training course test.~~

~~70.5(7) The department shall approve the state certification examinations for the disciplines of lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, and project designer. The state certification examination shall be administered by selected community college testing centers in Iowa through an agreement with the consortium of Iowa community colleges. A community college testing center shall set the fee for administering the state certification examination to each applicant and shall collect the fee from each applicant.~~

~~a. An individual must achieve a score of at least 80 percent on the examination. An individual may take the state certification examination no more than three times within six months of receiving a certificate of completion from an approved course.~~

~~b. No change.~~

~~70.5(8) Reciprocity. Each applicant for certification who is certified in any of the disciplines specified in this rule in another state may request reciprocal certification. The department shall evaluate the requirements for certification to determine that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa. If For all disciplines except lead-safe renovator, if the department determines that the requirements for certification in such other state are as protective of health and the environment as the requirements for~~

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certification in Iowa, the applicant may be certified after passing a proctored test covering Iowa-specific lead information with a score of at least 80 percent. For a lead-safe renovator, if the department determines that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa, the applicant may be certified after signing a statement indicating that the applicant has read and understands Iowa-specific lead information provided by the department. Each applicant for certification pursuant to this subrule shall submit the appropriate application accompanied by the fee for each discipline as specified in 641—70.5(135).

ITEM 8. Amend rule 641—70.6(135) as follows:

**641—70.6(135) Work practice standards for lead professionals conducting lead-based paint activities in target housing and child-occupied facilities.** Prior to March 1, 2000, when performing any lead-based paint activity described as a lead-free inspection, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement, a certified individual was required to perform that activity in compliance with the appropriate requirements below. Beginning March 1, 2000, any All lead-based paint activity described as a lead-free inspection, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement activities shall be performed according to the work practice standards in 641—70.6(135), and a certified individual must perform that activity in compliance with the appropriate requirements below.

**70.6(1)** A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct a lead-free inspection according to the following standards. ~~Beginning March 1, 2000, a~~ A lead-free inspection shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

~~a. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall notify the department in writing no later than 30 days after conducting a lead-free inspection in a residential dwelling or child-occupied facility. The notification shall include the following information:~~

- ~~(1) The address where the lead-free inspection was conducted.~~
- ~~(2) The dates when the lead-free inspection was conducted.~~
- ~~(3) The name, address, telephone number, Iowa certification number, and signature of the contact for the certified firm that conducted the lead-free inspection.~~
- ~~(4) The name, address, telephone number, Iowa certification number, and signature of each certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor who conducted the lead-free inspection.~~

~~b. a.~~ When conducting a lead-free inspection in a residential dwelling, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

- (1) to (3) No change.

(4) Paint shall be tested using adequate quality control by X-ray fluorescence (XRF) or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

1. to 3. No change.

4. Prior to taking the final set of calibration readings and if ~~required~~ recommended by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas

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chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation  $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$  and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16.

5. to 7. No change.

(5) and (6) No change.

(7) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a lead-free inspection is completed. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the lead-free inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The report shall include, at least:

1. to 6. No change.

7. Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the ~~investigation~~ inspection;

8. Name and certification number of the certified firm(s) conducting the inspection;

~~8.~~ 9. Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

~~9.~~ 10. Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) device;

~~10.~~ 11. XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated at each required calibration;

~~11.~~ 12. Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

~~12.~~ 13. The results of retesting of 10 surfaces, calculations to determine the retest tolerance limit, and the determination of whether the inspection meets the retest tolerance limit;

~~13.~~ 14. If the ~~inspector~~ certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that the residential dwelling is free of lead-based paint, the report shall contain the following statement:

“The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm<sup>2</sup> in paint was found on any building components, using the inspection protocol in Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997). Therefore, this residential dwelling qualifies for the exemption in 24 CFR Part 35 and 40 CFR Part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm<sup>2</sup>, which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the owner and all future owners for the life of the residential dwelling. Per the disclosure requirements of 24 CFR Part 35 and 40 CFR Part 745, prospective buyers are entitled to all available inspection reports should the property be resold.”;

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14. 15. If any lead-based paint is identified, a description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

15. 16. A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

16. 17. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

~~17. Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

18. Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation, remodeling and repainting found in 641—Chapter 70; and

19. The report shall contain the following statement:

"The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.59(135)."

~~e.~~ b. When conducting a lead-free inspection in multifamily housing, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) to (5) No change.

(6) Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

1. No change.

2. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not use an X-ray fluorescence analyzer using a software version or a mode of operation that could result in inconclusive readings or ~~would require~~ that recommends substrate correction.

3. to 6. No change.

(7) to (11) No change.

(12) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility inspected. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The inspection report shall include, at least:

1. to 8. No change.

9. Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the ~~investigation~~ inspection;

10. Name and certification number of the certified firm(s) conducting the inspection;

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~~40-~~ 11. Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

~~41-~~ 12. Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

~~42-~~ 13. XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated at each required calibration;

~~43-~~ 14. Specific locations by room of each painted component tested for the presence of lead-based paint and by residential dwelling or common area and the results for each component expressed in terms appropriate to the sampling method used;

~~44-~~ 15. Component aggregations and the determination of whether lead-based paint is present by component type;

~~45-~~ 16. The results of retesting of 10 surfaces, calculations to determine the retest tolerance limit, and the determination of whether the inspection meets the retest tolerance limit;

~~46-~~ 17. If the ~~inspector~~ certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that the multifamily housing is free of lead-based paint, the report shall contain the following statement:

“The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm<sup>2</sup> in paint was found on any building components, using the inspection protocol in Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997). Therefore, this multifamily housing qualifies for the exemption in 24 CFR Part 35 and 40 CFR Part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm<sup>2</sup>, which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the owner and all future owners for the life of the multifamily housing. Per the disclosure requirements of 24 CFR Part 35 and 40 CFR Part 745, prospective buyers are entitled to all available inspection reports should the property be resold.”;

~~47-~~ 18. If any lead-based paint is identified, a description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

~~48-~~ 19. A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

~~49-~~ 20. Information regarding the owner’s obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

~~20.—Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

~~21. Information regarding Iowa’s prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa’s regulations for renovation found in 641—Chapter 70; and~~

~~22. The report shall contain the following statement:~~

~~“The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135).”~~

**70.6(2)** A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct lead inspections according to the following standards. ~~Beginning March 1, 2000,~~

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~~lead~~ Lead inspections shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting a lead inspection in a residential dwelling or child-occupied facility, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) No change.

(2) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test each testing combination in each room. On windows, the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination. One sample shall be taken for each testing combination in a room, including the walls. If a testing combination is painted and not tested, it shall be assumed to be painted with lead-based paint.

b. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) to (3) No change.

(4) If ~~required~~ recommended by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation  $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$  and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where ~~required~~ recommended by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

(5) and (6) No change.

c. No change.

d. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility inspected. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The inspection report shall include, at least:

(1) to (6) No change.

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(7) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the ~~investigation~~ inspection;

(8) The name and certification number of the certified firm(s) conducting the inspection;

~~(8)~~ (9) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(9) (10) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

~~(10)~~ (11) XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

~~(11)~~ (12) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

~~(12)~~ (13) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;

~~(13)~~ (14) A description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

(14) (15) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

~~(15)~~ (16) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CRF Part 35 and Subpart I of 40 CFR Part 745; and

~~(16) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

(17) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and

(18) The report shall contain the following statement:

"The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

**70.6(3)** A certified elevated blood lead (EBL) inspector/risk assessor must conduct elevated blood lead (EBL) inspections according to the following standards. ~~Beginning March 1, 2000,~~ ~~elevated~~ Elevated blood lead (EBL) inspections shall be conducted only by a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting an elevated blood lead (EBL) inspection, the certified elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) No change.

(2) The certified elevated blood lead (EBL) inspector/risk assessor shall test each testing combination in each room. One sample shall be taken for each testing combination in a room, including walls. On windows, the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination. If a testing combination is painted and not tested, it shall be assumed to be painted with lead-based paint.

b. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If

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testing by laboratory analysis, the certified elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) to (3) No change.

(4) If ~~required~~ recommended by the performance characteristics sheet, the certified elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation  $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$  and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where ~~required~~ recommended by the performance characteristics sheet, then the certified elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

(5) and (6) No change.

c. No change.

d. No later than two weeks after the receipt of laboratory results, a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted and shall provide a copy of this report to the property owner and the occupant of the dwelling. The report shall include, at least:

(1) to (6) No change.

(7) Name, signature, and certification number of each certified elevated blood lead (EBL) inspector/risk assessor conducting the ~~investigation~~ inspection;

(8) Name and certification number of the certified firm(s) conducting the inspection;

~~(8)~~ (9) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

~~(9)~~ (10) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

~~(10)~~ (11) XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

~~(11)~~ (12) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

~~(12)~~ (13) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;

~~(13)~~ (14) A description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the play area or in the dripline of a home where

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lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

(14) (15) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

(15) (16) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

(16) ~~Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

(17) ~~Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and~~

(18) The report shall contain the following statement:

"The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by an elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

e. A certified elevated blood lead (EBL) inspector/risk assessor shall maintain for no fewer than ten years a written record for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted ~~for no fewer than ten years~~. The record shall include, at least:

(1) to (3) No change.

(4) Records of follow-up visits made to each residential dwelling or child-occupied facility where lead-based paint hazards are identified ~~to ensure that lead-based paint hazards are safely repaired and, when issued, a copy of the clearance report.~~

**70.6(4)** A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct lead hazard screens according to the following standards. ~~Beginning March 1, 2000, lead~~ Lead hazard screens shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. to g. No change.

h. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) to (3) No change.

(4) If ~~required~~ recommended by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood

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lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation  $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$  and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where ~~required~~ recommended by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all the readings are positive and shall not state that a surface is free of lead-based paint.

(5) and (6) No change.

*i. to l.* No change.

*m.* A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a lead hazard screen is conducted. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the lead hazard screen, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The report shall include, at least:

(1) to (5) No change.

(6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the ~~investigation~~ lead hazard screen.

(7) Name and certification number of the certified firm(s) conducting the lead hazard screen.

~~(7)~~ (8) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

~~(8)~~ (9) Results of the visual inspection.

~~(9)~~ (10) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer.

~~(10)~~ (11) If used, XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated.

~~(11)~~ (12) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component tested expressed in terms appropriate to the sampling method used.

~~(12)~~ (13) All results of laboratory analysis of collected paint, dust, and soil samples. The results of dust sampling shall be reported in micrograms of lead per square foot, and the results of soil sampling shall be reported in parts per million of lead. Results shall not be reported as "not detectable."

~~(13)~~ (14) Any other sampling results;

~~(14)~~ (15) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint.

~~(15)~~ (16) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years.

~~(16)~~ (17) Whether the residential dwelling or child-occupied facility passed or failed the lead hazard screen and recommendations, if warranted, for a follow-up lead inspection or risk assessment, and, as appropriate, any further actions.

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~~(17)~~ (18) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745.

~~(18) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

~~(19) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation found in 641—Chapter 70.~~

~~(20) The report shall contain the following statement:~~

~~"The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."~~

**70.6(5)** A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct risk assessments according to the following standards. ~~Beginning March 1, 2000,~~ ~~risk~~ Risk assessments shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

*a. to i.* No change.

*j.* Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) to (3) No change.

(4) If ~~required~~ recommended by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation  $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$  and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where ~~required~~ recommended by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

(5) and (6) No change.

*k.* No change.

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1. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a risk assessment is conducted. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the risk assessment, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of the report for no less than three years. The report shall include, at least:

- (1) to (5) No change.
- (6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the ~~investigation~~ risk assessment;
- (7) Name and certification number of the certified firm(s) conducting the risk assessment;
- ~~(7)~~ (8) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b));
- ~~(8)~~ (9) Results of the visual inspection;
- ~~(9)~~ (10) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;
- ~~(10)~~ (11) If used, XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;
- ~~(11)~~ (12) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component tested expressed in terms appropriate to the sampling method used;
- ~~(12)~~ (13) All results of laboratory analysis of collected paint, dust, and soil samples;
- ~~(13)~~ (14) Any other sampling results;
- ~~(14)~~ (15) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;
- ~~(15)~~ (16) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years;
- ~~(16)~~ (17) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint hazards;
- ~~(17)~~ (18) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards, including bare soil in the play area or in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;
- ~~(18)~~ (19) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;
- ~~(19)~~ (20) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; ~~and~~
- ~~(20) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~
- (21) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and
- (22) The report shall contain the following statement:  
"The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional

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signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135).”

**70.6(6)** A certified lead abatement contractor or certified lead abatement worker must conduct lead abatement according to the following standards. ~~Beginning March 1, 2000, lead~~ Lead abatement shall be conducted only by a certified lead abatement contractor or a certified lead abatement worker.

*a. to d.* No change.

*e.* A certified lead abatement contractor shall ensure that the worksite(s) is accessed only by certified lead professionals according to Iowa Administrative Code 641—70.3(135) and 70.5(135). Noncertified individuals shall not be allowed access to a worksite. A worksite shall remain inaccessible to noncertified individuals until it passes clearance testing.

~~*e. f.* A certified lead abatement contractor or a certified project designer shall develop an a~~ *f.* A certified lead abatement contractor or a certified project designer shall develop a written occupant protection plan for all lead abatement projects prior to starting lead abatement and shall implement the occupant protection plan during the lead abatement project. The occupant protection plan shall be unique to each residential dwelling or child-occupied facility. The occupant protection plan shall describe the measures and management procedures that will be taken during the lead abatement to protect the building occupants from exposure to any lead-based paint hazards. If the occupants will be living at the property where lead abatement is taking place, then the written occupant plan shall be given to the occupants prior to the start date of the lead abatement project and must contain at least the following information:

(1) A description of the type and location of the physical barriers that will keep occupants out of the designated worksite(s).

(2) An explanation of how the contractor will ensure that the worksite(s) is not entered by the occupants.

(3) An explanation of how the contractor will ensure that the occupants have access to a kitchen, bathroom, and living area that are not in the worksite(s).

~~*f. g.* Approved methods must be used to conduct lead abatement, and prohibited work practices must not be used to conduct lead abatement. The following are prohibited work practices:~~

~~(1) Open flame burning or torching of lead-based paint.~~

~~(2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.~~

~~(3) Uncontained water blasting of lead-based paint.~~

~~(4) Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.~~

~~(5) Operating a heat gun at a temperature at or above 1100 degrees Fahrenheit.~~

(1) Signs must be posted and readable. All signs must be posted before lead abatement begins and must remain in place until dust-lead clearance has been passed.

1. To the extent practicable, all signage must be posted in the occupants' primary language.

2. The signs must clearly define the work area.

3. The signs must warn occupants and other persons not involved with the lead abatement to remain outside the work area.

4. The signs must be posted at the entrance(s) to all work areas.

(2) The work area must be effectively contained before the lead abatement begins. To be effective, containment must:

1. Isolate the work area so that no dust or debris leaves the work area while the lead abatement is being performed.

2. Be monitored and maintained so that any plastic or other impermeable materials are not torn or displaced.

3. Be installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(3) For interior lead abatement, containment shall include:

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1. The removal or covering of all objects from the work area, including but not limited to furniture, rugs, and window coverings. Objects that are not removed from the work area must be covered with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

2. Closing and covering all duct openings in the work area. Ducts must be covered with plastic sheeting or other impermeable material that is taped down.

3. Closing windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

4. Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of the surfaces undergoing lead abatement or a sufficient distance to contain the dust, whichever is greater.

5. Ensuring that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving or being removed from the work area.

(4) For exterior lead abatement, containment shall include:

1. Closing all doors and windows within 20 feet of the lead abatement. On multistory buildings, all doors and windows within 20 feet of the lead abatement on the same story as the lead abatement shall be closed, and all doors and windows on all stories below the lead abatement that are the same horizontal distance from the lead abatement shall be closed.

2. Ensuring that doors within the work areas that will be used while the lead abatement is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

3. Covering the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing lead abatement or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground cover. Exterior ground cover shall include anchors or weights to ensure that the covering remains effective even during weather conditions such as high wind.

4. Vertical containment. In certain situations, such as where other buildings are in close proximity to the work area, when conditions are windy, or where the work area abuts a property line, the certified lead abatement contractor or certified lead abatement worker shall erect a system of vertical containment designed to prevent dust and debris from migrating to adjacent property or contaminating the ground, other buildings, or any object beyond the work area.

(5) The following are prohibited work practices:

1. Open-flame burning or torching of lead-based paint.

2. Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with high-efficiency particulate air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

3. Uncontained water blasting of lead-based paint.

4. Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.

5. Operating a heat gun at a temperature at or above 1100 degrees Fahrenheit.

(6) All waste generated during lead abatement shall be contained to prevent the release of dust and debris before the waste is removed from the work area for storage or disposal. Any chutes used to remove waste from the work area shall be covered.

1. At the conclusion of each workday and at the conclusion of the lead abatement, waste that has been collected from lead abatement activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

2. All waste from lead abatement must be contained during transportation so that no dust or debris is released.

(7) The work area shall be cleaned so that no dust, debris, or residue remains after lead abatement. Cleaning shall include:

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1. The collection of all paint chips and debris and, without dispersing the paint chips and debris, the sealing of the materials in heavy-duty bags.

2. The removal of the protective sheeting used as required in this subrule. The sheeting shall be misted, then the sheeting shall be folded dirty side inward. All sheeting shall be taped shut or otherwise sealed inside heavy-duty bags. Sheeting used to separate work areas from non-work areas must remain in place until after the cleaning and removal of other sheeting. All sheeting shall be disposed of as waste.

3. For interior lead abatement, all objects and surfaces in the work area and within two feet of the work area must be cleaned from high to low in the following manner:

- Walls must either be vacuumed with a HEPA vacuum or wiped with a wet cloth, beginning at the ceiling and working toward the floor.

- All remaining surfaces including objects and fixtures must be thoroughly vacuumed with a HEPA vacuum. For carpeted floors and rugs, the HEPA vacuum must be equipped with a beater bar.

- All remaining surfaces, except for carpeted or upholstered surfaces, must also be wiped with a damp cloth. Uncarpeted floors must be thoroughly mopped using a method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

~~g.~~ h. Soil abatement shall be conducted using one of the following methods:

(1) and (2) No change.

~~h.~~ i. If lead-based paint is removed from a surface, the surface shall be repainted or refinished prior to postabatement clearance dust sampling. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall visually verify that lead-based paint was removed from a surface prior to repainting or refinishing.

~~i.~~ j. If components painted with lead-based paint are removed, the replacement components shall be installed prior to postabatement clearance testing.

~~j.~~ k. Postabatement clearance procedures shall be conducted by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor. If the abatement is conducted in response to an elevated blood lead (EBL) inspection, clearance must be conducted by a certified elevated blood lead (EBL) inspector/risk assessor. Postabatement clearance testing shall be performed by persons or entities independent of those performing lead abatement, unless the designated party uses qualified in-house employees to conduct postabatement clearance testing. An in-house employee shall not conduct both lead abatement and the postabatement clearance testing for this work. Postabatement clearance testing shall be conducted using the following procedures:

(1) No change.

(2) Following the visual inspection and any required postabatement cleanup, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall conduct clearance sampling for lead in dust. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling. Interior dust-lead testing shall be performed for all projects that include window replacement.

(3) to (8) No change.

~~k.~~ l. In multifamily housing consisting of at least 20 similarly constructed and maintained residential dwellings, random selection for the purpose of clearance testing may be conducted if the following conditions are met:

(1) and (2) No change.

(3) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall sample the randomly selected residential dwellings and evaluate them for clearance according to the procedures found in paragraphs 70.6(6)“~~h~~”“~~i~~” through “~~j~~.”“~~k~~.”

~~l.~~ m. No later than three weeks after the property passes clearance, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a report to the lead abatement contractor that contains the items required by subparagraphs 70.6(6)“~~m~~”“~~n~~”(7) through (9).

~~m.~~ n. The certified lead abatement contractor or a certified project designer shall prepare a lead abatement report containing the following information:

(1) to (3) No change.

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(4) The name, address, and signature of the certified lead abatement contractor and ~~certified lead abatement worker~~ and of the certified firm contact for the firm conducting the lead abatement.

(5) No change.

(6) The occupant protection plan required by paragraph 70.6(6) ~~“e.”~~ “f.”

(7) to (11) No change.

~~(12) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

(12) Information regarding Iowa’s prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa’s regulations for renovation found in 641—Chapter 70.

(13) If applicable, a copy of the written consent or waiver required by subrule ~~70.6(11)~~ 70.6(13).

~~n. o.~~ The lead abatement report shall be completed no later than 30 days after the lead abatement project passes clearance testing.

~~p. q.~~ The certified lead abatement contractor shall maintain all reports and plans required in this subrule for a minimum of three years.

~~p. q.~~ The certified lead abatement contractor shall provide a copy of all reports required by this subrule to the building owner and to the person who contracted for the lead abatement, if different.

**70.6(7)** A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician must conduct visual risk assessments according to the following standards. ~~Beginning March 1, 2000, visual~~ Visual risk assessments shall be conducted only by a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician.

a. and b. No change.

c. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted. No later than three weeks after completing the visual risk assessment, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall send a copy of the report to the property owner and to the person requesting the visual risk assessment, if different. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall maintain a copy of the report for no less than three years. The report shall include, at least:

(1) to (6) No change.

(7) Name and certification number of the certified firm(s) conducting the visual risk assessment;

~~(7)~~ (8) A statement that all painted or finished components must be assumed to contain lead-based paint;

~~(8)~~ (9) Specific locations of painted or finished components identified as likely to contain lead-based paint and likely to be lead-based paint hazards;

~~(9)~~ (10) Specific locations of bare soil in the play area and the dripline of a home;

~~(10)~~ (11) Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility;

~~(11)~~ (12) Information regarding the owner’s obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

~~(12) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

(13) Information regarding Iowa’s prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa’s regulations for renovation found in 641—Chapter 70; and

(14) The report shall contain the following statement:

“The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any

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addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135).”

**70.6(8)** A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician must conduct clearance testing according to the following standards. ~~Beginning March 1, 2000, clearance~~ Clearance testing following lead abatement shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor. ~~Beginning September 15, 2000, Dust clearance testing after renovation and clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted only by certified sampling technicians, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspector/risk assessors.~~ Clearance testing after an elevated blood lead (EBL) inspection must be completed by a certified elevated blood lead (EBL) inspector/risk assessor.

a. Clearance testing following lead abatement shall be conducted according to paragraphs 70.6(6) ~~“h” “i”~~ through ~~“l.” “m.”~~

b. ~~Clearance~~ Dust clearance testing after renovation and clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted according to the following standards:

(1) to (5) No change.

(6) The following clearance activities shall be conducted as appropriate based upon the extent or manner of renovation or of interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35 in the residential dwelling or child-occupied facility:

1. After conducting renovation or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35, with containment between treated and untreated areas, three dust samples shall be taken from each of no fewer than four rooms, hallways, or stairwells within the containment area. Dust samples shall be taken from one interior windowsill and from one window trough (if available), and one dust sample shall be taken from the floor of each of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside of each individual containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled. Interior dust-lead testing shall be performed for all projects that include window replacement.

2. After conducting renovation or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35, with no containment between treated and untreated areas, three dust samples shall be taken from each of no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. Dust samples shall be taken from one interior windowsill and window trough (if available), and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility, then all rooms, hallways, and stairwells shall be sampled. Interior dust-lead testing shall be performed for all projects that include window replacement.

(7) to (9) No change.

c. No change.

d. A clearance report must be prepared that provides documentation of the lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35 as well as the clearance testing. When lead abatement is performed, the report shall be a lead abatement report in accordance with paragraph 70.7(6) ~~“m.”~~ 70.6(6) ~~“n.”~~ When renovation or interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 are performed, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall prepare a written report for each residential dwelling or child-occupied facility where clearance testing is conducted. No later than 30 days after the property

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passes clearance, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall send a copy of the report to the property owner and to the person requesting the clearance testing, if different. The clearance report shall include the following information:

(1) No change.

(2) The following information regarding the clearance testing:

1. and 2. No change.

3. The name and certification number of the certified firm(s) conducting the clearance testing.

~~3.~~ 4. Whether or not containment was used and, if containment was used, the locations of the containment.

~~4.~~ 5. If random selection was used to select the residential dwellings that were sampled, the report shall state that random selection was used, the number of residential dwellings that were sampled, and how this number was determined.

~~5.~~ 6. The results of the visual inspection for the presence of deteriorated paint and visible dust, debris, residue, or paint chips in the rooms where interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation were conducted pursuant to 24 CFR Part 35.

~~6.~~ 7. ~~The~~ All of the results of the analysis of dust samples, in micrograms per square foot, by location of sample. The results shall not be reported as “not detectable.”

~~7.~~ 8. A statement that the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35 were or were not done as specified and that the rooms and exterior areas where these activities were conducted did or did not pass the visual clearance and the clearance dust testing. If the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician conducting the clearance testing cannot verify that all lead-based paint hazards have been controlled, the report shall contain the following statement:

“The purpose of this clearance report is to verify that this lead hazard control project was done according to the project specifications. This residential dwelling may still contain hazardous lead-based paint, soil-lead hazards, or dust-lead hazards in the rooms or exterior areas that were not included in the lead hazard control project.”

~~8.~~ 9. The name, address, and telephone number of each recognized laboratory conducting an analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(3) The following information on the renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation for which clearance testing was performed:

1. The start and completion dates of the renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation.

2. The name and address of each firm or organization conducting the renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation and the name of each supervisor assigned.

3. A detailed written description of the renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, including the methods used, locations of exterior surfaces, interior rooms, common areas, and components where the hazard reduction activity occurred.

4. No change.

5. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745.

~~6. Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~ Information regarding Iowa's prerenovation notification

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requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation found in 641—Chapter 70.

7. The report shall contain the following statement:

"The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

e. No change.

f. Clearance testing shall be performed by persons or entities independent of those performing lead abatement, renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, unless the designated party uses qualified in-house employees to conduct clearance testing. An in-house employee shall not conduct both lead abatement, renovation, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation and the clearance examination for this work.

**70.6(9)** A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall conduct paint testing pursuant to 24 CFR Part 35 according to the following standards. ~~Beginning March 1, 2000, paint~~ Paint testing pursuant to 24 CFR Part 35 shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting paint testing in a residential dwelling or child-occupied facility, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) No change.

(2) Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

1. to 3. No change.

4. If ~~required~~ recommended by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation  $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$  and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct

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substrate correction where ~~required~~ recommended by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

5. and 6. No change.

b. No change.

c. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where paint testing is conducted. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The report shall include, at least:

(1) to (7) No change.

(8) Name and certification number of the certified firm(s) conducting the paint testing;

~~(8)~~ (9) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(9) (10) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

~~(10)~~ (11) XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

~~(11)~~ (12) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

~~(12)~~ (13) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;

~~(13)~~ (14) A description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

~~(14)~~ (15) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

~~(15)~~ (16) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

~~(16) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.~~

(17) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation found in 641—Chapter 70; and

(18) The report shall contain the following statement:

"The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135)."

**70.6(10)** A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct reevaluations according to the following standards. Reevaluations

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shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. All available information regarding lead-based paint for the property being reevaluated shall be reviewed, including but not limited to reports of any lead-based paint activities conducted in a residential dwelling, multifamily, or child-occupied facility.

b. A visual inspection of the property shall be undertaken to locate the existence of deteriorated paint; bare soil; recommended lead abatement, interim controls, or standard treatments that were not implemented; and failed interim controls, standard treatments, encapsulation, or enclosure.

c. Deteriorated paint for which the lead content is unknown shall be tested for the presence of lead.

d. Soil samples shall be collected and analyzed from bare soil for which the lead content is unknown. Soil samples shall be collected using the documented methodologies specified in guidance documents issued by the department and shall be analyzed by a recognized laboratory to determine the level of lead.

e. If any lead-based paint hazards, recommended lead abatement, interim controls, or standard treatments that were not implemented, or failed interim controls, standard treatments, encapsulation, or enclosure are identified, then the reevaluation is failed. These conditions shall be controlled through lead abatement or interim controls before the reevaluation can continue. Clearance testing shall be conducted following control of the conditions through lead abatement or interim controls.

f. If there are no lead-based paint hazards present and all of the recommended lead abatement or interim controls were implemented and have not failed, then single-surface or composite dust samples shall be collected. The reevaluation is passed if all of the dust samples taken are below the clearance level.

g. In residential dwellings, single-surface or composite dust samples shall be collected from floors and interior windowsills in at least four rooms, hallways, or stairwells where at least one child under the age of six years is most likely to come in contact with dust.

h. In multifamily dwellings, single-surface or composite dust samples shall also be collected from common areas where at least one child under the age of six years is likely to come in contact with dust.

i. In child-occupied facilities, single-surface or composite dust samples shall be collected from the floor and interior windowsill in at least four rooms, hallways, or stairwells utilized by one or more children under the age of six years and in other common areas where the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that at least one child under the age of six years is likely to come in contact with dust.

j. Dust samples shall be collected by wipe samples using the documented methodologies specified in guidance documents issued by the department. The minimum area for a floor wipe sample shall be 0.50 square feet or 72 square inches. The minimum area for a windowsill wipe sample and for a window trough wipe sample shall be 0.25 square feet or 36 square inches. Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

k. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If tested by laboratory analysis, the paint shall be sampled using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use an X-ray fluorescence analyzer that has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

(2) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the NIST 1.02 standard film or standards provided by the manufacturer for calibration of the X-ray fluorescence analyzer. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not state that any surface is free of lead-based paint unless the NIST 1.02 standard film is used for calibration.

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(3) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings.

(4) If recommended by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation  $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$  and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where recommended by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

(5) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading that did not require substrate correction and each corrected XRF reading for XRF readings that required substrate correction as positive, negative, or inconclusive, according to the performance characteristics sheet for the XRF. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not discard XRF readings unless instructed to do so by the performance characteristics sheet or the operating instructions from the manufacturer. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor believes that a reading classified as positive is in error, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect a paint sample for laboratory analysis. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall change the positive classification to negative only if the results of the laboratory analysis indicate that the surface is not painted with lead-based paint. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume that all inconclusive readings are positive and classify them as such.

(6) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall resolve inconclusive readings as defined by the performance characteristics sheet for the XRF by collecting paint samples for laboratory analysis. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not resolve inconclusive readings by laboratory analysis, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the inconclusive readings are positive.

l. When conducting reevaluation in multifamily housing, a certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor may sample each residential dwelling or choose residential dwellings for sampling by random selection, targeted selection, or worst case selection.

(1) If built before 1960 or if the date of construction is unknown, the multifamily housing shall contain at least 20 similarly constructed and maintained residential dwellings in order to use random selection. If built from 1960 to 1977, the multifamily housing shall contain at least 10 similarly constructed and maintained residential dwellings in order to use random selection. The certified

lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 1 to determine the number of residential dwellings to randomly select for testing.

(2) If the multifamily housing contains 5 or more similar residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may use targeted selection. If using targeted selection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 2 to determine the number of residential dwellings to test. If the multifamily housing has fewer than 5 similar dwellings, all residential dwellings shall be tested. Residential dwellings chosen by targeted selection shall meet as many of the following criteria as possible. If additional residential dwellings are needed to meet the minimum number specified in Table 2, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall select them randomly. If too many residential dwellings meet the criteria, residential dwellings shall be eliminated randomly. Targeted selection criteria are as follows:

1. The residential dwelling has been cited with a housing or building code violation within the past year.

2. The property owner believes that the residential dwelling is in poor condition.

3. The residential dwelling contains two or more children between the ages of six months and six years. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall give preference to residential dwellings that house the largest number of children.

4. The residential dwelling serves as a child-occupied facility.

5. The residential dwelling has been prepared for reoccupancy within the past three months.

(3) If the multifamily housing contains 5 or more similar residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may use worst case selection. If using worst case selection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 2 to determine the number of residential dwellings to test. If the multifamily housing has fewer than 5 similar dwellings, all residential dwellings shall be tested.

(4) The following standards shall be used to determine the extent of lead-based paint hazards throughout multifamily housing that is sampled by random selection, targeted selection, or worst case selection:

1. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean of the dust-lead levels for carpeted floors, uncarpeted floors, interior windowsills, and window troughs. If the arithmetic mean is greater than or equal to the level defined as a dust-lead hazard for the component, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall determine that a dust-lead hazard has been identified on the component throughout the multifamily housing. If the arithmetic mean is less than the level defined as a dust-lead hazard for the component, but some of the individual components have dust-lead levels that are greater than or equal to the level defined as a dust-lead hazard, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall determine that a dust-lead hazard has been identified on the individual components and on all other similar components throughout the multifamily housing.

2. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall evaluate the results of paint sampling by component and location. If all components at a given location are determined to be painted with lead-based paint or are determined not to be painted with lead-based paint, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume this condition is true for all similar residential dwellings. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not assume that the multifamily housing is free of lead-based paint. If a component at a given location is found to be painted with lead-based paint in some residential dwellings and not painted with lead-based paint in other residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the component is a lead-based paint hazard in all similar residential dwellings.

m. If reevaluation is conducted, the first reevaluation shall be conducted no later than two years from completion of lead abatement, interim controls, or standard treatments. Subsequent reevaluation

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shall be conducted at intervals of two years, plus or minus 60 days. To be exempt from additional reevaluation, a residential dwelling or child-occupied facility shall have at least two consecutive passing reevaluations conducted at such two-year intervals. If, however, a reevaluation fails, at least two more consecutive reevaluations conducted at such two-year intervals must be conducted.

n. A certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a reevaluation is conducted. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the reevaluation, if different. A certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of the report for no less than three years. The report shall include, at least:

- (1) Date of each reevaluation;
- (2) Address of building;
- (3) Date of construction;
- (4) Apartment numbers (if applicable);
- (5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
- (6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the reevaluation;
- (7) Name and certification number of the certified firm(s) conducting the reevaluation;
- (8) All of the information gathered for the review as outlined in 70.6(10)“a”;
- (9) Results of the visual inspection including details of any newly identified lead-based paint hazards, the status of past lead hazards control measures, and repair options for any lead-based paint hazards identified during the reevaluation;
- (10) An indication of whether or not the property passed or failed the reevaluation;
- (11) An indication of when the next reevaluation, if any, should occur;
- (12) The results of any environmental samples taken, including all XRF readings, all laboratory analyses and clearance testing results, if necessary;
- (13) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b));
- (14) Information regarding the owner’s obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745;
- (15) Information regarding Iowa’s prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa’s regulations for renovation found in 641—Chapter 70; and
- (16) The report shall contain the following statement:

“The location and nature of this inspection are required to be reported to the Iowa Department of Public Health for tracking purposes. The Iowa Department of Public Health may review this report for compliance purposes. It is a violation of law for anyone other than the certified lead professional signing it to alter this report. This report may be supplemented with additional information, so long as any addendum is signed by a sampling technician, lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor certified according to Iowa Administrative Code 641—70.3(135) and 70.5(135).”

**70.6(11)** All renovations performed in target housing and child-occupied facilities, except for emergency renovations and minor repair and maintenance activities, shall be performed according to the work practice standards in 70.6(11). Renovation activities conducted in housing or on surfaces determined to be free of lead-based paint by a certified lead inspector/risk assessor or certified blood lead (EBL) lead inspector/risk assessor shall be exempt from all work practice standards except record keeping. All renovations shall be performed by a certified firm under the supervision of a certified lead abatement contractor or a certified lead abatement worker who completes initial certification on or after [insert the effective date of this amendment] or if certified prior to [insert the effective date of this amendment], completes a lead abatement worker, lead abatement contractor, or lead-safe renovator

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refresher course on or after [insert the effective date of this amendment], or shall be performed by a certified lead-safe renovator in accordance with the requirements below.

a. A firm shall assign at least one certified lead abatement contractor, a certified lead abatement worker, or a certified lead-safe renovator to each individual renovation project. The certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator assigned to each individual renovation project shall ensure the following:

(1) A certified lead abatement contractor, a certified lead abatement worker, or a certified lead-safe renovator must be on site during all worksite preparation and during the cleanup of work areas. At all other times when renovation is being conducted, a certified lead abatement contractor, a certified lead abatement worker, or a certified lead-safe renovator shall be on site or available by telephone, pager, or answering service, and be able to be present at the worksite in no more than two hours.

(2) Signs are posted and readable. All signs must be posted before the renovation begins and must remain in place until the postrenovation cleaning verification has been completed.

1. To the extent practicable, all signage must be posted in the occupants' primary language.

2. The signs must clearly define the work area.

3. The signs must warn occupants and other persons not involved with the renovation activity to remain outside the work area.

4. The signs must be posted at the entrance(s) to all work areas.

(3) The work area must be effectively contained before beginning the renovation. To be effective, containment must:

1. Isolate the work area so that no dust or debris leaves the work area while the renovation is being performed.

2. Be monitored and maintained so that any plastic or other impermeable materials are not torn or displaced.

3. Be installed in such a manner that it does not interfere with occupant and worker egress in an emergency.

(4) For interior renovations, containment shall include:

1. The removal or covering of all objects from the work area, including but not limited to furniture, rugs, and window coverings. Objects that are not removed from the work area must be covered with plastic sheeting or other impermeable material with all seams and edges taped or otherwise sealed.

2. Closing and covering all duct openings in the work area. Ducts must be covered with plastic sheeting or other impermeable material that is taped down.

3. Closing windows and doors in the work area. Doors must be covered with plastic sheeting or other impermeable material. Doors used as an entrance to the work area must be covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

4. Covering the floor surface, including installed carpet, with taped-down plastic sheeting or other impermeable material in the work area six feet beyond the perimeter of the surfaces undergoing renovation or a sufficient distance to contain the dust, whichever is greater.

5. Ensuring that all personnel, tools, and other items, including the exteriors of containers of waste, are free of dust and debris before leaving or being removed from the work area.

(5) For exterior renovations, containment shall include:

1. Closing all doors and windows within 20 feet of the renovation. On multistory buildings, all doors and windows within 20 feet of the renovation on the same story as the renovation shall be closed, and all doors and windows on all stories below the renovation that are the same horizontal distance from the renovation shall be closed.

2. Ensuring that doors within the work areas that will be used while the renovation is being performed are covered with plastic sheeting or other impermeable material in a manner that allows workers to pass through while confining dust and debris to the work area.

3. Covering the ground with plastic sheeting or other disposable impermeable material extending 10 feet beyond the perimeter of surfaces undergoing renovation or a sufficient distance to collect falling paint debris, whichever is greater, unless the property line prevents 10 feet of such ground cover. Exterior

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ground cover shall include anchors or weights to ensure the covering remains effective even during weather conditions such as high wind.

4. Vertical containment. In certain situations, such as where other buildings are in close proximity to the work area, when conditions are windy, or where the work area abuts a property line, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall erect a system of vertical containment designed to prevent dust and debris from migrating to adjacent property or contaminating the ground, other buildings, or any object beyond the work area.

(6) Prohibited practices are not used during the renovation. Prohibited practices include:

1. Open-flame burning or torching of paint.

2. Machine sanding or grinding or abrasive blasting or sandblasting of paint unless used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

3. Uncontained water blasting of paint.

4. Dry scraping or dry sanding of paint except in conjunction with the use of a heat gun or around electrical outlets.

5. Operating a heat gun at a temperature at or above 1100 degrees Fahrenheit.

(7) All workers that are not certified lead abatement contractors, certified lead abatement workers, or certified lead-safe renovators must have on-the-job training as required by 70.6(11) "d."

(8) If desired, perform all testing with recognized test kits in accordance with 70.6(11) "e."

(9) Perform the postrenovation cleaning verification as outlined in 70.6(11) "b."

(10) All waste generated during renovation activities is contained to prevent the release of dust and debris before the waste is removed from the work area for storage or disposal. Any chutes used to remove waste from the work area shall be covered.

1. At the conclusion of each workday and at the conclusion of the renovation, waste that has been collected from renovation activities must be stored under containment, in an enclosure, or behind a barrier that prevents release of dust and debris out of the work area and prevents access to dust and debris.

2. All waste from renovation activities must be contained during transportation so that no dust or debris is released.

(11) The work area shall be cleaned so that no dust, debris, or residue remains after the renovation. Cleaning shall include:

1. The collection of all paint chips and debris and, without dispersing the paint chips and debris, the sealing of the materials in heavy-duty bags.

2. The removal of the protective sheeting used as required in this subrule. The sheeting shall be misted, then the sheeting shall be folded dirty side inward. All sheeting shall be taped shut or otherwise sealed inside heavy-duty bags. Sheeting used to separate work areas from non-work areas must remain in place until after the cleaning and removal of other sheeting. All sheeting shall be disposed of as waste.

3. For interior renovations, all objects and surfaces in the work area and within two feet of the work area must be cleaned from high to low in the following manner:

- Walls must either be vacuumed with a HEPA vacuum or wiped with a wet cloth, beginning at the ceiling and working toward the floor.

- All remaining surfaces including objects and fixtures must be thoroughly vacuumed with a HEPA vacuum. For carpeted floors and rugs, the HEPA vacuum must be equipped with a beater bar.

- All remaining surfaces, except for carpeted or upholstered surfaces, must also be wiped with a damp cloth. Uncarpeted floors must be thoroughly mopped using a method that keeps the wash water separate from the rinse water, such as the two-bucket mopping method, or using a wet mopping system.

b. Postrenovation cleaning verification. A certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall use the following procedure for conducting postrenovation cleaning verification. In lieu of postrenovation cleaning verification, clearance testing as outlined in 70.6(8) can be performed. If the work is done in response to an elevated blood lead (EBL) inspection, clearance testing shall be performed by a certified elevated blood lead (EBL) inspector/risk

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assessor in lieu of postrenovation cleaning verification. Warning signs may be removed after all of the work areas in a renovation project have been adequately cleaned and verified or passed clearance testing.

(1) For interior renovations, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall perform a visual inspection to determine whether dust, debris, or residue is still present. If dust, debris, or residue is still present, these conditions must be removed by recleaning, and another visual inspection must be performed. Following a successful visual inspection, a certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator must:

1. Verify that each windowsill and window trough in the work area has been adequately cleaned, using the following procedure:

- Wipe the windowsill and window trough with a wet disposable cleaning cloth that is damp to the touch. If the cloth matches or is lighter than the cleaning verification card, the windowsill has been adequately cleaned.

- If the cloth does not match and is darker than the cleaning verification card, reclean the windowsill or window trough as directed in 70.6(11)“a”(11). Then wipe the windowsill or window trough again, using a new cloth or the same cloth folded in such a way that an unused surface is exposed. If the cloth matches or is lighter than the cleaning verification card, that windowsill has been adequately cleaned.

- If the cloth does not match and is darker than the cleaning verification card, wait for one hour or until the surface has dried completely, whichever is longer.

- After waiting for the windowsill or window trough to dry, wipe the windowsill or window trough with a dry disposable cleaning cloth. After this wipe, that windowsill or window trough has been adequately cleaned.

2. Verify that uncarpeted floors and countertops in the work area have been adequately cleaned, using the following procedure. If the surface within the work area is greater than 40 square feet, the surface within the work area must be divided into roughly equal sections that are each less than 40 square feet.

- Wipe uncarpeted floors and countertops within the work area with a wet disposable cleaning cloth. Floors must be wiped using an application device with a long handle and a head to which the cloth is attached. The cloth must remain damp at all times while it is being used to wipe the surface for postrenovation cleaning verification. Wipe each such section separately with a new wet disposable cleaning cloth. If the cloth used to wipe each section of the surface within the work area matches or is lighter than the cleaning verification card, the surface has been adequately cleaned.

- If the cloth does not match and is darker than the cleaning verification card, reclean the surface as in 70.6(11)“a”(11). Then, wipe the floor or countertop again, using a new cloth. If the cloth matches or is lighter than the cleaning verification card, that surface has been adequately cleaned.

- If the cloth does not match and is darker than the cleaning verification card, wait for one hour or until the surface has dried completely, whichever is longer.

- After waiting for the surface to dry, wipe each section of the surface that has not yet achieved the postrenovation cleaning verification with a dry disposable cleaning cloth. After this wipe, that surface has been adequately cleaned.

(2) For exterior renovations, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall perform a visual inspection to determine whether dust, debris, or residue is still present on surfaces in and below the work area, including windowsills and the ground. If dust, debris, or residue is present, these conditions must be eliminated and another visual inspection must be performed. When the area passes the visual inspection, the exterior has been adequately cleaned.

(3) A certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall only use postrenovation cleaning verification cards that are approved by the U.S. Environmental Protection Agency (EPA).

(4) A certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall not use postrenovation cleaning verification cards that have expired.

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c. Clearance testing. Cleaning verification is not required if the contract between the renovation firm and the person contracting for the renovation or another federal, state, territorial, tribal, or local law or regulation requires the renovation firm to perform dust clearance testing at the conclusion of a renovation covered by this chapter.

(1) The dust samples must be collected by a certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician. If the work is done in response to an elevated blood lead (EBL) inspection, the dust samples must be collected by a certified elevated blood lead (EBL) inspector/risk assessor.

(2) The firm conducting the renovation is required to reclean the work area until the dust clearance sample results are below the clearance standards in subrule 70.6(8).

d. On-the-job training. The certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator assigned to the renovation project shall ensure that each noncertified individual conducting renovation activities has been or is currently being trained on how to safely conduct renovation activities.

(1) All on-the-job training shall be conducted by a certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator.

(2) Each noncertified individual shall be trained by a certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator that is employed by the same certified firm. A certified firm shall not accept on-the-job training that was performed by another firm.

(3) On-the-job training shall be specific for the type of work the noncertified individual is performing and must include at least the following topics:

1. An overview of the requirements described in this chapter.
2. An overview of the health effects of lead poisoning.
3. Methods to prevent taking lead dust home from the worksite.
4. How and why to properly set up a work area for lead-safe renovations.
5. How and where to properly post signage.
6. Personal protection.
7. How and why to properly set up containment.
8. How and why to minimize dust and debris.
9. Proper cleaning techniques and time lines for cleaning in renovation activities.
10. How to properly handle and control waste generated from renovation activities.
11. An overview of the postrenovation cleaning verification and clearance testing.
12. An overview of the prerenovation notification requirements found in 641—Chapter 69.
13. Prohibited work practices.

e. Recognized test kits. A certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator may use recognized test kits to determine whether surfaces to be affected by renovation activities are painted with lead-based paint. The result from each individual test performed applies only to the individual surface tested. Surfaces which are determined by proper use of a recognized test kit to be free of lead-based paint are exempt from the requirements of 70.6(11)“a” through “d.” Results obtained from recognized test kits are only valid if the testing was performed according to the manufacturer’s directions. Any results from test kits which are not recognized shall be invalid. A certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall not discard a valid result from a recognized test kit.

f. A certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator must complete a written report when conducting a renovation. The report shall include the results of any testing performed with a recognized test kit, information regarding the work practices used in the renovation and, if applicable, a copy of the clearance testing report. When the final invoice for the renovation is delivered or within 30 days after the renovation activity is complete, whichever is earlier, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall send a copy of the report to the owner of the building. If the renovation took place within a residential dwelling, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall send a copy of the report to an adult occupant of the residential

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dwelling and to the person requesting the renovation, if different from the owner. If the renovation took place within a child-occupied facility, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall send a copy of the report to an adult representative of the child-occupied facility and to the person requesting the renovation, if different from the owner. If the renovation took place within common areas of multifamily target housing, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall post in areas where it is likely to be seen by the occupants of all of the affected units the report required by this paragraph or instructions on how interested occupants can obtain a copy of this report at no charge. If the renovation took place within a child-occupied facility, the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall post in areas where it is likely to be seen by the parents or guardians of children frequenting the child-occupied facility the report required by this paragraph or instructions on how interested parents or guardians of children frequenting the child-occupied facility can obtain a copy of this report at no charge. A certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator shall maintain a copy of the report for no less than three years. The report shall include, at least:

- (1) The date(s) of the renovation.
- (2) Address of the building, including apartment numbers, if applicable.
- (3) The name, address, and telephone number of the owner(s) of the address(es) where the renovation took place.
- (4) The name, address, signature, certification number, and telephone number of the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator who performed the renovation.
- (5) The name and certification number of the certified firm performing the renovation.
- (6) If testing was performed with a recognized test kit, the location of each test. The location shall be specific to the room and component.
- (7) The results of testing. The results shall be classified as either positive for lead-based paint or negative for lead-based paint.
- (8) The name and manufacturer of the recognized test kit(s) used, the expiration date, and the EPA approval number.
- (9) The work practices used in the renovation, including the location(s) where each work practice was used. The location shall be specific to the room and component.
- (10) If applicable, a copy of the clearance report.
- (11) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745.
- (12) Information regarding Iowa's prerenovation notification requirements found in 641—Chapter 69; and information regarding Iowa's regulations for renovation, remodeling and repainting found in 641—Chapter 70.

g. Record keeping. Records shall be kept for each renovation project that involves target housing or child-occupied facilities. The records for each renovation shall include:

- (1) The name and certification number of the certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator responsible for the renovation.
- (2) The name and certification number of the certified firm.
- (3) The address(es) of the property where the renovation activity was performed.
- (4) The name, address, and telephone number of the property owner where the renovation activity was performed.
- (5) Renovations considered emergency pursuant to 641—70.2(135) shall contain a description of the circumstances explaining why the renovations were immediately required and which work practice standards were not followed as a result.
- (6) Any reports or documentation completed by a certified lead professional concerning the renovation project, including documentation from certified lead inspector/risk assessors or certified blood lead (EBL) lead inspector/risk assessors regarding housing, components, or surfaces that have

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

been determined to be free of lead-based paint and clearance reports from clearance testing performed in lieu of postrenovation cleaning verification.

(7) Documentation that each noncertified individual working on the renovation project had, or was receiving, the appropriate on-the-job training outlined in 70.6(11)“d.” The documentation must include the names of all of the noncertified individuals who worked on the renovation.

(8) Documentation that the certified lead-safe renovator followed the work practices for renovation activities outlined in 70.6(11). This shall include documentation that the following work practices were followed:

1. Signs were posted at the entrance to the work area.
2. The work area was contained.
3. All objects in the work area were covered or removed.
4. All HVAC ducts in the work area were closed and covered.
5. All windows in the work area were closed, and all windows within 20 feet of exterior work areas were closed.
6. All doors not used to enter the work area were closed and sealed, and all doors within 20 feet of exterior work areas were closed and sealed.
7. All doors used as an entrance to the work area had containment in place to prevent the spread of dust and debris.
8. All floors in the work area were covered a sufficient distance to contain the dust and debris from the renovation.
9. Adequate ground cover was in place to contain the dust and debris for exterior renovations.
10. Adequate vertical containment was in place to contain the dust and debris for exterior renovations.
11. All of the waste generated during the renovations was contained all throughout the renovation and the transportation to disposal.

(9) Documentation that the renovation work area was cleaned and passed the postrenovation cleaning verification procedures outlined in 70.6(11)“b,” including the expiration date of the postrenovation cleaning verification cards used.

(10) Documentation regarding the use of any recognized test kits outlined in 70.6(11)“e.” The documentation shall include a copy of the written report required by 70.6(11)“f.”

h. Emergency renovations.

(1) Renovation activities that are deemed to be an emergency are exempt from the certification requirements and all of the work practice standards, except for the cleaning requirements, postrenovation cleaning verification, and the written report required by 70.6(11)“f.” All postrenovation cleaning must take place under the direction of a certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator. The postrenovation cleaning verification after an emergency renovation must be performed by a certified lead abatement contractor, certified lead abatement worker, or certified lead-safe renovator.

(2) Emergency renovations that are required as a result of an elevated blood lead (EBL) inspection are initially exempt from the certification requirements. The work practice standards found in 70.6(11)“a” shall apply. All individuals that perform emergency renovations in response to an elevated blood lead (EBL) inspection are required to obtain certification as a lead-safe renovator, lead abatement contractor, or lead abatement worker within six months from the date the elevated blood lead (EBL) inspection report was issued. Renovations and interim controls performed in response to an elevated blood lead (EBL) inspection are required to pass clearance testing that is performed by a certified elevated blood lead (EBL) inspector/risk assessor.

**~~70.6(10)~~ 70.6(12)** A certified elevated blood lead (EBL) inspection agency shall maintain for a period of at least 10 years the written records for all elevated blood lead (EBL) inspections conducted by persons that the agency employs or contracts with to provide elevated blood lead (EBL) inspections in the agency’s service area.

**~~70.6(11)~~ 70.6(13)** A person may be certified as a lead inspector/risk assessor, sampling technician, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

worker. Except as specified by paragraph ~~70.6(6)“j”~~ 70.6(6) “k” and paragraph 70.6(8) “f,” a person who is certified both as a lead inspector/risk assessor, sampling technician, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement worker shall not provide both lead inspection or visual risk assessment and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

**70.6(12) 70.6(14)** Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in subrules 70.6(1) to 70.6(6) and 70.6(9) shall be collected by persons certified as a lead inspector/risk assessor or an elevated blood lead (EBL) inspector/risk assessor. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in subrule 70.6(8) for clearance testing following lead abatement shall be collected by persons certified as a lead inspector/risk assessor or an elevated blood lead (EBL) inspector/risk assessor. Any dust or soil samples collected pursuant to the work practice standards contained in subrule 70.6(8) for clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be collected only by certified sampling technicians, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspector/risk assessors. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in 641—70.6(135) shall be analyzed by a recognized laboratory.

**70.6(13) 70.6(15)** Composite dust sampling shall be conducted only in the situations specified in subrules 70.6(4) to 70.6(6) and 70.6(8). If composite sampling is conducted, it shall meet the following requirements:

*a. to c.* No change.

*d.* The results of composite dust samples shall be evaluated by comparing the residual lead level as determined by the laboratory analysis from each composite dust sample with applicable single-surface dust-lead hazard or clearance levels for lead in dust on floors, interior windowsills, and window troughs divided by half the number of subsamples in the composite sample. For example, the applicable clearance level for a composite window trough sample consisting of three subsamples would be 267 micrograms per square foot (400/1.5).

**70.6(16)** Reporting lead-based paint activities. A certified sampling technician, lead inspector risk/assessor, and elevated blood lead (EBL) inspector risk/assessor shall report to the department quarterly all lead-based paint activities that they perform. Lead-based paint activities include: lead-free inspections, lead inspections, risk assessments, lead hazards screens, visual risk assessments, and clearance testing.

*a.* Each certified sampling technician, lead inspector risk/assessor, and elevated blood lead (EBL) inspector/risk assessor shall provide the following information to the department electronically in a format specified by the department:

(1) Name and certification number of the certified sampling technician, lead inspector/risk assessor, or elevated blood lead (EBL) inspector/risk assessor who performed the lead-based paint activity.

(2) Name, address, telephone number, and certification number of the certified firm that performed the lead-based paint activity.

(3) Address where the activity took place. For each address, the report shall specify:

1. The type of activity.

2. Whether or not lead-based paint was identified, including paint assumed to be lead-based paint.

3. Whether or not lead-based paint hazards were identified, including assumed hazards.

4. Whether or not the address was free of lead-based paint pursuant to the requirements outlined in subrule 70.6(1).

*b.* Reports shall be due on January 15, April 15, July 15, and October 15 of each year.

ITEM 9. Amend rule 641—70.7(135), introductory paragraph, as follows:

**641—70.7(135) Firms.** All firms that perform or offer to perform lead-based paint activities after September 15, 2000, must be certified by the department. Firms shall employ only appropriately certified employees to conduct lead-based paint activities, and the firm and its employees shall follow

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

the work practice standards in 641—70.6(135) for conducting lead-based paint activities. A firm must employ at least one certified individual in order receive or maintain firm certification. Beginning April 22, 2010, firms that perform or offer to perform renovation must be certified by the department.

ITEM 10. Rescind and reserve rule **641—70.8(135)**.

ITEM 11. Amend rule 641—70.9(135) as follows:

**641—70.9(135) Compliance inspections.**

**70.9(1) to 70.9(3)** No change.

**70.9(4)** The department may review all reports involving lead-based paint activities.

**70.9(5)** The department may issue subpoenas pursuant to 641—Chapter 173, Iowa Administrative Code, for the purposes of determining compliance.

ITEM 12. Amend rule 641—70.10(135) as follows:

**641—70.10(135) Denial, suspension, or revocation of certification; denial, suspension, revocation, or modification of course approval; and imposition of penalties.**

**70.10(1)** ~~Violators are subject to civil penalties pursuant to Iowa Code section 135.105A and 641—70.10(135) or to criminal penalties pursuant to Iowa Code section 135.38. The following are considered to be in violation of this chapter:~~ When the department finds that the applicant, certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm has committed any of the following acts, the department may deny an application for certification, may suspend or revoke a certification, may prohibit specific work practices, may require a project conducted by persons or firms that are not certified or a project where prohibited work practices are being used to be halted, may require the cleanup of lead hazards created by the use of prohibited work practices, may impose a civil penalty, may place on probation, may require additional education, may require reexamination of the state certification examination, may issue a warning, may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38, or may impose other sanctions allowed by law as may be appropriate.

*a. to f.* No change.

*g.* Conducting any part of a lead-based paint activity that requires certification without being certified or with a certification that has lapsed.

*h.* Obtained documentation of training through fraudulent means.

*i.* Gained admission to an accredited training program through misrepresentation of admission requirements.

*j.* Obtained certification through misrepresentation of certification requirements or related documents pertaining to education, training, professional registration, or experience.

*k.* Performed work requiring certification at a job site without having proof of current certification.

*l.* Permitted the duplication or use of the individual's or firm's own certificate by another.

*m.* Failed to follow the standards of conduct required by 641—70.6(135).

*n.* Failed to comply with federal, state, or local lead-based paint statutes and regulations, including the requirements of this chapter.

*o.* For certified elevated blood lead (EBL) inspection agencies and certified firms, performed work for which certification is required with employees or persons under the control of the certified elevated blood lead (EBL) inspection agency or certified firm who were not appropriately certified.

*p.* Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of lead professional activities or engaged in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

*q.* Used untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by a lead professional making information or intention known to the public that is false, deceptive, misleading, or promoted through fraud or misrepresentation.

*r.* Falsified reports and records required by this chapter.

*s.* Accepted any fee by fraud or misrepresentation.

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

t. Negligence by the firm or individual in the practice of lead professional activities. This includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions that impair the ability of the firm or individual to safely and skillfully practice the profession.

u. Revocation, suspension, or other disciplinary action taken by a certification or licensing authority of this state, another state, territory, or country; or failure by the firm or individual to report such action in writing within 30 days of the final action by such certification or licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.

v. Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.

w. Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed.

x. Failed to respond within 20 days of receipt of communication from the department that was sent by registered or certified mail.

y. Engaged in any conduct that subverts or attempts to subvert a department investigation.

z. Failed to comply with a subpoena issued by the department or failure to cooperate with a department investigation.

aa. Failed to pay costs assessed in any disciplinary action.

ab. Been convicted of a felony or misdemeanor related to lead professional activities or the conviction of any felony or misdemeanor that would affect the ability of the firm or individual to perform lead professional activities. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

ac. Unethical conduct. This includes, but is not limited to, the following:

(1) Verbally or physically abusing a client or coworker.

(2) Improper sexual conduct with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.

(3) Engaging in a professional conflict of interest.

(4) Mental or physical inability reasonably related to and adversely affecting the ability of the firm or individual to practice in a safe and competent manner.

(5) Being adjudged mentally incompetent by a court of competent jurisdiction.

(6) Habitual intoxication or addiction to drugs.

1. The inability of a lead professional 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 a lead professional's ability to practice with reasonable skill or safety.

3. Obtaining, possessing, attempting to obtain or possess, or administering controlled substances without lawful authority.

~~70.10(2) Reserved. The department may deny an application for certification, may suspend or revoke a certification, may impose a civil penalty, or may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that the applicant, certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm has committed any of the following acts:~~

~~a. Obtained documentation of training through fraudulent means.~~

~~b. Gained admission to an accredited training program through misrepresentation of admission requirements.~~

~~c. Obtained certification through misrepresentation of certification requirements or related documents pertaining to education, training, professional registration, or experience.~~

~~d. Performed work requiring certification at a job site without having proof of current certification.~~

~~e. Permitted the duplication or use of the individual's or firm's own certificate by another.~~

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~f. Performed work for which certification is required, but for which appropriate certification had not been received.~~

~~g. Failed to follow the standards of conduct required by 641—70.6(135).~~

~~h. Failed to comply with federal, state, or local lead-based paint statutes and regulations, including the requirements of this chapter.~~

~~i. For certified elevated blood lead (EBL) inspection agencies and certified firms, performed work for which certification is required with employees or persons under the control of the certified elevated blood lead (EBL) inspection agency or certified firm who were not appropriately certified.~~

~~j. Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of lead professional activities or engaged in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.~~

~~k. Used untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by a lead professional making information or intention known to the public that is false, deceptive, misleading, or promoted through fraud or misrepresentation.~~

~~l. Falsified reports and records required by this chapter.~~

~~m. Accepted any fee by fraud or misrepresentation.~~

~~n. Negligence by the firm or individual in the practice of the lead professional activities. This includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions that impair the ability of the firm or individual to safely and skillfully practice the profession.~~

~~o. Revocation, suspension, or other disciplinary action taken by a certification or licensing authority of this state, another state, territory, or country; or failure by the firm or individual to report such action in writing within 30 days of the final action by such certification or licensing authority. A stay by an appellate court shall not negate this requirement; however, if such disciplinary action is overturned or reversed by a court of last resort, the report shall be expunged from the records of the board.~~

~~p. Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.~~

~~q. Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed.~~

~~r. Failed to respond within 30 days of receipt of communication from the department that was sent by registered or certified mail.~~

~~s. Engaged in any conduct that subverts or attempts to subvert a department investigation.~~

~~t. Failed to comply with a subpoena issued by the department or failure to cooperate with a department investigation.~~

~~u. Failed to pay costs assessed in any disciplinary action.~~

~~v. Been convicted of a felony related to lead professional activities or the conviction of any felony that would affect the ability of the firm or individual to perform lead professional activities. A copy of the record of conviction or plea of guilty shall be conclusive evidence.~~

~~w. Unethical conduct. This includes, but is not limited to, the following:~~

~~(1) Verbally or physically abusing a client or coworker.~~

~~(2) Improper sexual conduct with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.~~

~~(3) Engaging in a professional conflict of interest.~~

~~(4) Mental or physical inability reasonably related to and adversely affecting the ability of the firm or individual to practice in a safe and competent manner.~~

~~(5) Being adjudged mentally incompetent by a court of competent jurisdiction.~~

**70.10(3)** The department may deny, suspend, revoke, or modify the approval for a course, or may place on probation, or impose other sanctions allowed by law as may be appropriate, or may impose a civil penalty or may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that the training program, training manager, or other person with supervisory authority over the course has committed any of the following acts:

## PUBLIC HEALTH DEPARTMENT[641](cont'd)

- a. to m.* No change.
- ~~*n.* Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed.~~
- ~~*o. n.*~~ Failed to respond within ~~30~~ 20 days of receipt of communication from the department that was sent by registered or certified mail.
- ~~*p. o.*~~ Engaged in any conduct that subverts or attempts to subvert a department investigation.
- ~~*q. p.*~~ Failed to comply with a subpoena issued by the department or failure to cooperate with a department investigation.
- ~~*r. q.*~~ Failed to pay costs assessed in any disciplinary action.
- 70.10(4) and 70.10(5)** No change.
- 70.10(6)** Appeals.
  - a.* No change.
  - b.* An appeal of a denial, suspension or revocation or other disciplinary action shall be submitted by certified mail, return receipt requested, within ~~30~~ 20 days of the receipt of the department's notice to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the ~~30~~ 20-day time period, the notice of denial, suspension or revocation or other disciplinary action 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, suspension or revocation or other disciplinary action 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, suspension or revocation or other disciplinary action. If no appeal is submitted within ~~30~~ 20 days, the denial, suspension or revocation or other disciplinary action shall become the department's final agency action.
  - c. to i.* No change.
  - j.* Any petition for judicial review of a decision and order shall be filed in the district court within ~~30~~ 20 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 to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075.
  - k.* No change.
  - 70.10(7)** Public notification.
    - a. and b.* No change.
    - c.* The public shall be notified of the suspension or revocation of the certification of a lead professional or firm.
    - d.* The department shall maintain a list of lead professionals and firms for which certification has been suspended or revoked.

ARC 8354B

## REVENUE DEPARTMENT[701]

## Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code chapter 17A and section 421.14, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 10, “Interest, Penalty, Exceptions to Penalty, and Jeopardy Assessments,” Iowa Administrative Code.

Iowa Code section 421.7 requires the Director of Revenue to determine and publish the interest rate for each calendar year. The Director has determined that the rate of interest on interest-bearing taxes under Title XVI shall be 5 percent for calendar year 2010 (0.4% per month). The Department shall also

## REVENUE DEPARTMENT[701](cont'd)

pay interest at the 5 percent rate on refunds. The rate for calendar year 2009 is 8 percent (0.7% per month).

The proposed amendment will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

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

The Department has determined that this proposed amendment may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than January 4, 2010, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on this proposed amendment on or before December 22, 2009. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 23, 2009.

This amendment is intended to implement Iowa Code section 421.7.

The following amendment is proposed.

Adopt the following new subrule 10.2(29):

**10.2(29) *Calendar year 2010.*** The interest rate upon all unpaid taxes which are due as of January 1, 2010, will be 5 percent per annum (0.4% per month). This interest rate will accrue on taxes which are due and unpaid as of, or after, January 1, 2010. In addition, this interest will accrue on tax refunds which by law accrue interest, regardless of whether the tax to be refunded is due before or after January 1, 2010. This interest rate of 5 percent per annum, whether for unpaid taxes or tax refunds, will commence to accrue in 2010.

**ARC 8352B**

**REVENUE DEPARTMENT[701]**

**Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code chapter 17A and section 421.17, the Department of Revenue hereby gives Notice of Intended Action to amend Chapter 71, “Assessment Practices and Equalization,” Iowa Administrative Code.

Item 1 amends subrule 71.1(1) to provide that the assessor shall classify property, but not value property, according to its present use and not its highest and best use.

Item 2 amends subrule 71.2(1) to provide that the valuation of real estate established by the assessor shall be supported by current comparable sales, if available, and not based upon a speculative highest and best use.

## REVENUE DEPARTMENT[701](cont'd)

The proposed amendments will not necessitate additional expenditures by political subdivisions or agencies and entities which contract with political subdivisions.

Any person who believes that the application of the discretionary provisions of these amendments would result in hardship or injustice to that person may petition the Department for a waiver of the discretionary provisions, if any.

The Department has determined that these proposed amendments may have an impact on small business. The Department has considered the factors listed in Iowa Code section 17A.4A. The Department will issue a regulatory analysis as provided in Iowa Code section 17A.4A if a written request is filed by delivery or by mailing postmarked no later than January 4, 2010, to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306. The request may be made by the Administrative Rules Review Committee, the Administrative Rules Coordinator, at least 25 persons signing that request who each qualify as a small business or an organization representing at least 25 such persons.

Any interested person may make written suggestions or comments on these proposed amendments on or before December 22, 2009. Such written comments should be directed to the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, Hoover State Office Building, P.O. Box 10457, Des Moines, Iowa 50306.

Persons who want to convey their views orally should contact the Policy Section, Taxpayer Service and Policy Division, Department of Revenue, at (515)281-8036 or at the Department of Revenue offices on the fourth floor of the Hoover State Office Building.

Requests for a public hearing must be received by December 23, 2009.

These amendments are intended to implement Iowa Code section 441.21.

The following amendments are proposed.

ITEM 1. Amend subrule 71.1(1) as follows:

**71.1(1) *Responsibility of assessors.*** All real estate subject to assessment by city and county assessors shall be classified as provided in this rule. It shall be the responsibility of city and county assessors to determine the proper classification of real estate. There can be only one classification per property. An assessor shall not assign one classification to the land and a different classification to the building or separate classifications to the land or separate classifications to the building (dual classification). A building or structure on leased land is considered a separate property and may be classified differently than the land upon which it is located. The determination shall be based upon the best judgment of the assessor following the guidelines set forth in this rule and the status of the real estate as of January 1 of the year in which the assessment is made. The assessor shall classify ~~and value~~ property according to its present use and not according to its highest and best use. ~~For example, property currently used as a golf course shall be assessed and valued by the assessor as a golf course even though its highest and best potential use may be an industrial park or commercial development.~~ See subrule 71.1(8) for an exception to the general rule that property is to be classified according to its use. The classification shall be utilized on the abstract of assessment submitted to the department of revenue pursuant to Iowa Code section 441.45. See rule 701—71.8(428,441).

ITEM 2. Amend subrule 71.2(1) as follows:

**71.2(1) *Responsibility of assessor.*** The valuation of real estate as established by city and county assessors shall be the actual value of the real estate as of January 1 of the year in which the assessment is made and, if available, supported by current comparable sales and not based on a speculative highest and best use. New parcels of real estate created by the division of existing parcels of real estate shall be assessed separately as of January 1 of the year following the division of the existing parcel of real estate.

**ARC 8342B****TRANSPORTATION DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 601, "Application for License," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

The REAL ID Act of 2005, 49 U.S.C. § 30301 note, as further defined in 6 CFR Part 37, provides that states must meet certain requirements in the issuance, reissuance, and renewal of driver's licenses and nonoperator's identification cards used to access federal facilities and federally regulated aircraft. These requirements include specific application and documentation requirements set forth at 6 CFR 37.11, including but not limited to documentation of identity, date of birth, social security number, address of principal residence, and evidence of lawful status in the United States. These requirements also include specific verification of documents and information provided, as well as mandatory facial image capture for all applicants for REAL ID-compliant driver's licenses and nonoperator's identification cards. These proposed amendments confirm that all applicants for REAL ID-compliant driver's licenses and nonoperator's identification cards must meet all lawful requirements for an Iowa driver's license or nonoperator's identification card, as well as all federal requirements for a REAL ID-compliant document, and are necessary to establish the state of Iowa's compliance with the REAL ID Act of 2005.

The Department shall not grant any waivers under the provisions of these amendments since the amendments are needed to comply with the REAL ID Act of 2005, 49 U.S.C. § 30301 note, as further defined in 6 CFR Part 37.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed amendment, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to Tracy George, Department of Transportation, Office of Policy and Legislative Services, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; E-mail [tracy.george@dot.iowa.gov](mailto:tracy.george@dot.iowa.gov).
5. Be received by the Office of Policy and Legislative Services no later than December 22, 2009.

A meeting to hear requested oral presentations is scheduled for December 29, 2009, at 1 p.m. at the Iowa Department of Transportation's Motor Vehicle Division offices located at 6310 SE Convenience Boulevard, Ankeny, Iowa.

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

These amendments were also Adopted and Filed Emergency and are published herein as **ARC 8339B** to allow for public comment. The content of that submission is incorporated by reference.

These amendments are intended to implement Iowa Code chapter 321, the REAL ID Act of 2005 (49 U.S.C. § 30301 note), and 6 CFR Part 37.

**USURY**

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

## USURY(cont'd)

|                                        |       |
|----------------------------------------|-------|
| December 1, 2008 — December 31, 2008   | 5.75% |
| January 1, 2009 — January 31, 2009     | 5.50% |
| February 1, 2009 — February 28, 2009   | 4.50% |
| March 1, 2009 — March 31, 2009         | 4.50% |
| April 1, 2009 — April 30, 2009         | 5.00% |
| May 1, 2009 — May 31, 2009             | 4.75% |
| June 1, 2009 — June 30, 2009           | 5.00% |
| July 1, 2009 — July 31, 2009           | 5.25% |
| August 1, 2009 — August 31, 2009       | 5.75% |
| September 1, 2009 — September 30, 2009 | 5.50% |
| October 1, 2009 — October 31, 2009     | 5.50% |
| November 1, 2009 — November 30, 2009   | 5.50% |
| December 1, 2009 — December 31, 2009   | 5.50% |

**ARC 8335B****UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 17A.4, 17A.7, and 476.1 and 2009 Iowa Acts, House File 810 [new Iowa Code Supplement section 476.48], the Utilities Board (Board) gives notice that on November 10, 2009, the Board issued an order in Docket No. RMU-2009-0010, In re: Small Wind Innovation Zones, “Order Commencing Rule Making.” The Board is noticing for public comment proposed amendments to 199 IAC 15.19(476C) and new rule 199 IAC 15.22(476). The proposed amendments and new rule deal with small wind innovation zones, which are the subject of 2009 Iowa Acts, House File 810.

In 2009, the General Assembly enacted 2009 Iowa Acts, House File 810 [Iowa Code Supplement section 476.48], which directs the Board to establish and administer a small wind innovation zone program. The statute provides that the program is “to facilitate and expedite interconnection of small wind energy systems with electric utilities” within areas designated as small wind innovation zones.

To be designated as a small wind innovation zone, an area must be “a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance...” (2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(1)“c”]).

The model ordinance referred to in the statute is to be jointly developed by the Iowa League of Cities, the Iowa State Association of Counties, the Iowa Environmental Council, the Iowa Wind Energy Association, and representatives from the utility industry. The model ordinance is to be available on the Web sites of the Iowa League of Cities and Iowa State Association of Counties. The statute does not describe the content of the model ordinance but states that a local government adopting the ordinance “shall establish an expedited approval process with regard to small wind energy systems in compliance with the ordinance” (2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(3)]).

## UTILITIES DIVISION[199](cont'd)

In addition to adopting the model ordinance, an area seeking to be designated as a small wind innovation zone must also be served by an electric utility that: “has agreed to utilize the model interconnection agreement to contract with the small wind energy system owners who agree to its terms” (2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(2)“b”]).

The model interconnection agreement referred to in the statute is the subject of a separate rule-making docket, Docket No. RMU-2009-0008, “Electric Interconnection of Distributed Generation Facilities,” which was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8201B**. The model interconnection rules as proposed would be mandatory for rate-regulated electric utilities and voluntary for non-rate-regulated electric utilities. An oral presentation in Docket No. RMU-2009-0008 is scheduled for December 10, 2009.

The proposed rules for implementing 2009 Iowa Acts, House File 810, include new rule 199 IAC 15.22(476), “Small wind innovation zones,” and changes to 199 IAC 15.19(476C), “Certification of eligibility for wind energy and renewable energy tax credits under Iowa Code chapter 476C.” The definitions in proposed subrule 15.22(1) are primarily based on the definitions and descriptions in 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48]. The definition of “model interconnection agreement” is explicitly tied to the standard interconnection agreements being developed separately in Docket No. RMU-2009-0008. Proposed subrule 15.22(2) describes the form and content of the application filing requirements for the Board’s designation of small wind innovation zones under 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(2)“b”].

In addition to requiring development of the model interconnection agreement, 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(4)], also requires the Board to develop a procedure for modifying the model interconnection agreement based on changes mutually agreeable to the utility and interconnecting generator. This procedure and associated filing requirements are described in proposed subrule 15.22(3).

2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(6)], requires the Board to file a report with the General Assembly before January 1 each year, providing annual information about the small wind innovation zones created and about the energy produced by small wind energy systems in each zone. Proposed subrule 15.22(4) requires utilities (including non-rate-regulated utilities) that serve small wind innovation zones to annually report the energy produced by small wind energy systems in each zone for the previous calendar year. The first utility reports, due April 1, 2010, will be for calendar year 2009; that information will be included in the Board’s second report to the General Assembly, due before the end of 2010. The first report to the General Assembly, due before the end of 2009, will likely describe the progress of the development of the model ordinance by the Iowa League of Cities, et al., and progress of the relevant Board rule-making dockets (i.e., Docket Nos. RMU-2009-0008 and RMU-2009-0010).

2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(5)], provides: “The owner of a small wind energy system operating within a small wind innovation zone shall qualify for the renewable energy tax credit pursuant to [Iowa Code] chapter 476C.” This language appears to create a new ownership category for Iowa Code chapter 476C eligibility, separate from the current ownership requirements of Iowa Code section 476C.1(6)“b.” Although separate, the Board’s reading of the statute indicates that the new ownership category in 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(5)], is neither superior nor subordinate to the ownership requirements of Iowa Code section 476C.1(6)“b,” which means it would not affect the queue order of eligible applicants or applicants in the waiting list, nor be subject to the ownership limitations (no more than two eligible facilities, with additional equity percentage limitations) specifically attached to Iowa Code section 476C.1(6)“b.” The proposed amendments to paragraphs 199 IAC 15.19(1)“b,” 199 IAC 15.19(1)“d,” and 199 IAC 15.19(1)“e” clarify these points.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before December 22, 2009. The statement should be filed electronically through the Board’s Electronic Filing System (EFS). Instructions for making an electronic filing can be found on the EFS Web site at <http://efs.iowa.gov>. Any person who does not have access to the Internet may file comments on

## UTILITIES DIVISION[199](cont'd)

paper pursuant to 199 IAC 14.4(5). An original and ten copies of paper comments shall be filed. Both electronic and written filings shall comply with the format requirements in 199 IAC 2.2(2) and clearly state the author's name and address and make specific reference to this docket. All paper communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive comments on the proposed amendments will be held at 10 a.m. on January 11, 2010, in the Board's hearing room at the address listed above.

Persons with disabilities who require assistive services or devices to observe or participate should contact the Board at (515)281-5256 at least five days in advance of the scheduled date to request that appropriate arrangements be made.

The Board does not find it necessary to propose a separate waiver provision in this rule making. The Board's general waiver provision in 199 IAC 1.3(17A,474,476,78GA,HF2206) is applicable to these amendments.

These amendments are intended to implement Iowa Code section 476.1 and 2009 Iowa Acts, House File 810 [Iowa Code Supplement section 476.48].

The following amendments are proposed.

ITEM 1. Amend paragraph **15.19(1)“b,”** introductory paragraph, as follows:

*b.* Information regarding the ownership of the facility, including the legal name of each owner, information demonstrating the legal status of each owner, and the percentage of equity interest held by each owner. The “legal status of each owner” refers to either ownership of a small wind energy system operating in a small wind innovation zone as defined in 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(1)], and 199 IAC 22.1(476), or, alternatively, the ownership requirements of Iowa Code Supplement section 476C.1(6)“b,” which provides that an eligible renewable energy facility must be at least 51 percent owned by one or more or any combination of the following:

ITEM 2. Amend paragraph **15.19(1)“d”** as follows:

*d.* For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6)“b” with an equity interest in the facility equal to or greater than 51 percent, a statement attesting that the owner does not have an equity interest greater than 10 percent in any other eligible renewable energy facility.

ITEM 3. Amend paragraph **15.19(1)“e”** as follows:

*e.* For any owner meeting the eligibility requirements of Iowa Code section 476C.1(6)“b” with an equity interest in the facility greater than 10 percent and less than 51 percent, a statement attesting that the owner does not have an equity interest equal to or greater than 51 percent in any other eligible renewable energy facility.

ITEM 4. Adopt the following **new** rule 199—15.22(476):

**199—15.22(476) Small wind innovation zones.**

**15.22(1) Definitions.** For purposes of this rule:

“*Electric utility*” means a public utility that furnishes electricity to the public for compensation.

“*Model interconnection agreement*” means the applicable standard interconnection agreement under 199 IAC 45, including the standard interconnection agreement for review Level 1 under 199 IAC 45.14(476) and the standard interconnection agreement for review Levels 2 through 4 under 199 IAC 45.17(476).

“*Model ordinance*” means the model ordinance developed pursuant to 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48(3)], which when adopted will be posted on the Web sites of the Iowa League of Cities at [www.iowaleague.org](http://www.iowaleague.org) and the Iowa State Association of Counties at [www.iowacounties.org](http://www.iowacounties.org).

“*Small wind energy system*” means a wind energy conversion system that collects and converts wind into energy to generate electricity, which has a nameplate generating capacity of 100 kilowatts or less.

“*Small wind innovation zone*” means a political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under

## UTILITIES DIVISION[199](cont'd)

the control of the state board of regents, or any other local commission, association, or tribal council which adopts, or is encompassed within a local government which adopts, the model ordinance.

**15.22(2) *Application for small wind innovation zone designation.*** A political subdivision of this state, including but not limited to a city, county, township, school district, community college, area education agency, institution under the control of the state board of regents, or any other local commission, association, or tribal council, may apply to the board for designation as a small wind innovation zone under 2009 Iowa Acts, House File 810, section 1 [Iowa Code Supplement section 476.48]. The application must include the following information:

*a.* The name, location, and description of the political subdivision seeking designation as a small wind innovation zone.

*b.* Contact information for the applicant filing on behalf of the political subdivision, including legal name, address, telephone number, and, as applicable, facsimile transmission number and electronic mail address.

*c.* If the political subdivision is other than a local government, identification of the local government that has either adopted the model ordinance or is in the process of amending an existing zoning ordinance to comply with the model ordinance and the relationship of the political subdivision to the local government.

*d.* A copy of the model ordinance adopted by the local government or copy of a pending amendment to an existing zoning ordinance intended to comply with the model ordinance.

*e.* Date the model ordinance was adopted or anticipated date of adoption of the pending amendment to an existing zoning ordinance intended to comply with the model ordinance.

*f.* Identification of the electric utilities that serve the political subdivision.

*g.* Documentation from the electric utilities serving the political subdivision and confirming that they are either:

(1) Rate-regulated utilities subject to the provisions of 199 IAC 45; or

(2) Non-rate-regulated utilities not subject to the provisions of 199 IAC 45 but which nonetheless agree to utilize the standard forms, procedures, and standard interconnection agreements of 199 IAC 45 within the political subdivision to contract with small wind energy system owners who agree to the terms and conditions therein.

**15.22(3) *Motion for modification of a model interconnection agreement in a small wind innovation zone.*** An electric utility and the owner of a small wind energy system in a small wind innovation zone may jointly seek to modify a model interconnection agreement by jointly filing a motion for board approval. The motion must include the following information:

*a.* The name, location, and description of the political subdivision designated as a small wind innovation zone;

*b.* The interconnecting electric utility;

*c.* Information regarding the owner of the small wind energy system, including legal name, address, telephone number, and, as applicable, facsimile transmission number and electronic mail address;

*d.* Description of the small wind energy system, including location and nameplate generating capacity;

*e.* A copy of the modified model interconnection agreement clearly identifying the proposed modifications;

*f.* A description of the reasons and circumstances that require the modifications; and

*g.* Signed statements from the electric utility and the owner of the small wind energy system attesting that the proposed modifications to the model interconnection agreement are mutually agreeable.

**15.22(4) *Annual reporting requirement.*** A current listing of small wind innovation zones shall be maintained on the board's Web site at [www.state.ia.us/iub](http://www.state.ia.us/iub). Beginning April 1, 2010, each electric utility shall file an annual report for the previous calendar year, listing the nameplate kW capacity and annual kWh production of each interconnected small wind energy system, for each small wind innovation zone served by the electric utility.

**ARC 8351B****UTILITIES DIVISION[199]****Notice of Termination**

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Utilities Board (Board) gives notice that on November 12, 2009, the Board issued an order in Docket No. RMU-2009-0002, In re: Notification Requirements for Certificated Local Exchange Companies [199 IAC 22.2(9)], “Order Terminating Rule Making.” On March 12, 2009, the Board issued an order commencing a rule making to establish service outage notification requirements for certificated local exchange companies. The proposed new subrule with the notification requirements was published in IAB Vol. XXXI, No. 21 (4/8/09), p. 2253, as **ARC 7674B**.

The proposed new subrule was designed to address problems the Board experienced with the current outage notification requirements that were adopted in 2008. The Board established the current requirements in order to receive the earliest possible notice of significant telecommunications service outages that affected Iowa citizens. Early notice allows the Board to assist with notifying and coordinating other government agencies and emergency responders to try to minimize the adverse effects on the public of an emergency. The outage notification standards established in the current rules, which mirror those of the Federal Communications Commission (FCC), have not provided the timely notice the Board requires.

Comments addressing the new proposed subrule were filed by the Iowa Telecommunication Association (ITA), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), Qwest Corporation (Qwest), and MCI Metro Access Transmission Services LLC, d/b/a Verizon Access Transmission Services (Verizon).

On May 6, 2009, the Board had published an Amended Notice of Intended Action rescheduling the oral presentation from May 11, 2009, to May 20, 2009; that Notice was published in IAB Vol. XXXI, No. 23 (5/6/09), p. 2438, as **ARC 7739B**. On May 20, 2009, the Board held the oral presentation as scheduled. On May 29, 2009, the Board issued an order scheduling a workshop to allow participants to discuss the various issues raised concerning the proposed subrule that required notification of outages by certificated local exchange companies. The workshop was held on August 6, 2009. On September 10, 2009, the Board issued an order allowing additional comments. Consumer Advocate, Qwest, and Verizon filed additional comments.

After considering the oral and written comments and the information obtained at the workshop, the Board determined that the proposed rule making should be terminated to allow for a complete review of the Board’s overall outage notification process. A review is especially necessary for telecommunications providers because of the deregulation of many areas of telecommunications service and the current lack of jurisdiction over wireless carriers. Whether the Board initiates another rule making with outage notification requirements will depend on the outcome of this internal review.

Pursuant to the authority of Iowa Code section 17A.4(1)“b,” the Board hereby terminates the rule making initiated in **ARC 7674B**.

**ARC 8316B****VETERINARY MEDICINE BOARD[811]****Notice of Termination**

Pursuant to the authority of Iowa Code section 169.5, the Iowa Board of Veterinary Medicine hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 8168B** on September 23, 2009.

The Notice is being terminated in order to allow the Board additional time to review and work on the proposed amendments.

**ARC 8340B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 234.6, the Department of Human Services rescinds Chapter 10, "Individual Development Accounts," Iowa Administrative Code.

Legislation in 2008 Iowa Acts, chapter 1178, division III, has transferred responsibility for the Individual Development Account Program to the Department of Human Rights, Division of Community Action Agencies. The Division of Community Action Agencies has adopted rules for individual development accounts (IDAs) at 427—Chapter 14. Those rules were Adopted and Filed Emergency and were published in the Iowa Administrative Bulletin on March 11, 2009, as **ARC 7613B**.

This amendment does not provide for waivers in specified situations since the Department of Human Services has no further responsibility for the administration of the IDA program.

The Council on Human Services adopted this amendment on November 10, 2009.

The Department finds that notice and public participation are unnecessary because the Department has no legal authority to maintain these rules. A public hearing on the rules proposed by the Division of Community Action Agencies was held on March 31, 2009. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department finds that this amendment confers a benefit on the public by eliminating conflicting rule provisions. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of the amendment is waived.

This amendment is intended to implement Iowa Code chapter 541A and 2008 Iowa Acts, chapter 1178, division III.

This amendment became effective on November 10, 2009.

The following amendment is adopted.

Rescind and reserve **441—Chapter 10**.

[Filed Emergency 11/10/09, effective 11/10/09]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8341B****HUMAN SERVICES DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 15, "Resolution of Legal Settlement Disputes," Iowa Administrative Code.

This amendment updates an obsolete E-mail address for receiving notices of legal settlement disputes. Submission of a notice of dispute via electronic mail is one of three options available to a county.

The Council on Human Services adopted this amendment on November 10, 2009.

The Department finds that notice and public participation are unnecessary because this is merely a technical amendment. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department finds that this amendment confers a benefit by eliminating incorrect information and providing a viable way to submit a notice of dispute. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date is waived.

This amendment is intended to implement Iowa Code section 225C.8.

This amendment became effective on November 10, 2009.

The following amendment is adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subparagraph **15.2(1)“a”(2)** as follows:

(2) The notice of dispute may be mailed to Administrator, DHS Division of Fiscal Management, 1305 E. Walnut Street, Des Moines, Iowa 50319-0114; faxed to (515)281-6237; or sent by E-mail to [bzimmer@dhs.state.ia.us](mailto:bzimmer@dhs.state.ia.us) [LegalSettlementCases@dhs.state.ia.us](mailto:LegalSettlementCases@dhs.state.ia.us).

[Filed Emergency 11/10/09, effective 11/10/09]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8344B**

## **HUMAN SERVICES DEPARTMENT[441]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 78, “Amount, Duration and Scope of Medical and Remedial Services,” Chapter 79, “Other Policies Relating to Providers of Medical and Remedial Care,” and Chapter 81, “Nursing Facilities,” Iowa Administrative Code.

These amendments reduce the reimbursement for most Medicaid services to achieve the savings required by Executive Order 19, which mandated a 10 percent across-the-board cut in expenditures. Specifically, these amendments:

- Reduce the rental allowance for durable medical equipment from 150 percent of the purchase price to 100 percent of the purchase price.
- Reduce the reimbursement for nonemergency medical transportation by private automobile from 34 cents per mile to 30 cents per mile.
- Limit the reimbursement for nonemergency medical transportation by public transportation to \$1.40 per mile.
- Reduce the reimbursement for generic and brand-name specialty drugs from the average wholesale price less 12 percent to the average wholesale price less 17 percent.
- Reduce the multiplier used to calculate the state maximum allowable cost for generic drugs (SMAC) from 1.4 to 1.2 and clarify that the average acquisition cost is based on generic products only.
- Reduce the pharmacy dispensing fee from \$4.57 to \$4.34 for the remainder of the state fiscal year.
- Reduce payments to the following providers by 5 percent for services rendered during the remainder of state fiscal year 2010: hospitals (not including critical access hospitals), nursing facilities, and psychiatric medical institutions for children; physicians, podiatrists, advanced registered nurse practitioners, audiologists, occupational and physical therapists, psychologists, optometrists, opticians, and chiropractors; dealers of medical equipment and supplies, hearing aids, orthopedic shoes, and prosthetic devices; remedial and behavioral health services, laboratory, X-ray, and ambulance providers; ambulatory surgical centers, clinics, home health agencies, rehabilitation agencies, lead inspection agencies, family planning providers, and screening centers.
- Reduce payments to the following providers by 2.5 percent for services rendered during the remainder of state fiscal year 2010: dentists, community mental health centers, targeted case management providers, and home- and community-based waiver service providers.
- Provide that computation of administrative, environmental, and property expenses for nursing facilities shall be based on 90 percent of facility capacity, instead of 85 percent, unless the number of inpatient days is higher.
- Provide that nursing facilities shall be reimbursed for holding a bed for a hospitalized resident only if the facility's occupancy rate is at 95 percent or more. For those facilities whose occupancy rate meets that level, the payment will be made at 25 percent of the facility's daily rate, instead of 42 percent of the daily rate.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

These amendments do not provide for waivers in specified situations. Needed savings will not be realized if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted these amendments on November 10, 2009.

The Department finds that notice and public participation are impracticable and contrary to the public interest. The Department is statutorily and constitutionally required to reduce spending obligations to the level of constitutionally authorized appropriations. Deeper cuts would be required if the Department were to delay taking action to allow for notice and public participation. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b,” that avoidance of deficit spending confers a public benefit and that the immediate efficacy of this amendment is necessary because of the presently existing constitutional peril to the public welfare caused by spending obligations which exceed available revenues. Therefore, the normal effective date of these amendments is waived.

These amendments are also published herein under Notice of Intended Action as **ARC 8345B** to allow for public comment.

These amendments are intended to implement Executive Order 19 and Iowa Code chapter 249A.

These amendments became effective on December 1, 2009.

The following amendments are adopted.

ITEM 1. Amend subparagraph **78.10(1)“f”(1)** as follows:

(1) The provider shall monitor rental payments up to ~~450~~ 100 percent of the purchase price. At the point that total rent paid equals ~~450~~ 100 percent of the purchase allowance, the member will be considered to own the item and no further rental payments will be made to the provider.

ITEM 2. Amend paragraphs **78.13(5)“a”** and **“b”** as follows:

a. ~~Effective September 1, 2008, when~~ When transportation is by car, the maximum payment that may be made will be the actual charge made by the provider for transportation to and from the source of medical care, but not in excess of ~~34~~ 30 cents per mile.

b. When public transportation is utilized, the basis of payment will be the actual charge made by the provider of transportation, not to exceed ~~the charge that would be made by the most economical available source of public transportation~~ \$1.40 per mile.

ITEM 3. Amend subrule 79.1(8) as follows:

**79.1(8) Drugs.** The amount of payment shall be based on several factors, subject to the upper limits in 42 CFR 447.500 to 447.520 as amended to October 7, 2008. The Medicaid program relies on information published by Medi-Span to classify drugs as brand-name or generic. Specialty drugs include biological drugs, blood-derived products, complex molecules, and select oral, injectable, and infused medications identified by the department and published on the specialty drug list.

a. ~~Effective June 25, 2005, reimbursement~~ Reimbursement for covered generic prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined: ~~as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph “g.”~~

1. For covered nonspecialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph “g”; or

2. For covered specialty generic prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph “g.”

(2) No change.

(3) The state maximum allowable cost (SMAC), defined as the average wholesale acquisition cost for a generic drug and all equivalent products (the average price pharmacies pay to obtain drugs the generic drug as evidenced by purchase records) adjusted by a multiplier of ~~1.4~~ 1.2, plus the professional dispensing fee specified in paragraph “g.”

(4) No change.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

~~b. Effective June 25, 2005, reimbursement~~ Reimbursement for covered brand-name prescription drugs shall be the lowest of the following, as of the date of dispensing:

(1) The estimated acquisition cost, defined: ~~as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph "g."~~

1. For covered nonspecialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 12 percent, plus the professional dispensing fee specified in paragraph "g"; or

2. For covered specialty brand-name prescription drugs, as the average wholesale price as published by Medi-Span less 17 percent, plus the professional dispensing fee specified in paragraph "g."

(2) No change.

c. to f. No change.

g. ~~For services rendered after June 30, 2008, the~~ The professional dispensing fee is \$4.57 or the pharmacy's usual and customary fee, whichever is lower, except for the period from December 1, 2009, to June 30, 2010, during which the professional dispensing fee shall be \$4.34.

h. to j. No change.

ITEM 4. Adopt the following new rule 441—79.16(249A):

**441—79.16(249A) Payment reductions pursuant to executive order.** The following payment provisions shall apply to services rendered during the period from December 1, 2009, to June 30, 2010, notwithstanding any contrary provision in this chapter.

**79.16(1)** Notwithstanding any provision of subrule 79.1(2), payment for covered services rendered by the following providers shall be reduced by 5 percent from the rates in effect November 30, 2009:

- a. Ambulance services.
- b. Ambulatory surgical centers.
- c. Advanced registered nurse practitioners, including certified nurse-midwives.
- d. Audiologists and hearing aid dealers.
- e. Behavioral health providers.
- f. Birth centers.
- g. Chiropractors.
- h. Clinics.
- i. Durable medical equipment, medical supply, orthopedic shoe, and prosthetic device dealers.
- j. Family planning clinics.
- k. Hospitals, not including services rendered by critical access hospitals or services billed under the IowaCare program, but including:
  - (1) Inpatient hospital care, including Medicaid-certified psychiatric and rehabilitation units.
  - (2) Outpatient hospital care.
  - (3) Indirect medical education payments.
  - (4) Direct medical education payments.
  - (5) Disproportionate-share payments (except for payments to the Iowa state-owned teaching hospital).
- l. Independent laboratories and X-ray providers.
- m. Independently practicing occupational therapists, physical therapists, and psychologists.
- n. Lead inspection agencies.
- o. Maternal health centers.
- p. Optometrists and opticians.
- q. Physicians, excluding services billed to the IowaCare program except for preventative examinations.
- r. Podiatrists.
- s. Rehabilitation agencies.
- t. Screening centers.

## HUMAN SERVICES DEPARTMENT[441](cont'd)

**79.16(2)** Notwithstanding any provision of subrule 79.1(2), the basis of reimbursement for skilled nursing, physical therapy, occupational therapy, home health aide, and medical social services, and home health care for maternity patients and children provided by home health agencies shall be retrospective cost-related with cost settlement based on the lesser of the following:

- a. The maximum Medicare rate in effect November 30, 2009, less 5 percent,
- b. The maximum Medicaid rate in effect November 30, 2009, less 5 percent, or
- c. 95 percent of the reasonable and allowable Medicaid cost.

**79.16(3)** Notwithstanding any provision of subrule 79.1(2), the basis of reimbursement for private duty nursing and personal care for persons aged 20 or under provided by home health agencies shall be retrospective cost-related with cost settlement based on the lesser of the following:

- a. The maximum Medicaid rate in effect November 30, 2009, less 5 percent, or
- b. 95 percent of the reasonable and allowable Medicaid cost.

**79.16(4)** Notwithstanding any provision of subrule 79.1(2) or 79.1(23), the basis of reimbursement for remedial services providers shall be consistent with the methodology described in subrule 79.1(23) except that the reasonable and proper cost of operation is equal to the actual and allowable cost less 5 percent subject to the established rate maximum less 5 percent.

**79.16(5)** Notwithstanding any provision of subrule 79.1(2) or rule 441—81.6(249A), the patient-day-weighted medians used in rate setting for nursing facilities shall be calculated and the rates adjusted to provide a 5 percent decrease in nursing facility rates (except for state-owned facilities).

**79.16(6)** Notwithstanding any provision of subrule 79.1(2) or rule 441—85.25(249A), the basis of reimbursement for non-state-owned psychiatric medical institutions for children shall be consistent with the methodology described in 441—subrule 85.25(1) except that the per diem rate shall be based on the facility's cost for the service less 5 percent, not to exceed the upper limit as provided in subrule 79.1(2) less 5 percent.

**79.16(7)** Notwithstanding any provision of subrule 79.1(2), payment for covered services rendered by dentists shall be reduced by 2.5 percent from the rates in effect November 30, 2009.

**79.16(8)** Notwithstanding any provision of subrule 79.1(2) or 79.1(25), the basis of reimbursement for community mental health centers shall be retrospective and cost-related with cost settlement limited to 97.5 percent of the provider's reasonable and allowable Medicaid cost.

**79.16(9)** Notwithstanding any provision of subrule 79.1(2), the basis of reimbursement for targeted case management shall be fee for service with cost settlement limited to 97.5 percent of the provider's reasonable and allowable Medicaid cost.

**79.16(10)** Notwithstanding any provision of subrule 79.1(2), payment for covered services rendered by home- and community-based waiver service providers shall be reduced by 2.5 percent from the rates in effect November 30, 2009.

- a. Rates based on a submitted financial and statistical report shall be consistent with the methodology described in subparagraph 79.1(15)“d”(1) except that the inflation adjustment applied to actual, historical costs and the prior period base cost shall be reduced by 2.5 percent.

- b. The retrospective adjustment of prospective rates shall be made based on revenues exceeding 100 percent of adjusted actual costs. Adjusted actual costs shall not exceed the upper limits as specified in subrule 79.1(2).

This rule is intended to implement Executive Order 19 and Iowa Code chapter 249A.

ITEM 5. Amend subparagraph **81.6(16)“a”(1)** as follows:

(1) Non-state-owned nursing facilities. ~~Beginning July 1, 2001, patient days for purposes of the computation of administrative, environmental, and property expenses shall be inpatient days as specified in subrule 81.6(7) or 80 percent of the licensed capacity of the facility, whichever is greater. Beginning July 1, 2003, and thereafter, patient~~ Patient days for purposes of the computation of administrative, environmental, and property expenses for non-state-owned facilities shall be inpatient days as determined in subrule 81.6(7) or ~~85~~ 90 percent of the licensed capacity of the facility, whichever is greater. Patient days for purposes of the computation of all other expenses shall be inpatient days as determined in subrule 81.6(7).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 6. Amend subparagraph **81.6(16)“h”(9)** as follows:

(9) Calculation of capital cost per diem instant relief add-on. The capital cost per diem instant relief add-on is calculated by dividing the annual estimated property costs for the complete replacement, new construction, or major renovation project for which the add-on is granted by the facility's estimated annual total patient days.

1. Total patient days shall be determined using the most current submitted financial and statistical report or using the estimated total patient days as reported in the request for the add-on. For purposes of calculating the add-on, total patient days shall be the greater of the estimated annual total patient days or 85 90 percent of the facility's estimated licensed capacity.

2. and 3. No change.

ITEM 7. Amend subparagraph **81.6(16)“h”(12)** as follows:

(12) Reconciliation of capital cost per diem instant relief add-on. During the period in which the capital cost per diem instant relief add-on is granted, the Iowa Medicaid enterprise shall recalculate the amount of the add-on based on actual allowable costs and patient days reported on the facility's submitted annual financial and statistical report. A separate reconciliation shall be performed for each cost report period in which the capital cost per diem instant relief add-on was paid. The facility shall submit with the annual financial and statistical report a separate schedule reporting total patient days per calendar quarter and a current depreciation schedule identifying the assets related to the add-on.

1. For purposes of recalculating the capital cost per diem instant relief add-on, total patient days shall be based on the greater of the number of actual patient days during the period in which the add-on was paid or 85 90 percent of the facility's actual licensed bed capacity during the period in which the add-on was paid.

2. No change.

ITEM 8. Amend paragraph **81.10(4)“f”** as follows:

*f.* Payment for periods when residents are absent for a visit ~~or hospitalization~~ shall be made at 42 percent of the nursing facility's rate. ~~Effective May 1, 2003, Medicaid reimbursement savings attributable to the limitation of payments to facilities for periods when residents are absent shall be used to pay costs associated with the design and implementation of that limitation before reversion to Medicaid.~~ Payment for periods when residents are absent for hospitalization shall:

(1) Be made at 25 percent of the nursing facility's rate if the facility occupancy percentage is 95 percent or greater.

(2) Not be made if a facility's occupancy percentage is less than 95 percent.

(3) Be made at 42 percent of the nursing facility's rate for special population facilities.

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8346B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 239B.4(6) and 239B.8(2), the Department of Human Services amends Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

This amendment decreases the mileage reimbursement rate for travel to PROMISE JOBS activities in a private vehicle from \$.34 per mile to \$.30 per mile effective December 1, 2009.

The Department must reduce its projected spending for state fiscal year 2010 to comply with Executive Order 19, which mandated a 10 percent across-the-board spending reduction. Additionally, caseloads in the Family Investment Program and the PROMISE JOBS program are increasing at a higher rate

## HUMAN SERVICES DEPARTMENT[441](cont'd)

than anticipated for state fiscal year 2010. Decreasing the mileage reimbursement rate will assist the Department in reducing its spending and staying within budget.

This amendment does not provide for waivers in specified situations. Needed savings will not be achieved if waivers are granted. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

The Council on Human Services adopted this amendment on November 10, 2009.

The Department finds that notice and public participation are impracticable and contrary to the public interest. The Department is statutorily and constitutionally required to reduce spending obligations to the level of constitutionally authorized appropriations. Deeper cuts would be required if the Department were to delay taking action to allow for notice and public participation. Therefore, this amendment is filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b,” that avoidance of deficit spending confers a public benefit and that the immediate efficacy of this amendment is necessary because of the presently existing constitutional peril to the public welfare caused by spending obligations which exceed available revenues. Therefore, the normal effective date of this amendment is waived.

This amendment is also published herein under Notice of Intended Action as **ARC 8347B** to allow for public comment.

This amendment is intended to implement Executive Order 19 and Iowa Code section 239B.8(2).

This amendment became effective on December 1, 2009.

The following amendment is adopted.

Amend subparagraph **93.11(3)“b”(2)** as follows:

(2) Private transportation. For participants who use a privately owned motor vehicle or who hire private transportation, the transportation payment shall be based on a formula which uses the normally scheduled days of participation in the PROMISE JOBS activity for the period covered by the payment multiplied by the participant's anticipated daily round-trip miles and then multiplied by the mileage rate of 34 30 cents per mile.

[Filed Emergency 11/10/09, effective 12/1/09]

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**ARC 8319B**

**HUMAN SERVICES DEPARTMENT[441]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services amends Chapter 153, “Funding for Local Services,” Iowa Administrative Code.

These amendments specify how the State Payment Program will implement a waiting list. Implementation of the waiting list is necessary for the state to operate within the reduced appropriation due to Executive Order 19, which mandated a 10 percent across-the-board spending reduction.

Effective November 1, 2009, new applications will be placed on a waiting list until the Department determines there is money to fund another applicant's services. The rules specify the procedures for submitting applications, determining the application date, and determining the priority of services for persons whose applications are on the waiting list.

Placement on the waiting list will not apply to:

- Persons applying to the program for payment of commitment costs.
- Persons waiting for placement who are ready for discharge from an involuntary placement in an inpatient setting (such as a state mental health institute or a private hospital).

Requests for the waiver of any provision of the rules may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

## HUMAN SERVICES DEPARTMENT[441](cont'd)

The Mental Health, Mental Retardation, Developmental Disabilities, and Brain Injury Commission adopted these amendments on October 30, 2009.

The Department finds that notice and public participation are contrary to the public interest because the need for a waiting list is imminent. The Department is statutorily required to reduce spending obligations to the level of authorized appropriations. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(3).

The Department also finds, pursuant to Iowa Code section 17A.5(2)“b”(3), that the normal effective date of these amendments should be waived because of imminent peril to the public welfare that would be caused if appropriations are exhausted and existing clients must be discharged from services.

These amendments are also published herein under Notice of Intended Action as **ARC 8320B** to allow for public comment.

These amendments are intended to implement Executive Order 19 and Iowa Code section 331.440.

These amendments became effective on November 1, 2009.

The following amendments are adopted.

ITEM 1. Amend paragraph **153.53(2)“a”** as follows:

*a.* A funding request for the applicant showing ~~the total monthly dollar amount needed for services;~~

- (1) The services being requested,
- (2) The total monthly dollar amount needed for the services requested, and
- (3) The chart of accounts codes from the county billing system for the requested services.

ITEM 2. Amend subrule 153.53(4) as follows:

**153.53(4) Application date.** ~~The date of application is the date of the CPC application form, the date on court documents, or October 1, 2006, whichever is later. This date may be used as the effective date of eligibility when the complete application is received in the division within 60 business days of the CPC application date or the date on court documents.~~

*a. Waiting list not in effect.* When a waiting list is not in effect, the application date shall be the latest of the following dates:

- (1) The date on court commitment documents,
- (2) The date on the CPC application form, or
- (3) 60 days before the division receives the complete application, if the complete application is received more than 60 days after the date on the CPC application form.

*b. Waiting list in effect.* When a waiting list is in effect pursuant to subrule 153.54(5), the date of application shall be:

- (1) The date on court commitment documents, or
- (2) The date the application is moved off the waiting list.

ITEM 3. Amend paragraph **153.54(2)“b”** as follows:

*b.* ~~The division shall institute a waiting list for state payment program clients if the appropriation becomes fully encumbered. The division shall promptly notify all counties if a waiting list is to be instituted because of a lack of state funding. An application shall be approved only when funds are available. When funds are insufficient, the application shall be placed on a statewide waiting list pursuant to subrule 153.54(5).~~

ITEM 4. Adopt the following **new** subrule 153.54(5):

**153.54(5) Waiting list.** Funds available for the program shall first be used to continue assistance to persons currently receiving assistance from the program. The department shall start a waiting list when the state payment program appropriation funds are fully encumbered.

*a. Notice of waiting list.* The department shall notify county CPCs:

- (1) Before implementing a waiting list, and
- (2) Promptly when the department determines a waiting list is no longer required.

*b. Placement on the waiting list.* When a waiting list is in effect, all new applications shall be placed on the waiting list, with the following exceptions:

## HUMAN SERVICES DEPARTMENT[441](cont'd)

(1) Applicants who are subject to an involuntary commitment when the CPC includes a copy of the evaluation and placement court order documentation with the application packet to verify that the applicant has been involuntarily placed. If this documentation is not included, the application will be placed on the waiting list.

(2) Applicants awaiting community placement from an involuntary inpatient setting.

*c. Movement off the waiting list.* The department shall review the waiting list every 30 days. As funds are determined available, applications shall be moved off the statewide waiting list. Applicants shall be served on a first-come, first-served basis, as determined by the date and time the complete application is received in the division office.

(1) In cases where applications are received simultaneously, the applicants will be prioritized by the birth month and day (earliest birth date first).

(2) If there are multiple applicants with the same birth month and day, the last four digits of the applicants' social security numbers will be used, with the lowest number being considered first.

*d. Notification of applicant status.* The department shall notify the CPC of each applicant's status quarterly, unless an application can be removed from the waiting list sooner. When the department notifies the CPC that an application can be removed from the waiting list, the CPC shall:

(1) Verify with the applicant that the services are still needed, and

(2) Notify the applicant that service funding is available for services identified.

ITEM 5. Amend subrule 153.58(1) as follows:

**153.58(1)** Decisions regarding eligibility of any applicant, ~~decisions regarding instituting a waiting list because the appropriation has been fully encumbered,~~ and decisions adversely affecting applicants or members who are not eligible may be appealed pursuant to 441—Chapter 7.

ITEM 6. Amend **441—Chapter 153**, implementation sentence for division IV, as follows:

These rules are intended to implement Iowa Code section 331.440 ~~as amended by 2006 Iowa Acts, chapter 1115, division III.~~

[Filed Emergency 10/30/09, effective 11/1/09]

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EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8323B**

## **IOWA FINANCE AUTHORITY[265]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b,” 16.5(1)“r” and 16.40, the Iowa Finance Authority hereby amends Chapter 29, “Jump-Start Housing Assistance Program,” Iowa Administrative Code.

The purpose of this amendment is to modify and clarify certain provisions of the program of housing assistance for persons affected by the natural disasters that occurred in Iowa in 2008.

The Authority does not intend to grant waivers under the provisions of this rule, other than as may be allowed under the Authority's general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that assistance to the victims of the natural disasters is needed immediately, and the normal notice and public participation process would delay implementation of the changes. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 8324B** herein to allow for public comment.

The Authority finds that this amendment confers a benefit on the persons adversely affected by the natural disasters, in that the amendment eases and speeds the administration of an important program benefiting those persons and should be implemented as soon as feasible in order to facilitate assistance

IOWA FINANCE AUTHORITY[265](cont'd)

under the program and to avoid confusion. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on November 4, 2009.

This amendment became effective on November 4, 2009.

This amendment is intended to implement Iowa Code sections 16.5(1)“r” and 16.40 and 2009 Iowa Acts, Senate File 289.

The following amendment is adopted.

Amend subrule 29.6(5) as follows:

**29.6(5) Retention agreement.** Each loan made pursuant to this program shall be secured by a retention agreement which shall constitute a lien on the title of the real property for which the forgivable loan is made until such time as the forgivable loan has either been fully forgiven or paid in full; provided, however, that in the case of a property acquisition under the hazard mitigation grant program set forth in Iowa Code chapter 29C (or under any other comparable program implemented in whole or in part to assist in recovery from the natural disasters of 2008), payment of the following shall be waived:

a. That portion of the repayment due for a down payment assistance loan made under paragraph 29.5(1) “a” or an interim mortgage assistance loan made under subrule 29.5(2), provided that the amount so waived shall not exceed \$25,000; and

b. That portion of the repayment due for a housing repair or rehabilitation assistance loan made under paragraph 29.5(1) “b” for which the eligible resident provides documentation that the assistance was expended for the purpose for which it was awarded.

[Filed Emergency 11/4/09, effective 11/4/09]

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**ARC 8327B**

## **IOWA FINANCE AUTHORITY[265]**

### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12, the Iowa Finance Authority hereby amends Chapter 32, “Iowa Jobs Program,” Iowa Administrative Code.

The purpose of this amendment is to implement 2009 Iowa Acts, Senate File 376, sections 5 to 12, by amending rule 265—32.4(16,83GA,SF376), relating to the Iowa Jobs Program application procedures.

The Authority does not intend to grant waivers under the provisions of this rule, other than as may be allowed under the Authority’s general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the normal notice and public participation process would result in unnecessary expense and delays in the program, which is designed to provide disaster relief and economic stimulus. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 8328B** herein to allow for public comment.

The Authority finds that adoption of this amendment confers a benefit on the public in that this amendment promotes disaster recovery and economic stimulus and eases and speeds the administration of the program. The Authority finds that this amendment should be implemented as soon as feasible in order to facilitate the awarding of grants under the program and to avoid unnecessary expense and delays. Furthermore, 2009 Iowa Acts, Senate File 376, section 12, specifically provides for emergency rule making. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(1) and (2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on November 4, 2009.

This amendment became effective on November 4, 2009.

## IOWA FINANCE AUTHORITY[265](cont'd)

This amendment is intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, sections 5 to 12.

The following amendment is adopted.

Amend subrule 32.4(6) as follows:

**32.4(6) *Application procedure.***

*a.* Applications shall be reviewed and scored in rounds. The deadline for submission for the first round of applications shall be August 3, 2009. Subsequent rounds shall be quarterly at the discretion of the board as funding is available. Applications for each such round shall be due not later than January 1, April 1, July 1, and October 1 of each year, respectively.

*b.* No change.

*c.* The review committee members will score the applications according to the criteria set forth in subrule 32.4(7), and IFA staff shall compile the scores. To be eligible for a grant, a proposed project must receive a minimum score of at least 100 points. The review committee shall meet at least quarterly to review the ratings for each round of applications. Those applications meeting the minimum criteria shall be referred to the Iowa jobs board with a recommendation of final approval, denial, or deferral.

*d. to i.* No change.

*j.* A denied or deferred application may be revised and resubmitted as a new application in a subsequent round, if any. Unless a deferred application is withdrawn by the applicant or revised and resubmitted as a new application, the authority shall keep it on file, and its score shall automatically be ranked among new applications submitted for the next round, if any, once such new applications have been scored.

[Filed Emergency 11/4/09, effective 11/4/09]

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**ARC 8325B**

**IOWA FINANCE AUTHORITY[265]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 17A.3(1)“b” and 16.5 (1)“r” and 2009 Iowa Acts, Senate File 376, section 30, the Iowa Finance Authority hereby amends Chapter 35, “Affordable Housing Assistance Grant Fund,” Iowa Administrative Code.

The purpose of this amendment is to expand the availability of funds under the program to adaptive reuse projects.

The Authority does not intend to grant waivers under the provisions of this rule, other than as may be allowed under the Authority’s general rules concerning waivers.

Pursuant to Iowa Code section 17A.4(3), the Authority finds that notice and public participation are impracticable and contrary to the public interest in that the normal notice and public participation process would delay implementation of the grant program which is designed to assist communities in providing safe and affordable housing for certain elderly, disabled, and low-income persons and public servants in professions meeting critical skill shortages in the state. The Authority is also simultaneously publishing a Notice of Intended Action as **ARC 8326B** herein to allow for public comment.

The Authority finds that adoption of this amendment confers a benefit on the public in that the amendment expands the availability of safe and affordable housing for certain elderly, disabled, and low-income persons and public servants in professions meeting critical skill shortages in the state. The Authority finds that this amendment should be implemented as soon as feasible in order to facilitate the awarding of allocations under the program. Therefore, this amendment is filed pursuant to Iowa Code section 17A.5(2)“b”(2), and the normal effective date of this amendment is waived.

The Authority adopted this amendment on November 4, 2009.

This amendment became effective November 4, 2009.

IOWA FINANCE AUTHORITY[265](cont'd)

This amendment is intended to implement Iowa Code section 16.5(1)“r” and 2009 Iowa Acts, Senate File 376, section 30.

The following amendment is adopted.

Amend rule 265—35.1(16,83GA,SF376) as follows:

**265—35.1(16,83GA,SF376) Affordable housing assistance grant fund allocation plan.** The affordable housing assistance grant fund allocation plan entitled Iowa Finance Authority Affordable Housing Assistance Grant Fund Allocation Plan dated ~~June~~ November 2009 shall be the allocation plan for the award, pursuant to the affordable housing assistance grant fund program, of funds held within the affordable housing assistance grant fund established in 2009 Iowa Acts, Senate File 376, section 30. The allocation plan for the affordable housing assistance grant fund program is incorporated by reference pursuant to Iowa Code section 17A.6 and 265—subrules 17.4(2) and 17.12(2).

[Filed Emergency 11/4/09, effective 11/4/09]

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EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

## **ARC 8317B**

### **PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

#### **Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board amends Chapter 7, “Impasse Procedures,” Iowa Administrative Code.

Chapter 7 implements the system set out in Iowa Code chapter 20 for resolving impasses in collective bargaining negotiations between public employers and the employee organizations certified to represent groups of the public employer’s employees. Parties are not required to utilize the statutory process, which is initiated by a request that the Board provide them with a mediator, but most do employ the statutory scheme or an agreed-upon variant which includes Board-provided mediation. These amendments implement a filing fee payable by a party who chooses to request a Board-appointed mediator and a processing fee payable by parties who actually schedule a mediation session with a Board-appointed mediator. These amendments, as well as other revenue-generating and expense-reduction measures, are necessary in order to ensure the Board’s ability to provide qualified mediators on request, notwithstanding the most recent across-the-board reductions in agency spending.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation are impracticable because, due to the timing of collective bargaining under Iowa Code chapter 20, most requests for mediation are filed, and most mediation sessions are scheduled, prior to the date upon which amendments filed with notice and public participation would become effective.

Pursuant to Iowa Code section 17A.5(2)“b”(2), the Board further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments made effective November 1, 2009. These amendments confer a benefit upon the public by ensuring the Board’s ability to maintain its heavily utilized, costly and time-consuming mediation program and to promptly provide mediators to effectuate the settlement of public sector collective bargaining impasses, which settlements help to ensure the effective and orderly operations of government in providing for the public health, safety and welfare.

These amendments are also published herein under Notice of Intended Action as **ARC 8318B** to allow for public comment.

These amendments are intended to implement Iowa Code sections 20.1(5), 20.6(3) and 20.20.

These amendments became effective November 1, 2009.

The following amendments are adopted.

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

ITEM 1. Amend subrule 7.3(2) as follows:

**7.3(2)** *Date, signature, ~~filing fee~~ and notice.* The request for mediation shall be dated and signed by an authorized representative of the requesting party and be accompanied by a filing fee of \$30, in the form of a check payable to the board. The requesting party shall also serve a copy of the request upon other parties to the negotiations either by personal delivery or by ordinary mail.

ITEM 2. Adopt the following **new** subrule 7.3(8):

**7.3(8)** *Processing fee.* Parties to an impasse in which a mediation meeting is scheduled shall pay a processing fee of \$250, to be shared equally by the parties. The fee shall be billed to the parties by the board upon the board's receipt of notice of the scheduling of the meeting, and shall be remitted by check payable to the board within 30 days of billing.

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**ARC 8338B**

**PUBLIC EMPLOYMENT RELATIONS BOARD[621]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 20.6(5), the Public Employment Relations Board amends Chapter 7, "Impasse Procedures," Iowa Administrative Code.

On October 29, 2009, the Board Adopted and Filed Emergency amendments to Chapter 7, published herein as **ARC 8317B**. Those amendments, part of the Board's plan to deal with the most recent across-the-board reductions in agency budgets, implemented a filing fee payable by a party who chooses to request a Board-appointed mediator and a processing fee payable by parties who actually schedule a mediation session with a Board-appointed mediator. Questions and controversy have ensued concerning the Board's authority to adopt and ability to retain and utilize the fees collected pursuant to those amendments. The Board has determined that it is in the best interests of the agency, its regulated community and the public to adopt these amendments, which effectively rescind the newly implemented fees, and to develop an alternative agency plan to address the across-the-board budget reduction.

Pursuant to Iowa Code section 17A.4(3), the Board finds that notice and public participation are unnecessary because the effect of these amendments is to rescind the questioned fees and return to the status quo which existed prior to their adoption.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Board further finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective upon their filing with the administrative rules coordinator, because these amendments confer a benefit on the public by eliminating controversial fees and restoring the status quo which existed prior to their adoption.

These amendments are intended to implement Iowa Code sections 20.1(5) and 20.20.

These amendments became effective November 10, 2009.

The following amendments are adopted.

ITEM 1. Amend subrule 7.3(2) as follows:

**7.3(2)** *Date, signature, ~~filing fee~~ and notice.* The request for mediation shall be dated and signed by an authorized representative of the requesting party ~~and be accompanied by a filing fee of \$30, in the form of a check payable to the board.~~ The requesting party shall also serve a copy of the request upon other parties to the negotiations either by personal delivery or by ordinary mail.

## PUBLIC EMPLOYMENT RELATIONS BOARD[621](cont'd)

ITEM 2. Rescind subrule **7.3(8)**.

[Filed Emergency 11/10/09, effective 11/10/09]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8339B**

**TRANSPORTATION DEPARTMENT[761]**

**Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation adopts amendments to Chapter 601, "Application for License," and Chapter 630, "Nonoperator's Identification," Iowa Administrative Code.

The REAL ID Act of 2005, 49 U.S.C. § 30301 note, as further defined in 6 CFR Part 37, provides that states must meet certain requirements in the issuance, reissuance, and renewal of driver's licenses and nonoperator's identification cards used to access federal facilities and federally regulated aircraft. These requirements include specific application and documentation requirements set forth at 6 CFR 37.11, including but not limited to documentation of identity, date of birth, social security number, address of principal residence, and evidence of lawful status in the United States. These requirements also include specific verification of documents and information provided, as well as mandatory facial image capture for all applicants for REAL ID-compliant driver's licenses and nonoperator's identification cards. These amendments confirm that all applicants for REAL ID-compliant driver's licenses and nonoperator's identification cards must meet all lawful requirements for an Iowa driver's license or nonoperator's identification card, as well as all federal requirements for a REAL ID-compliant document, and are necessary to establish the state of Iowa's compliance with the REAL ID Act of 2005.

For good cause and pursuant to Iowa Code section 17A.4(3), the Department finds that notice and public participation prior to adoption of these amendments pursuant to Iowa Code section 17A.4(1) are impracticable and contrary to the public interest as it will preclude implementation before January 1, 2010, thereby jeopardizing the state of Iowa's material compliance with the REAL ID Act of 2005 and Iowans' access to federal facilities and federally regulated aircraft.

The REAL ID Act of 2005 originally provided that federal agencies were precluded from accepting a state-issued driver's license or nonoperator's identification card for official purposes beginning May 11, 2008, unless the issuing state met the requirements of the Act by that date. A change to 6 CFR Part 37 allowed states to obtain an extension of that deadline until December 31, 2009, which the state of Iowa has obtained. According to 6 CFR 37.51(b), states must be in material compliance with the requirements of the REAL ID Act of 2005 by January 1, 2010, to receive a further extension to May 10, 2011. Pursuant to 6 CFR 37.65, driver's licenses and nonoperator's identification cards issued by a state that has obtained such an exception will be acceptable by federal agencies for official purposes until the end of the applicable enrollment periods, as set forth above. If, however, a state is not in material compliance by January 1, 2010, such licenses and cards will not be acceptable for official federal purposes until the state establishes full compliance, and then only with compliant credentials. The amendments help the state of Iowa establish proper procedure for issuance of REAL ID-compliant driver's licenses and nonoperator's identification cards, and are necessary to establish material compliance by the January 1, 2010, deadline.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Department finds that the normal effective date of these amendments, 35 days after publication, should be waived and the amendments be made effective December 21, 2009. As discussed above, immediate implementation is needed to help the state of Iowa establish proper procedure for issuance of REAL ID-compliant driver's licenses and nonoperator's identification cards, and are necessary to establish material compliance by the January 1, 2010, deadline.

TRANSPORTATION DEPARTMENT[761](cont'd)

The Department shall not grant any waivers under the provisions of these amendments since the amendments are needed to comply with the REAL ID Act of 2005, 49 U.S.C. § 30301 note, as further defined in 6 CFR Part 37.

These amendments are also published herein under Notice of Intended Action as **ARC 8342B** to allow for public comment.

These amendments shall become effective December 21, 2009.

These amendments are intended to implement Iowa Code chapter 321, the REAL ID Act of 2005 (49 U.S.C. § 30301 note), and 6 CFR Part 37.

The following amendments are adopted.

ITEM 1. Adopt the following **new** rule 761—601.7(321):

**761—601.7(321) REAL ID driver's license.** A person who seeks a driver's license that is compliant with the REAL ID Act of 2005, 49 U.S.C. § 30301 note, as further defined in 6 CFR Part 37 ("REAL ID driver's license"), must meet and comply with all lawful requirements for an Iowa driver's license, and must also meet and comply with all application and documentation requirements set forth at 6 CFR Part 37, including but not limited to documentation of identity, date of birth, social security number, address of principal residence, and evidence of lawful status in the United States. Documents and information provided to fulfill REAL ID requirements must be verified as required in 6 CFR 37.13. An applicant for a REAL ID driver's license is subject to a mandatory facial image capture that meets the requirements of 6 CFR 37.11(a). A REAL ID driver's license may not be issued, reissued, or renewed except as permitted in 6 CFR Part 37 and may not be issued, reissued, or renewed by any procedure, in any circumstance, to any person, or for any term prohibited under 6 CFR Part 37. The information on the front of any REAL ID driver's license must include all information and markings required by 6 CFR 37.17. Nothing in this rule requires a person to obtain a REAL ID driver's license.

This rule is intended to implement Iowa Code chapter 321, the REAL ID Act of 2005 (49 U.S.C. Section 30301 note), and 6 CFR Part 37.

ITEM 2. Adopt the following **new** subrule 630.2(7):

**630.2(7)** A person who seeks a nonoperator's identification card that is compliant with the REAL ID Act of 2005, 49 U.S.C. § 30301 note, as further defined in 6 CFR Part 37 ("REAL ID nonoperator's identification card"), must meet and comply with all lawful requirements for an Iowa nonoperator's identification card, and must also meet and comply with all application and documentation requirements set forth at 6 CFR Part 37, including but not limited to documentation of identity, date of birth, social security number, address of principal residence, and evidence of lawful status in the United States. Documents and information provided to fulfill REAL ID requirements must be verified as required in 6 CFR 37.13. An applicant for a REAL ID nonoperator's identification card is subject to a mandatory facial image capture that meets the requirements of 6 CFR 37.11(a). A REAL ID nonoperator's identification card may not be issued, reissued, or renewed except as permitted in 6 CFR Part 37 and may not be issued, reissued, or renewed by any procedure, in any circumstance, to any person, or for any term prohibited under 6 CFR Part 37. The information on the front of any REAL ID nonoperator's identification card must include all information and markings required by 6 CFR 37.17. Nothing in this subrule requires a person to obtain a REAL ID nonoperator's identification card.

[Filed Emergency 11/10/09, effective 12/21/09]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8333B****COLLEGE STUDENT AID COMMISSION[283]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 261.3, the College Student Aid Commission hereby amends Chapter 8, "All Iowa Opportunity Scholarship Program," Iowa Administrative Code.

The adopted amendment modifies the current eligibility requirements for the All Iowa Opportunity Scholarship Program pursuant to Iowa Code section 261.87 as amended by 2009 Iowa Acts, Senate File 470, section 28.

Notice of Intended Action was published in the August 12, 2009, Iowa Administrative Bulletin as **ARC 8036B**. No comments were received from the public, and the adopted amendment is identical to that published under Notice.

This amendment was adopted during the November 4, 2009, meeting of the Iowa College Student Aid Commission.

This amendment will become effective on January 6, 2010.

This amendment is intended to implement Iowa Code section 261.87 as amended by 2009 Iowa Acts, Senate File 470, section 28.

The following amendment is adopted.

Amend rule 283—8.3(261) as follows:

**283—8.3(261) Eligibility requirements.**

**8.3(1)** Applicants for the all Iowa opportunity scholarship program must complete the Free Application for Federal Student Aid (FAFSA) by the date specified in the application instructions and any additional applications or documents required by the commission. In addition to completing the FAFSA, an applicant must be:

*a.* An Iowa resident who begins his or her initial period of postsecondary enrollment within two academic years of graduation from high school;

*b.* An Iowa high school ~~graduate who graduated from high school with at least a 2.5 cumulative grade point average on a 4.0 grade scale or its equivalent~~ student with at least a 2.5 cumulative grade point average on a 4.0 scale or its equivalent; and

*c.* Enrolled for at least three semester hours, or the trimester or quarter equivalent, in a program eligible for federal student aid under Title IV of the federal Higher Education Act leading to an undergraduate degree, diploma, or certificate from an eligible college or university.

**8.3(2)** To maintain eligibility, recipients must maintain satisfactory academic progress as defined by the eligible college or university.

**8.3(3)** Individuals who have military obligations may delay the initial period of enrollment for up to four academic years beyond high school graduation or must begin postsecondary enrollment within two academic years of discharge. Exceptions for health or other personal reasons for delaying the initial period of enrollment will be reviewed by commission staff on a case-by-case basis.

[Filed 11/6/09, effective 1/6/10]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8329B****DENTAL BOARD[650]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Dental Board hereby adopts new Chapter 36, "Nonpayment of State Debt," Iowa Administrative Code.

DENTAL BOARD[650](cont'd)

The amendment adopts a new chapter pursuant to Iowa Code chapter 272D that establishes procedures to deny a license, permit, or registration, or take disciplinary action against a license, permit, or registration upon receipt of a certificate of noncompliance from the centralized collection unit of the Iowa Department of Revenue.

These rules are subject to waiver at the sole discretion of the Board in accordance with 650—Chapter 7.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 12, 2009, as **ARC 8042B**. A public hearing on the rules was held on September 1, 2009. No oral or written comments were received. These rules are identical to those published under Notice.

These rules were approved at the October 27, 2009, regular meeting of the Iowa Dental Board.

These rules are intended to implement Iowa Code chapter 272D.

These rules will become effective on January 6, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 36] is being omitted. These rules are identical to those published under Notice as **ARC 8042B**, IAB 8/12/09.

[Filed 11/5/09, effective 1/6/10]

[Published 12/2/09]

[For replacement pages for IAC, see IAC Supplement 12/2/09.]

## **ARC 8343B**

### **HUMAN SERVICES DEPARTMENT[441]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 76, "Application and Investigation," Iowa Administrative Code.

This amendment limits the Medicaid expenses subject to recovery from a Medicaid member's estate. This amendment is intended to implement the Medicare Improvements for Patients and Providers Act of 2008, Public Law 110-275. Effective January 1, 2010, this legislation prohibits states from using estate recovery programs to recover Medicaid payments made for Medicare cost-sharing benefits under a Medicare savings program.

Coverage groups referred to as Medicare savings programs include qualified Medicare beneficiaries (QMBs), specified low-income Medicare beneficiaries (SLMBs), expanded specified low-income Medicare beneficiaries (E-SLMBs), and qualified disabled and working persons (QDWP). Depending on the coverage group, Medicare cost-sharing may include Medicaid payments to cover a member's Medicare Part A and B premiums, deductibles, coinsurance, and copayments.

The cost of medical assistance is subject to recovery from the estates of Medicaid members who received benefits after the age of 55 or while living in a medical institution without the expectation of returning home. Under this amendment, the value of cost-sharing benefits paid on or after January 1, 2010, is excluded from the calculation of the cost of a member's medical assistance for purposes of the estate recovery program.

This amendment does not provide for waivers in specified situations because this exemption is a benefit to those affected.

Notice of Intended Action on this amendment was published in the Iowa Administrative Bulletin on September 9, 2009, as **ARC 8113B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on November 10, 2009.

This amendment is intended to implement Iowa Code section 249A.5(2).

This amendment shall become effective on January 6, 2010.

The following amendment is adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

Amend subrule 76.12(7), introductory paragraph, as follows:

**76.12(7) *Estate recovery.*** Medical assistance is subject to recovery from the estate of a Medicaid member, the estate of the member's surviving spouse, or the estate of the member's surviving child as provided in this subrule. Effective January 1, 2010, medical assistance that has been paid for Medicare cost sharing or for benefits described in Section 1902(a)(10)(E) of the Social Security Act is not subject to recovery. All assets included in the estate of the member, the surviving spouse, or the surviving child are subject to probate for the purposes of medical assistance estate recovery pursuant to Iowa Code section 249A.5(2) "d." The classification of the debt is defined at Iowa Code section 633.425(7).

[Filed 11/10/09, effective 1/6/10]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8353B**

## **MEDICINE BOARD[653]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 272D, the Board of Medicine hereby amends Chapter 12, "Nonpayment of State Debt," Iowa Administrative Code.

Chapter 12 establishes that the Board may deny issuance or renewal of a medical or osteopathic medical license or acupuncture license or suspend or revoke a license upon the receipt of a certificate of noncompliance from the centralized collection unit of the Department of Revenue according to the procedures set forth in Iowa Code sections 272D.1 to 272D.9.

The Board approved the amendments to Chapter 12 that were published under Notice of Intended Action during a regularly scheduled meeting on September 3, 2009.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8191B**. No public comment was received. Since publication of the Notice, Item 4 has been added to amend the implementation sentence for Chapter 12.

The amendments were approved for adoption during a telephone conference call on November 12, 2009.

These amendments shall become effective January 6, 2010.

These amendments are intended to implement Iowa Code chapter 272D.

The following amendments are adopted.

ITEM 1. Strike "82GA,SF2428" wherever it appears in rules **653—12.1(82GA,SF2428)** to **653—12.3(82GA,SF2428)** and insert "272D" in lieu thereof.

ITEM 2. Amend rule **653—12.1(272D)**, definitions of "Act" and "Certificate of noncompliance," as follows:

"Act" means ~~2008 Iowa Acts, Senate File 2428, division II~~ Iowa Code sections 272D.1 to 272D.9.

"Certificate of noncompliance" means a document ~~known as a certificate of noncompliance which~~ is provided by the centralized collection unit of the department of revenue certifying that the named applicant or licensee has an outstanding liability placed with the unit and has not entered into an approved payment plan to pay the liability.

ITEM 3. Amend subrule 12.2(4) as follows:

**12.2(4) *Licensees and applicants responsible to inform board.*** Licensees and applicants shall keep the board informed of all court actions and all centralized collection unit actions taken under or in connection with the Act. Licensees and applicants shall also provide the board copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to the Act, all court orders entered in such actions, and ~~any~~ withdrawals of certificates issued by the centralized collection unit.

MEDICINE BOARD[653](cont'd)

ITEM 4. Amend **653—Chapter 12**, implementation sentence, as follows:

These rules are intended to implement ~~2008 Iowa Acts, Senate File 2428, division II~~ Iowa Code chapter 272D.

[Filed 11/12/09, effective 1/6/10]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8349B**

## **PROFESSIONAL LICENSURE DIVISION[645]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Barbering hereby amends Chapter 5, "Fees," Chapter 21, "Licensure," Chapter 23, "Barber Schools," and Chapter 24, "Continuing Education for Barbers," Iowa Administrative Code.

These amendments implement a national computerized theory examination and a national practical examination. The amendments also amend the continuing education requirement for barbers by requiring one of the eight hours of continuing education to cover Iowa barbering laws and administrative rules and sanitation. The amendments realign the fee structure to be consistent with cosmetology applicant fees. Amendments to fees reflect the outsourcing of the theory examination and the increased cost associated with administering a national practical examination.

These amendments were pre-noticed on May 26, 2009, and the Board received no comments on the amendments.

Notice of Intended Action was published in the Iowa Administrative Bulletin on August 26, 2009, as **ARC 8085B**. A public hearing was held on September 15, 2009, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. Two instructors and six students from one barber school attended the public hearing. Commenters at the public hearing voiced concern about the pass rate required for the national theory examination. In addition, the Board received three written comments supporting the rule changes and two comments opposed to making any changes to licensure requirements. The Board considered the comments at its meeting on October 27, 2009, and determined that Iowa requirements should be consistent with national standards. The final amendments were revised as follows:

- Revised paragraphs 21.2(1)"f" and 21.3(2)"a" to require documents to be in the Board office a minimum of five business days prior to the NIC practical examination. Because applicants will have already completed the theory examination, the administrative processing time is reduced from 14 days.

- In subparagraph 21.16(3)"b"(3), changed the word "administered" to "required."

- Reduced the number of continuing education hours relating to Iowa law and rules and sanitation from two hours to one hour (subrules 21.5(3) and 24.2(1) and paragraph 24.3(2)"c"). The Board reconsidered the number of hours minimally necessary for licensees to remain current on Iowa laws and administrative rules and sanitation and decided that one hour of the eight hours required for continuing education would be sufficient to protect the public. Also, the implementation date of August 1, 2010, has been added so that the revisions will not affect the current renewal cycle. The implementation date of August 1, 2010, has also been added to the endorsement requirements found in subrule 21.5(3).

These amendments were adopted by the Board of Barbering on November 9, 2009.

These amendments will become effective on January 6, 2010.

These amendments are intended to implement Iowa Code chapters 21, 147, 158 and 272C and 2008 Iowa Acts, House File 2212.

The following amendments are adopted.

ITEM 1. Amend subrules 5.2(1) and 5.2(4) as follows:

**5.2(1)** License fee for an initial license to practice barbering, license by endorsement, license by reciprocity or an instructor's license is ~~\$120~~ \$60.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**5.2(4) Examination** Practical examination fee is ~~\$60~~ \$75.

ITEM 2. Amend rule ~~645—21.1(158)~~, definition of “Examination,” as follows:

*“Examination”* means ~~the examination administered by the board, which includes written and practical components~~ any of the tests used by the board to determine minimum competency prior to the issuance of a barber or barber instructor license.

ITEM 3. Adopt the following **new** definitions of “NIC” and “Testing service” in rule ~~645—21.1(158)~~:

*“NIC”* means the National-Interstate Council of State Boards of Cosmetology, Inc.

*“Testing service”* means a national testing service selected by the board.

ITEM 4. Rescind rules 645—21.2(158) and 645—21.3(158) and adopt the following **new** rules in lieu thereof:

**645—21.2(158) Requirements for licensure.**

**21.2(1)** The following criteria shall apply to licensure:

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>) 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.

b. Applicants shall present proof of completion of the tenth grade or equivalent education. In the event the applicant is a refugee or immigrant from a country where high school records no longer exist, the applicant shall be considered to have met this requirement when the applicant submits an affidavit attesting to the fact that the applicant has met the tenth-grade requirement.

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).

d. Applicants shall pass both the NIC theory examination and the NIC practical examination with a score of 70 percent or better on each examination.

e. An applicant shall provide verification of license(s) from every state in which the applicant has been licensed as a barber, sent directly from the state(s) to the Iowa board of barbering office.

f. Applications for a barber license must be received in the board office a minimum of five business days prior to the NIC practical examination.

g. Licensees who were issued their licenses within six months prior to renewal shall not be required to renew their licenses until the renewal month two years later.

h. Incomplete applications that have been on file in the board office for more than two years shall be:

(1) Considered invalid and shall be destroyed; or

(2) Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

**21.2(2)** Foreign-trained barbers shall:

a. Provide an equivalency evaluation of their educational credentials by one of the following: International Educational Research Foundation, Inc., Credentials Evaluation Service, P.O. Box 3665, Culver City, CA 90231-3665, telephone (310)258-9451, Web site [www.ierf.org](http://www.ierf.org) or E-mail at [info@ierf.org](mailto:info@ierf.org); or World Education Services (WES) at (212)966-6311, electronically at [www.wes.org](http://www.wes.org) or by writing to WES, P.O. Box 745, Old Chelsea Station, New York, NY 10113-0745. The professional curriculum must be equivalent to that stated in these rules. An applicant shall bear the expense of the curriculum evaluation.

b. Provide a notarized copy of the certificate or diploma awarded to the applicant from a barber school in the country in which the applicant was educated.

c. Receive a final determination from the board regarding the application for licensure.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

**21.2(3)** Requirements for an instructor's license. Applicants shall:

- a. Complete all requirements stated in subrule 21.2(1), paragraphs "a" and "d";
- b. Present proof of graduation from an accredited high school or the equivalent thereof;
- c. Be licensed in the state of Iowa as a barber for not less than two years; and
- d. Pass both the NIC instructor theory examination and the NIC instructor practical examination with a score of 70 percent or better on each examination.

**21.2(4)** Instructors who were issued their licenses within six months prior to renewal shall not be required to renew their licenses until the renewal month two years later.

**21.2(5)** Incomplete applications that have been on file in the board office for more than two years shall be:

- a. Considered invalid and shall be destroyed; or
- b. Maintained upon written request of the applicant. The applicant is responsible for requesting that the file be maintained.

**21.2(6)** An applicant who meets the requirements for an instructor's license except for the instructor examinations may apply for a temporary permit to be an instructor. The temporary permit shall be valid for a maximum of six months from the issue date of the permit and shall not be renewable.

**645—21.3(158) Examination requirements for barbers and barber instructors.**

**21.3(1)** *Theory examination.* Applicants shall contact the testing service directly to schedule the computer-based NIC theory examination. The fee for scheduling the written theory examination shall be paid directly to the testing service. This fee is not included in the licensure fee and practical examination fee identified in 645—subrules 5.2(1) and 5.2(4).

**21.3(2)** *Practical examination.* Applicants who have completed the application process and passed the NIC theory examination with a score of 70 percent or better shall be eligible to sit for the NIC practical examination administered by the board.

a. Application, supporting documentation, and licensure and practical examination fees required by the board shall be received in the board office at least five days prior to the scheduled NIC practical examination date.

b. The board shall send a notice of the date and time of the practical examination to the address on record.

c. Applicants are required to receive a passing score of 70 percent on the practical examination to be eligible for licensure.

d. Applicants shall be notified in writing of the result of the practical examination.

e. Applicants who fail to appear for the practical examination must request in writing or by telephone to reschedule the examination. Examination fees are not refundable, but the rescheduled examination fee may be waived upon the applicant's showing of good cause for missing the previously scheduled examination. Proof of good cause shall be submitted to the board office with the request to reschedule the examination. The applicant shall be required to pay the reexamination fee if the applicant does not appear for the subsequent examination.

f. Persons who do not attain the passing score may reapply to take the practical examination. The examination fee cannot be refunded, and the applicant shall be required to pay the reexamination fee.

ITEM 5. Rescind subrule 21.5(3) and adopt the following new subrules 21.5(3) and 21.5(4):

**21.5(3)** Beginning August 1, 2010, completes one hour of Iowa barbering laws and administrative rules and sanitation.

**21.5(4)** Passes a national written and practical examination.

ITEM 6. Amend rule **645—21.7(158)**, numbered paragraph "2," as follows:

2. The applicant has met the requirements for licensure except for ~~the examination~~ passing the examinations required by the board. The temporary permit is valid from the date the application is ~~completed~~ approved for a maximum of six months and shall not be renewable.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 7. Amend subparagraph **21.16(3)“b”(3)** as follows:

(3) Verification of passing ~~the state examination administered~~ the examinations required by the board within one year immediately prior to reactivation if the applicant does not have a current license and has not been in active practice in the United States during the past five years.

ITEM 8. Amend subrules 23.8(1) and 23.8(2) as follows:

**23.8(1)** Supervised practical instruction totaling 1,675 hours shall include:

Scalp care and shampooing  
Honing and stropping  
Shaving  
Facials, massage and packs  
Science of hair structure  
Haircutting  
Hair tonics  
Hair relaxing  
Hair coloring and hair body processing  
Hair styling  
Fitting of hairpieces  
Manicuring  
Artificial nails (all aspects)

Waxing

**23.8(2)** Demonstrations and lectures totaling 380 hours shall include:

Law, ethics, economics, equipment, shop management and history of barbering  
Sanitation, sterilization, personal hygiene and first aid  
Bacteriology  
Anatomy  
Skin, scalp, and hair and their common disorders  
Electricity, as applied to barbering  
Chemistry and pharmacology  
Scalp care  
Honing and stropping  
Shaving  
Facials, massage and packs  
Hair relaxing  
Science of hair structure  
Haircutting  
Hair tonics  
Instruments, soaps, shampoos, creams, lotions and tonics  
Nails

Waxing

ITEM 9. Amend subrule 24.2(1) as follows:

**24.2(1)** The biennial continuing education compliance period shall extend for a two-year period beginning on July 1 and ending on June 30 of each even-numbered year. Each biennium, each person who is licensed to practice as a barber in this state shall be required to complete a minimum of eight hours of continuing education ~~approved by the board that meet the requirements of rule 645—24.3(158,272C).~~ Beginning August 1, 2010, a minimum of one hour of the eight hours shall be in the content areas of Iowa barbering laws and administrative rules and sanitation. A licensee who is a barber instructor shall obtain four hours in teaching methodology in addition to meeting all continuing education requirements for renewal of the barber license.

## PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 10. Adopt the following new paragraph **24.3(2)“c”**:

c. Beginning August 1, 2010, one hour of continuing education per biennium must be specific to Iowa barbering laws and administrative rules and sanitation.

[Filed 11/11/09, effective 1/6/10]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8348B**

**PROFESSIONAL LICENSURE DIVISION[645]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 147.76, the Board of Respiratory Care hereby amends Chapter 261, “Licensure of Respiratory Care Practitioners,” and Chapter 263, “Discipline for Respiratory Care Practitioners,” Iowa Administrative Code.

These amendments update the name of the accrediting organization for respiratory care to be consistent with the separation of the Committee on Accreditation for Respiratory Care (CoARC) from the Commission on Accreditation of Allied Health Education Programs (CAAHEP). The amendments also amend subrule 263.2(11) by replacing the word “felony” with the word “crime” to be consistent with Iowa Code section 147.55.

Notice of Intended Action was published in the Iowa Administrative Bulletin September 9, 2009, as **ARC 8100B**. A public hearing was held September 29, 2009, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No comments were received. These amendments are identical to those published under Notice of Intended Action.

These amendments were adopted by the Board of Respiratory Care on November 10, 2009.

These amendments will become effective January 6, 2010.

These amendments are intended to implement Iowa Code chapters 21, 147, 152B, and 272C.

The following amendments are adopted.

ITEM 1. Amend rule ~~645~~—**261.1(152B)**, definition of “CoARC,” as follows:

“*CoARC*” means the ~~Committee~~ Commission on Accreditation ~~of~~ for Respiratory Care.

ITEM 2. Amend subrule 261.3(1) as follows:

**261.3(1)** The applicant shall have successfully completed a respiratory care education program accredited by, or under a letter of review from, the Commission on Accreditation ~~of Allied Health Education Programs (CAAHEP)~~ or by a program that is under Letter of Review by the Committee on Accreditation for Respiratory Care (CoARC) ~~while actively pursuing CAAHEP accreditation.~~

ITEM 3. Amend subrule 263.2(11) as follows:

**263.2(11)** Conviction of a ~~felony~~ crime related to the profession or occupation of the licensee or the conviction of any ~~felony~~ crime that would affect the licensee’s ability to practice within the profession. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

[Filed 11/11/09, effective 1/6/10]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8350B**

**PROPANE EDUCATION AND RESEARCH COUNCIL, IOWA[599]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 101C.3, the Iowa Propane Education and Research Council hereby amends Chapter 1, "Propane Education and Research Council," Iowa Administrative Code.

The amendments add rules concerning the development by the Iowa Propane Education and Research Council of energy efficiency programs dedicated to weatherization and modifies the rules concerning the membership of the Iowa Propane and Education Research Council pursuant to Iowa Code chapter 101C as amended by 2009 Iowa Acts, House File 684, sections 1 to 4.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 7, 2009, as **ARC 8200B**. A public hearing was held on October 27, 2009. No one attended the hearing, and no comments were received by mail, E-mail or telephone. There are no changes from the Notice of Intended Action.

These amendments are intended to implement 2009 Iowa Acts, House File 684, sections 1 to 4.

These amendments will become effective January 6, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1 to 1.3, 1.4(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 8200B**, IAB 10/7/09.

[Filed 11/11/09, effective 1/6/10]

[Published 12/2/09]

[For replacement pages for IAC, see IAC Supplement 12/2/09.]

**ARC 8359B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 105.4, the Department of Public Health hereby adopts new Chapter 31, "Plumbing and Mechanical Systems Board—Waivers or Variances from Administrative Rules."

These rules describe the applicable standards and process for the granting of individual waivers from rules adopted by the Board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8173B** on September 23, 2009.

A public hearing was scheduled, originating from the Iowa Communications Network (ICN) Room at the Historical Building and was accessible over the ICN from five locations across the state.

Seven comments were received. Six were general questions on individual licensing issues, and the other was in support of the rule. As a result of the comments, no changes were made to the rules.

These rules were adopted by the Plumbing and Mechanical Systems Board on November 9, 2009.

These rules are intended to implement Iowa Code chapters 17A, 105, and 272C.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

These rules will become effective January 6, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 31] is being omitted. These rules are identical to those published under Notice as **ARC 8173B**, IAB 9/23/09.

[Filed 11/12/09, effective 1/6/10]

[Published 12/2/09]

[For replacement pages for IAC, see IAC Supplement 12/2/09.]

**ARC 8356B**

## **REVENUE DEPARTMENT[701]**

### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 421.14, the Department of Revenue hereby adopts an amendment to Chapter 40, "Determination of Net Income," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXII, No. 8, p. 943, on October 7, 2009, as **ARC 8223B**.

This amendment revises rule 701—40.15(422), introductory paragraph, by adding a phrase that makes the Iowa rule consistent with the federal 1040 tax form instructions and 2009 Iowa Acts, Senate File 322, section 4.

This amendment is identical to that published under Notice of Intended Action.

This amendment will become effective January 6, 2010, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This amendment is intended to implement Iowa Code section 422.9(4).

The following amendment is adopted.

Amend rule 701—40.15(422), introductory paragraph, as follows:

**701—40.15(422) Reporting of incomes by married taxpayers who file a joint federal return but elect to file separately for Iowa income tax purposes.** Married taxpayers who have separate incomes and have filed jointly for federal income tax purposes can elect to file separate Iowa returns or to file separately on the combined Iowa return form. Where married persons file separately, both must use the optional standard deduction if either elects to use it, or both must claim itemized deductions if either elects to claim itemized deductions. The provisions of Treasury Regulation § 1.63-1 are equally applicable regarding the election to use the standard deduction or itemized deductions for Iowa income tax purposes. The spouses' election to file separately for Iowa income tax purposes is subject to the condition that incomes received by the taxpayers and the deductions for business expenses are allocated between the spouses as the incomes and deductions would have been allocated if the taxpayers had filed separate federal returns. Any Iowa additions to net income and any deductions to net income which pertain to taxpayers filing separately for Iowa income tax purposes must also be allocated accurately between the spouses. Thus, if married taxpayers file a joint federal return and elect to file separate Iowa returns or separately on the combined Iowa return, the taxpayers are required to compute their separate Iowa net incomes as if they had determined their federal adjusted gross incomes on separate federal returns with the Iowa adjustments to net income.

[Filed 11/12/09, effective 1/6/10]

[Published 12/2/09]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 12/2/09.

**ARC 8358B****REVENUE DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code chapter 17A and sections 421.17 and 428A.11, the Department of Revenue hereby adopts amendments to Chapter 79, “Real Estate Transfer Tax and Declarations of Value,” and Chapter 80, “Property Tax Credits and Exemptions,” Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXXII, No. 8, p. 944-947, on October 7, 2009, as **ARC 8224B**.

Item 1 amends subrule 79.1(3) to delete the requirement that the county recorder initial a deed to show that the real estate transfer tax has been paid.

Item 2 amends the implementation sentence for rule 701—79.1(428A).

Item 3 amends subrule 79.5(1) to update the list of property transfers that are exempt from declaration of value filing requirements.

Item 4 amends the implementation sentence for rule 701—79.5(428A).

Item 5 amends rule 701—79.6(428A) to specify that social security numbers and federal tax identification numbers on declaration of value forms are confidential and must be redacted from the declaration of value form. The implementation sentence is also amended.

Item 6 amends subrule 80.12(2) to delete the requirement that methane gas conversion property must only be used in connection with a publicly owned sanitary landfill operation to qualify for a property tax exemption and to limit the exemption for property not used in connection with a publicly owned sanitary landfill to property placed in operation between January 1, 2008, and December 31, 2012, and to further limit the exemption to a ten-year time period.

Item 7 amends the implementation sentence for rule 701—80.12(427).

Item 8 amends rule 701—80.13(427B,476B). Subrule 80.13(1) is amended to reflect the change in the statute permitting wind energy conversion property to qualify for both the production tax credit and the special valuation of the property by the local assessor. Subrule 80.13(2) is amended to clarify that if a city council or county board of supervisors has not passed an ordinance for the special valuation of wind energy conversion property, the property is to be assessed by the department of revenue. The implementation sentence is also amended.

Item 9 amends rule 701—80.26(427) to provide a property tax exemption for computers and related equipment used in the operation of a data center business. The implementation sentence is also amended.

Item 10 adopts new rule 701—80.28(404B), which provides for a tax exemption on the increase in assessed value of property attributable to the revitalization of the property in a designated disaster area.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective January 6, 2010, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code section 428A.5 as amended by 2009 Iowa Acts, Senate File 288, section 17; Iowa Code section 428A.4 as amended by 2009 Iowa Acts, Senate File 288, section 16; Iowa Code section 428A.7 as amended by 2009 Iowa Acts, House File 477, section 1; Iowa Code section 427.1(29) as amended by 2009 Iowa Acts, Senate File 478, section 224; Iowa Code sections 476B.4 and 476B.6(1) as amended by 2009 Iowa Acts, Senate File 456, sections 2 and 4; Iowa

REVENUE DEPARTMENT[701](cont'd)

Code section 427.1 as amended by 2009 Iowa Acts, Senate File 478, section 200; and 2009 Iowa Acts, Senate File 457, sections 23 through 30.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [79.1, 79.5, 79.6, 80.12, 80.13, 80.26, 80.28] is being omitted. These amendments are identical to those published under Notice as **ARC 8224B**, IAB 10/7/09.

[Filed 11/12/09, effective 1/6/10]

[Published 12/2/09]

[For replacement pages for IAC, see IAC Supplement 12/2/09.]

## **ARC 8315B**

### **VOLUNTEER SERVICE, IOWA COMMISSION ON[817]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 17A.3 and 2009 Iowa Acts, Senate File 482, the Iowa Commission on Volunteer Service hereby adopts Chapter 9, "Iowa Summer Youth Corps," and Chapter 10, "Iowa Green Corps," Iowa Administrative Code.

The purpose of these chapters is to establish procedures for the Iowa Summer Youth Corps and Iowa Green Corps programs. This adoption is the result of legislation in 2009 Iowa Acts, Senate File 482.

Notice of Intended Action was published in IAB Volume XXXII, Number 7, p. 93, on September 23, 2009, as **ARC 8159B**, and the rules were simultaneously Adopted and Filed Emergency as **ARC 8158B**. A public hearing was held on October 15, 2009, from 2 to 4 p.m. at the Iowa Department of Economic Development Main Conference Room. No persons attended the hearing or offered comments. These adopted amendments are identical to those published under Notice of Intended Action.

These rules are intended to implement 2009 Iowa Acts, Senate File 482.

These rules shall become effective January 6, 2010, at which time the Adopted and Filed Emergency rules are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Chs 9, 10] is being omitted. These rules are identical to those published under Notice as **ARC 8159B** and Adopted and Filed Emergency as **ARC 8158B**, IAB 9/23/09.

[Filed 10/29/09, effective 1/6/10]

[Published 12/2/09]

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