IOWA ADMINISTRATIVE BULLETIN

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TREASURER OF STATE

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

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
26	**Wednesday, May 26, 2010**	**June 16, 2010**
27	**Friday, June 11, 2010**	**June 30, 2010**
1	**Wednesday, June 23, 2010**	**July 14, 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, June 8, 2010, at 9:30 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Supplemental Agenda to be published in the June 2, 2010, Iowa Administrative Bulletin.

ADMINISTRATIVE SERVICES DEPARTMENT[11]

State employee retirement incentive program, 60.1(7)"k" Filed Emergency **ARC 8727B** 5/5/10
Bumping or replacement of junior employees by supervisory employees, 60.3(5)
Filed Emergency **ARC 8764B** 5/19/10

AGING, DEPARTMENT ON[17]

Long-term care resident's advocate/ombudsman, 8.1 to 8.7 Notice **ARC 8772B** 5/19/10

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Chronic wasting disease—monitoring, 65.9(2) Notice **ARC 8754B** 5/19/10

CIVIL RIGHTS COMMISSION[161]

Rules of practice, 1.1(1), 1.2, 1.5 Filed **ARC 8749B** 5/5/10
Definition of "administratively closed," 2.1(10)"a" Filed **ARC 8746B** 5/5/10
Definitions relating to types of mail, 2.1(14) to 2.1(16) Filed **ARC 8748B** 5/5/10
Definitions relating to electronic filing, 2.1(17) to 2.1(19) Filed **ARC 8747B** 5/5/10
Filing of a complaint; update of bases for prohibition of discrimination, 3.3(1), 6.2(1), 9.5(2), 10.2 Filed **ARC 8744B** 5/5/10
Complaint process, 3.5, 3.6 Filed **ARC 8743B** 5/5/10
Conditions precedent to right to sue, 3.10(2) Filed **ARC 8742B** 5/5/10
Mediation, 3.11 Filed **ARC 8741B** 5/5/10
Complaint process—filing of documents, questionnaire, 3.12(1)"a" and "b" Filed **ARC 8740B** 5/5/10
Preliminary screening process, 3.12(1)"e" Filed **ARC 8739B** 5/5/10
Investigation and cause determination; role of administrative law judge, 3.13 Filed **ARC 8738B** 5/5/10
Complaint process—textual revisions, 3.14, 3.16 Filed **ARC 8745B** 5/5/10
Arbitration, rescind 3.17 Filed **ARC 8750B** 5/5/10
Contested cases—clarification of wording, 4.28(1), 4.31 Filed **ARC 8737B** 5/5/10
Discrimination in employment—applicability, ch 8 preamble, 8.46 Filed **ARC 8735B** 5/5/10
Discrimination in employment—elimination of outdated rules, rescind 8.1 to 8.7 Filed **ARC 8734B** 5/5/10
Discrimination in employment—clarification of provisions, 8.47(1) Filed **ARC 8736B** 5/5/10
Update of commission address, 11.3(1), 15.3 Filed **ARC 8733B** 5/5/10

HISTORICAL DIVISION[223]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"

Historic preservation and cultural and entertainment district tax credits—certification of project commencement, 48.10 Notice **ARC 8721B** 5/5/10

HUMAN SERVICES DEPARTMENT[441]

Medicaid members—brokerage program for provision of nonemergency medical transportation, 7.1, 78.13, 81.10(5)"b" and "d" Notice **ARC 8756B** 5/19/10
Replacement of electronic benefits transfer (EBT) cards, 65.4(2)"b" Notice **ARC 8719B** 5/5/10
Food assistance—methodology for standard utility allowance, 65.8 Notice **ARC 8758B** 5/19/10
Food assistance work requirements, 65.28 Filed Emergency After Notice **ARC 8712B** 5/5/10
Annual adjustment to premiums for employed people with disabilities, 75.1(39)"b"(3)
Filed Without Notice **ARC 8713B** 5/5/10
Medicaid coverage, 78.1(16), 78.10(2)"d," 78.28(1)"g" Filed Emergency After Notice **ARC 8714B** 5/5/10
Medical assistance—coverage for oxygen and nutritional products, 78.10 Notice **ARC 8722B** 5/5/10
Child care quality rating system, ch 118 preamble, 118.1 to 118.5, 118.7, 118.8 Notice **ARC 8757B** 5/19/10
Redetermination of foster group care costs, 156.9(1)"d" Filed **ARC 8715B** 5/5/10
Juvenile detention home—eligible costs for reimbursement, 167.1, 167.3, 167.5 Filed **ARC 8716B** 5/5/10
Aftercare services eligibility; PAL program eligibility and stipend, 187.2(3), 187.11(4), 187.12 Filed **ARC 8717B** 5/5/10
Foster care—independent living program, 202.11(7) Filed **ARC 8718B** 5/5/10

INSURANCE DIVISION[191]

COMMERCE DEPARTMENT[181]"umbrella"

Suitability in annuity transactions, 15.68 to 15.75 Notice **ARC 8768B** 5/19/10

IOWA FINANCE AUTHORITY[265]

Recovery zone bond allocation, ch 37 Notice **ARC 8710B**, also Filed Emergency **ARC 8709B** 5/5/10

Low-income housing tax credit program compliance monitoring manual, 12.3, 12.4 Filed **ARC 8723B** 5/5/10
Qualified midwestern disaster area bond allocation, 30.3(1)"b," 30.3(2), 30.4, 30.6 Filed **ARC 8724B** 5/5/10
Water quality financial assistance program, 33.4(1), 33.5 Filed **ARC 8725B** 5/5/10

LABOR SERVICES DIVISION[875]
WORKFORCE DEVELOPMENT DEPARTMENT[871]"umbrella"

Elevator safety board—installation of hoistway door safety retainers, 72.1(3)"a" Filed **ARC 8759B** 5/19/10
Elevator safety board—safe access to speed governors, 73.14(9) Filed **ARC 8760B**..... 5/19/10
Professional boxing; mixed martial arts, amendments to chs 173, 177 Notice **ARC 8752B**..... 5/5/10

MEDICINE BOARD[653]
PUBLIC HEALTH DEPARTMENT[641]"umbrella"

Licensure of acupuncturists, amendments to chs 8, 17 Filed **ARC 8707B** 5/5/10
Iowa physician health committee, amendments to ch 14 Notice **ARC 8751B** 5/5/10

NATURAL RESOURCE COMMISSION[571]
NATURAL RESOURCES DEPARTMENT[561]"umbrella"

General license regulations—determination of residency status, 15.2, 15.9 to 15.11 Notice **ARC 8729B**..... 5/5/10
Boating speed and distance zoning, amendments to ch 40 Notice **ARC 8728B** 5/5/10
All-terrain vehicles, off-road motorcycles and off-road utility vehicles, ch 46 Notice **ARC 8730B** 5/5/10
Snowmobiles, ch 47 Notice **ARC 8731B**..... 5/5/10
All-terrain vehicle, off-road motorcycle, off-road utility vehicle, snowmobile and vessel bonding, ch 50 Notice **ARC 8732B** 5/5/10

NATURAL RESOURCES DEPARTMENT[561]

Special nonresident deer and turkey licenses, 12.2, 12.3, 12.5 to 12.8 Filed **ARC 8753B** 5/19/10

PUBLIC HEALTH DEPARTMENT[641]

Backflow prevention assembly tester registration, 26.2, 26.4, 26.5, 26.8 Notice **ARC 8761B**..... 5/19/10
Radiation, amendments to chs 38 to 41, 45 Notice **ARC 8762B**..... 5/19/10
Dental screening, 51.1 to 51.16 Notice **ARC 8763B**..... 5/19/10
Local prescription drug donation repository—disaster emergencies, 109.12 to 109.14 Notice **ARC 8765B** 5/19/10

PUBLIC SAFETY DEPARTMENT[661]

Criminal history and fingerprint records, rescind ch 11; adopt ch 82 Notice **ARC 8769B** 5/19/10
Residential construction requirements, 301.8 Notice **ARC 8770B**, also Filed Emergency **ARC 8771B** 5/19/10
Peace officers' retirement, accident, and disability system, amend chs 400 to 402; rescind ch 404 Notice **ARC 8767B** 5/19/10

RACING AND GAMING COMMISSION[491]
INSPECTIONS AND APPEALS DEPARTMENT[481]"umbrella"

Licensees' responsibilities; gambling games; accounting and cash control, amendments to chs 5, 11, 12 Notice **ARC 8726B** 5/5/10

SECRETARY OF STATE[721]

Proposed constitutional amendment—Iowa's water and land legacy, 21.200(4) Notice **ARC 8708B** 5/5/10
Voting systems, amendments to ch 22 Notice of Termination **ARC 8773B** 5/19/10

SOIL CONSERVATION DIVISION[27]
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]"umbrella"

Financial incentive program for soil erosion control, amendments to ch 10 Filed **ARC 8766B**..... 5/19/10
Water protection projects and practices—supplemental allocation, appropriated funds, amendments to ch 12 Filed **ARC 8755B**..... 5/19/10

TRANSPORTATION DEPARTMENT[761]

Federal motor carrier safety and hazardous materials regulations, 520.1(1) Filed **ARC 8720B**..... 5/5/10

WORKFORCE DEVELOPMENT DEPARTMENT[871]

Unemployment insurance; employer records, reports, contributions and charges; claims and benefits, amendments to chs 21 to 24 Filed **ARC 8711B**..... 5/5/10

ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular, statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.
EDITOR'S NOTE: Terms ending April 30, 2011.

Senator Merlin Bartz
2081 410th Street
Grafton, Iowa 50440

Senator Thomas Courtney
2200 Summer Street
Burlington, Iowa 52601

Senator Wally Horn
101 Stoney Point Road, SW
Cedar Rapids, Iowa 52404

Senator John P. Kibbie
P.O. Box 190
Emmetsburg, Iowa 50536

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Representative David Heaton
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Representative Tyler Olson
P.O. Box 2389
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Representative Nathan Reichert
1155 Iowa Avenue
Muscatine, Iowa 52761

Representative Linda Upmeyer
2175 Pine Avenue
Garner, Iowa 50438

James Larew
Administrative Rules Coordinator
Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319
Telephone (515)281-0208

HISTORICAL DIVISION[223]

Historic preservation and cultural and entertainment district tax credits, 48.10 IAB 5/5/10 **ARC 8721B**	Tone Board Room, Third Floor West Historical Building 600 E. Locust St. Des Moines, Iowa	May 26, 2010 10 a.m.

INSURANCE DIVISION[191]

Suitability in annuity transactions, 15.68 to 15.75 IAB 5/19/10 **ARC 8768B**	Insurance Division Offices 330 Maple St. Des Moines, Iowa	June 8, 2010 10 a.m.

LABOR SERVICES DIVISION[875]

Professional boxing; mixed martial arts, amendments to chs 173, 177 IAB 5/5/10 **ARC 8752B**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	May 26, 2010 1:30 p.m. (If requested)

MEDICINE BOARD[653]

Iowa physician health committee, amendments to ch 14 IAB 5/5/10 **ARC 8751B**	Board Office, Suite C 400 SW 8th St. Des Moines, Iowa	May 25, 2010 11 a.m.

NATURAL RESOURCE COMMISSION[571]

Determination of residency status, 15.2, 15.9 to 15.11 IAB 5/5/10 **ARC 8729B**	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 1 p.m.
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All-terrain vehicles, off-road motorcycles and off-road utility vehicles, ch 46 IAB 5/5/10 **ARC 8730B**	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 2 p.m.
Snowmobiles, ch 47 IAB 5/5/10 **ARC 8731B**	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 2 p.m.
All-terrain vehicle, off-road motorcycle, off-road utility vehicle, snowmobile and vessel bonding, ch 50 IAB 5/5/10 **ARC 8732B**	Fifth Floor East Conference Room Wallace State Office Bldg. Des Moines, Iowa	May 25, 2010 2 p.m.

PUBLIC HEALTH DEPARTMENT[641]

Backflow prevention assembly tester registration, 26.2, 26.4, 26.5, 26.8 IAB 5/19/10 **ARC 8761B**	Room 524 Lucas State Office Bldg. Des Moines, Iowa	June 8, 2010 1 to 3 p.m.
Dental screening, 51.1 to 51.16 IAB 5/19/10 **ARC 8763B** **(ICN Network)**	ICN Room, Sixth Floor Lucas State Office Bldg. Des Moines, Iowa	June 8, 2010 3 to 4 p.m.

PUBLIC HEALTH DEPARTMENT[641] (Cont'd)

(ICN Network)	Room 7A, Buena Vista University 610 W. 4th St. Storm Lake, Iowa	June 8, 2010 3 to 4 p.m.
	Conference Room A Regional Health Center 1001 E. Pennsylvania Ottumwa, Iowa	June 8, 2010 3 to 4 p.m.
	Tech. Building, Red Oak High School 2011 N. 8th St. Red Oak, Iowa	June 8, 2010 3 to 4 p.m.
	Public Library 524 Parkade Cedar Falls, Iowa	June 8, 2010 3 to 4 p.m.

PUBLIC SAFETY DEPARTMENT[661]

Criminal history and fingerprint records, rescind ch 11; adopt ch 82 IAB 5/19/10 **ARC 8769B**	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	June 8, 2010 9:30 a.m.
Residential construction requirements, 301.8 IAB 5/19/10 **ARC 8770B**	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	July 6, 2010 10 a.m.
Peace officers' retirement, accident, and disability system, amend chs 400 to 402; rescind ch 404 IAB 5/19/10 **ARC 8767B**	First Floor Public Conference Room 125 Public Safety Headquarters Bldg. 215 E. 7th St. Des Moines, Iowa	June 8, 2010 9 a.m.

RACING AND GAMING COMMISSION[491]

Licensees' responsibilities; gambling games; accounting and cash control, amendments to chs 5, 11, 12 IAB 5/5/10 **ARC 8726B**	Suite B 717 E. Court Ave. Des Moines, Iowa	May 25, 2010 9:30 a.m.

The following list will be updated as changes occur.

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

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

Other autonomous agencies are included alphabetically in SMALL CAPITALS at the left-hand margin.

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AGING, DEPARTMENT ON[17]

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 2010 Iowa Acts, Senate File 2263, the Department on Aging hereby gives Notice of Intended Action to adopt amendments to Chapter 8, "Long-Term Care Resident's Advocate/Ombudsman," Iowa Administrative Code.

The proposed amendments update the chapter's purpose; remove unnecessary definitions and add new ones; remove rules on duties for the long-term care resident's advocate/ombudsman, access requirements, and department responsibilities for confidentiality, complaint referral, and the reporting system that are now covered in 2010 Iowa Acts, Senate File 2263, section 7, [Iowa Code section 231.42] or in federal law; and establish procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care resident's advocate/ombudsman.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 8, 2010. Such written suggestions or comments should be directed to the Department on Aging, Jessie M. Parker Building, 510 E. 12th Street, Des Moines, Iowa 50319; E-mailed to lisa.burk@iowa.gov; or faxed to (515)725-3300.

These amendments are intended to implement 2010 Iowa Acts, Senate File 2263.

The following amendments are proposed.

ITEM 1. Rescind rule 17—8.1(231) and adopt the following **new** rule in lieu thereof:

17—8.1(231) Purpose. This chapter establishes procedures for notice and appeal of penalties imposed for interference with the official duties of a long-term care resident's advocate/ombudsman, which are established in 2010 Iowa Acts, Senate File 2263, section 7, [Iowa Code section 231.42] and in accordance with Section 712 of the federal Older Americans Act, as codified at 42 U.S.C. Section 3058g. This chapter also establishes criteria for serving under the volunteer long-term care ombudsman program. The resident's advocates/ombudsmen investigate complaints related to the actions or inactions of long-term care providers that may adversely affect the health, safety, welfare, or rights of residents and tenants who reside in long-term care facilities, assisted living programs, and elder group homes.

ITEM 2. Rescind rule 17—8.2(231) and adopt the following **new** rule in lieu thereof:

17—8.2(231) Definitions.

"Access" means the term defined in 2010 Iowa Acts, Senate File 2263, section 7 [Iowa Code section 231.42(5)].

"Assisted living program" means a program defined in Iowa Code section 231C.2 and certified under Iowa Code chapter 231C.

"Civil penalty" means a civil money penalty not to exceed the amount authorized under 2010 Iowa Acts, Senate File 2263, section 7 [Iowa Code section 231.41(7)*"a"*].

"Department" means the Iowa department on aging.

"Director" means the director of the department on aging.

"Elder group home" means a home defined in Iowa Code section 231B.1 and certified under Iowa Code chapter 231B.

"Long-term care facility" means a long-term care unit of a hospital or a facility licensed under Iowa Code section 135C.1 whether the facility is public or private.

"Long-term care resident's advocate/ombudsman" means the individual employed to carry out the duties of 2010 Iowa Acts, Senate File 2263, section 7 [Iowa Code section 231.42].

"Office of the state long-term care resident's advocate" means the office established in 2010 Iowa Acts, Senate File 2263, section 7 [Iowa Code section 231.42(1)].

"Official duties" means those duties specified in 2010 Iowa Acts, Senate File 2263, section 7, [Iowa Code sections 231.42(2) and 231.42(3)] and in the federal Older Americans Act.

"Volunteer long-term care ombudsman" means a volunteer who has successfully completed all requirements and received certification from a long-term care resident's advocate/ombudsman.

ITEM 3. Rescind rule 17—8.3(231) and adopt the following **new** rule in lieu thereof:

17—8.3(231) Interference. A local long-term care resident's advocate/ombudsman or trained volunteer who is denied access to a resident or tenant in a long-term care facility, assisted living program, or elder group home, or to medical and personal records while in the course of conducting official duties or whose work is interfered with during the course of an investigation shall report such denial or interference to the office of the state long-term care resident's advocate who will report to the director of the department on aging.

ITEM 4. Rescind rule 17—8.4(231) and adopt the following **new** rule in lieu thereof:

17—8.4(231) Monetary civil penalties—basis. The director may impose a monetary civil penalty of $1,500 on an officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who intentionally prevents, interferes with, or attempts to impede the duties of the state or a local long-term care resident's advocate/ombudsman.

ITEM 5. Rescind rule 17—8.5(231) and adopt the following **new** rule in lieu thereof:

17—8.5(231) Monetary civil penalties—notice of penalty. The department on aging shall notify the officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home in writing by certified mail of the intent to impose a civil penalty. The notice shall include, at a minimum, the following information:

1. The nature of the interference and the date the action occurred.
2. The statutory basis for the penalty.
3. The amount of the penalty.
4. The date the penalty is due.
5. Instructions for responding to the notice, including information on the individual's right to appeal.

ITEM 6. Renumber rule **17—8.6(231)** as **17—8.7(231)**.

ITEM 7. Adopt the following **new** rule 17—8.6(231):

17—8.6(231) Monetary civil penalties—appeals. An officer, owner, director, or employee of a long-term care facility, assisted living program, or elder group home who is assessed a monetary civil penalty for interference with the official duties of a long-term care resident's advocate/ombudsman may appeal the penalty by informing the department of the intent to appeal in writing within ten days after receiving a notice of penalty. Appeals shall follow the procedures set forth in 17—Chapter 13.

ITEM 8. Amend **17—Chapter 8**, implementation sentence, as follows:

These rules are intended to implement 2010 Iowa Acts, Senate File 2263, section 7 [Iowa Code ~~chapter 231~~ section 231.42].

ARC 8754B
AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

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 163.1, the Iowa Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 65, "Animal and Livestock Importation," Iowa Administrative Code.

The proposed amendment changes the time period for which an out-of-state Cervidae herd must be monitored from three years to five years. The proposed amendment also makes technical clarifications regarding the certificate of veterinary inspection for Cervidae other than chronic wasting disease susceptible Cervidae. The changes have been approved by the Farm Deer Council.

Any interested person may make written suggestions or comments on the proposed amendment on or before 4:30 p.m. on June 8, 2010. Written comments should be addressed to Margaret Thomson, Iowa Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East 9th Street, Des Moines, Iowa 50319. Comments may also be submitted by fax to (515)281-6236 or by E-mail to Margaret.Thomson@IowaAgriculture.gov.

The proposed amendment is subject to the Department's general waiver provision found at 21—Chapter 8.

This amendment is intended to implement Iowa Code section 206.16.

The following amendment is proposed.

Amend subrule 65.9(2) as follows:

65.9(2) *Chronic wasting disease.*

a. Cervidae originating from an area considered to be endemic for chronic wasting disease shall not be allowed entry into Iowa. Cervidae that originate from a herd that has had animal introductions from an area endemic to chronic wasting disease during the preceding five years shall not be allowed entry into Iowa.

b. CWD susceptible Cervidae shall only be allowed into Iowa from herds which are currently enrolled in and have satisfactorily completed at least ~~three~~ five years in an official recognized CWD monitoring program. The CWD herd number, anniversary date, expiration date, and herd status for each individual animal must be listed on the CVI.

~~*c.* One of the~~ The following ~~statements~~ statement must be accurate and listed on the CVI:

~~(1) For CWD susceptible Cervidae:~~

"All Cervidae on this certificate originate from a CWD monitored or certified herd in which these animals have been kept for at least one year or were natural additions. There has been no diagnosis, sign, or epidemiological evidence of CWD in this herd for the past five years."

~~(2)~~ *c.* ~~For~~ Cervidae other than CWD susceptible Cervidae shall be allowed into the state only from herds which are currently enrolled in an official recognized CWD monitoring program. The CWD herd number, anniversary date, expiration date, and herd status for each individual animal must be listed on the CVI. The following statement must be accurate and listed on the CVI:

"All Cervidae on this certificate originate from a CWD monitored or certified herd and have not spent any time within the past 36 months in a zoo, animal menagerie or like facility, and have not been on the same premises as a cervid herd which has been classified as a CWD infected herd, exposed herd or trace herd."

d. Each animal must have official individual identification, and all forms of identification must be listed on the certificate.

ARC 8756B

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 7, "Appeals and Hearings," Chapter 78, "Amount, Duration and Scope of Medical and Remedial Services," and Chapter 81, "Nursing Facilities," Iowa Administrative Code.

The proposed amendments revise Medicaid service requirements to allow a contracted broker to provide management and oversight of the provision of nonemergency medical transportation. Section 6083 of the Deficit Reduction Act of 2005 (DRA), Public Law 109-171, allows states to implement a brokerage program to provide nonemergency medical transportation to Medicaid members who need access to medical care but have no other means of transportation. The University of Iowa Public Policy Center published a study in 2008 recommending that Iowa Medicaid move to a single, statewide broker system for arranging transportation and paying claims.

The Department has issued request for proposal MED-10-011 to solicit proposals from vendors for a transportation brokerage. The Department intends to enter into a contract with a broker that will be responsible for arranging transportation for Medicaid members who are eligible for this benefit, negotiating rates with transportation providers, and reimbursing transportation claims. Medicaid members who qualify to receive nonemergency medical transportation will be required to make transportation arrangements through the Department's contracted broker. A member who has been denied transportation by the broker will be able to appeal this decision.

The amendments also eliminate the requirement that transportation services be available only for medical appointments outside the community in which the member lives, which is a restriction in conflict with federal regulations.

The brokerage system will not apply to:

• Medicaid providers that provide nonemergency medical transportation as a directly reimbursable service, such as federally qualified health centers and local education agencies.

• Transportation provided under a Medicaid home- and community-based services waiver.

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

Any interested person may make written comments on the proposed amendments on or before June 8, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, 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.

These amendments are intended to implement Iowa Code section 249A.4.

The following amendments are proposed.

ITEM 1. Amend rule **441—7.1(17A)**, definition of "Aggrieved person," as follows:

"Aggrieved person" means a person against whom the department has taken an adverse action. This includes a person who meets any of the following conditions:

1. and 2. No change.

3. For medical assistance, healthy and well kids in Iowa, IowaCare, family planning services, and waiver services, a person (see numbered paragraph "7" for providers):

- Whose request to be given an application was denied.
- Whose application has been denied or has not been acted on in a timely manner.
- Who has been notified that level of care requirements have not been met.
- Who has been aggrieved by a failure to take into account the appellant's choice in assignment to a coverage group.
- Who contests the effective date of assistance, services, or premium payments.
- Who contests the amount of health insurance premium payments, healthy and well kids in Iowa premium payments, Medicaid for employed people with disabilities premium payments, IowaCare premium payments, or the spenddown amount under the medically needy program.
- Who contests the amount of client participation.
- Whose claim for payment or prior authorization has been denied.
- Who has been notified that the reconsideration process has been exhausted and who remains dissatisfied with the outcome.
- Who has received notice from the medical assistance hotline that services not received or services for which an individual is being billed are not payable by medical assistance.
- Who has been notified that there will be a reduction or cancellation of assistance or waiver services.
- Who has been notified that an overpayment of benefits has been established and repayment is requested.
- Who has been denied requested nonemergency medical transportation services by the broker designated by the department pursuant to rule 441—78.13(249A) and has exhausted the grievance procedures established by the broker pursuant to 441—subrule 78.13(7).

4. to 12. No change.

ITEM 2. Rescind rule 441—78.13(249A) and adopt the following **new** rule in lieu thereof:

441—78.13(249A) Nonemergency medical transportation. Nonemergency transportation to receive medical care, including any reimbursement of transportation expenses incurred by a Medicaid member, shall be provided through the broker designated by the department pursuant to a contract between the department and the broker, as specified in this rule.

78.13(1) *Member request.* When a member needs nonemergency transportation to receive medical care provided by the Medicaid program, including any reimbursement of transportation expenses incurred by the member, the member must contact the broker in advance. The broker shall establish and publicize the procedures for members to request transportation services. The broker is required to provide transportation within 72 hours of a request only if receipt of medical care within 72 hours is medically necessary.

78.13(2) *Necessary services.* Transportation shall be provided only when the member needs transportation to receive necessary services covered by the Iowa Medicaid program from an enrolled provider, including transportation needed to obtain prescribed drugs.

78.13(3) *Access to free transportation.* Transportation shall be provided only if the member does not have access to transportation that is available at no cost to the member, such as transportation provided by volunteers, relatives, friends, social service agencies, nursing facilities, residential care centers, or any other source. EXCEPTION: If a prescribed drug is needed immediately, transportation will be provided to obtain the drug even if free delivery is available.

78.13(4) *Closest medical provider.* Transportation beyond 20 miles (one way) shall be provided only to the closest qualified provider unless:

a. The difference between the closest qualified provider and the provider requested by the member is less than 10 miles (one way); or

b. The additional cost of transportation to the provider requested by the member is medically justified based on:

(1) A previous relationship between the member and the requested provider,

(2) Prior experience of the member with closer providers, or

(3) Special expertise or experience of the requested provider.

78.13(5) *Coverage.* Based on the information provided by the member and the provisions of this rule, the broker shall arrange and reimburse for the most economical form of transportation appropriate to the needs of the member.

a. The broker may require that public transportation be used when reasonably available and the member's condition does not preclude its use.

b. The broker may arrange and reimburse for transportation by arranging to reimburse the member for transportation expenses. In that case, the member shall submit transportation expenses to the broker on Form 470-0386, Medical Transportation Claim, or an equivalent electronic form.

c. When a member is unable to travel alone due to age or due to physical or mental incapacity, the broker shall provide for the expenses of an attendant.

d. The broker shall provide for meals, lodging, and other incidental transportation expenses required for the member and for any attendant required due to the age or incapacity of the member in connection with transportation provided under this rule.

78.13(6) *Exceptions for nursing facility residents.*

a. Nonemergency medical transportation for residents of nursing facilities within 30 miles of the nursing facility (one way) shall not be provided through the broker but shall be the responsibility of the nursing facility.

b. Nonemergency medical transportation for residents of nursing facilities beyond 30 miles from the nursing facility (one way) shall be provided through the broker, but the nursing facility shall contact the broker on behalf of the resident.

78.13(7) *Grievances.* Pursuant to its contract with the department, the broker shall establish an internal grievance procedure for members and transportation providers. Members who have exhausted the grievance process may appeal to the department pursuant to 441—Chapter 7 as an "aggrieved person." For transportation providers, the grievance process shall end with binding arbitration, with a designee of the Iowa Medicaid enterprise as arbitrator.

This rule is intended to implement Iowa Code section 249A.4.

ITEM 3. Amend paragraphs **81.10(5)"b"** and **"d"** as follows:

b. The facility shall arrange for nonemergency transportation for members to receive necessary medical services outside the facility.

(1) If a family member, friend, or volunteer is not available to provide the transportation at no charge, the facility shall arrange and pay for the medically necessary transportation within 30 miles of the facility (one way).

(2) For medically necessary transportation beyond 30 miles from the facility (one way), when no family member, friend, or volunteer is available to provide the transportation at no charge, the facility shall arrange for transportation through the broker designated by the department, with the cost to be paid by the broker pursuant to rule 441—78.13(249A).

d. Other supplies or services for which direct Medicaid payment may be available include:

(1) to (4) No change.

(5) Transportation to receive medical services ~~outside the community subject to limitations specified in rule 441—78.13(249A)~~ beyond 30 miles from the facility (one way), through the broker designated by the department pursuant to a contract between the department and the broker.

(6) No change.

ARC 8758B

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 234.6(4), the Department of Human Services proposes to amend Chapter 65, "Food Assistance Program Administration," Iowa Administrative Code.

The proposed amendments change the methodology for determining the annual changes to the standard utility allowance amounts that are given as income deductions in the Food Assistance Program. The United States Department of Agriculture Food and Nutrition Service (FNS) allows states to adjust these amounts annually based on a methodology approved by FNS. When the Department submitted its request for the October 1, 2009, adjustment, FNS approved the change but informed the Department that the current methodology would not be accepted for future years.

FNS has stated that a standardized methodology for utility allowances is being developed for consistency nationwide. That methodology has not yet been released, so these amendments do not contain details of how these changes will be made. The Department anticipates that the federal methodology will be released in time for adjustments on October 1, 2010, and that Iowa will be required to apply it. Rules may be adjusted when details become available. In general, Food Assistance policies are adopted by reference to federal regulations, so the need for rule making is determined by what options are available to the state.

These amendments do not provide for waivers in specified situations because the allowances must be approved by FNS, and the Department has no authority to waive them. Food Assistance benefits are entirely federally funded.

Any interested person may make written comments on the proposed amendments on or before June 8, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, 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.

These amendments are intended to implement Iowa Code section 234.12.

The following amendments are proposed.

ITEM 1. Amend subrule 65.8(1) as follows:

65.8(1) *Standard allowance for households with heating or air-conditioning expenses.* When a household is receiving heating or air-conditioning service for which it is required to pay all or part of the expense or receives assistance under the Low-Income Home Energy Assistance Act (LIHEAA) of 1981, the heating or air-conditioning standard shall be allowed.

a. The standard allowance for utilities which include heating or air-conditioning costs ~~is $276 effective March 1, 2005~~.

~~*b.* This allowance~~ shall change annually effective each October 1 using ~~the percent increase reported in the consumer price index monthly periodical for January for fuels and other utilities for the average percent increases for the prior year for all urban consumers United States city average~~ a methodology approved by the Food and Nutrition Service of the United States Department of Agriculture.

~~(1) Any numeral after the second digit following the decimal point will be dropped in this calculation.~~

~~(2) Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar.~~

~~(3) The cent amount will be included when calculating the next year's increase.~~

~~(4)~~ *b.* Effective October 1, 2007, two dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. Effective October 1, 2008, an additional two dollars, for a total of four dollars, will be subtracted from this amount to achieve continued cost neutrality.

ITEM 2. Amend subrule 65.8(3) as follows:

65.8(3) *Telephone standard.* When a household is receiving a standard utility allowance under subrule 65.8(1) or 65.8(5) or is solely responsible for telephone expenses, a standard allowance shall be allowed.

~~*a.* This standard shall be $36 effective March 1, 2005.~~

~~*b.*~~ This allowance shall change annually effective each October 1 using ~~the percent increase reported in the consumer price index monthly periodical for January for telephone service for the average percent increases for the prior year for all urban consumers United States city average~~ a methodology approved by the Food and Nutrition Service of the United States Department of Agriculture.

~~(1) Any numeral after the second digit following the decimal point will be dropped in this calculation.~~

~~(2) Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar.~~

~~(3) The cent amount will be included when calculating the next year's increase.~~

ITEM 3. Amend subrule 65.8(5) as follows:

65.8(5) *Standard allowance for households without heating or air-conditioning expenses.* When a household is receiving some utility service other than heating or air-conditioning for which it is responsible to pay all or part of the expense, the nonheating or air-conditioning standard shall be allowed. These utility expenses cannot be solely for telephone.

a. ~~This standard is $103 effective August 1, 1991.~~

~~*b.* Beginning October 1, 1992, this~~ This allowance shall change annually effective each October 1 using ~~the percent increase reported in the consumer price index monthly periodical for January for electric service for the average percent increases for the prior year for all urban consumers United States city average~~ a methodology approved by the Food and Nutrition Service of the United States Department of Agriculture.

~~(1) Any numeral after the second digit following the decimal point will be dropped in this calculation.~~

~~(2) Any decimal amount of .49 or under will be rounded down. Any decimal of .50 or more will be rounded up to the nearest dollar.~~

~~(3) The cent amount will be included when calculating the next year's increase.~~

~~(4)~~ *b.* Effective October 1, 2007, two dollars will be subtracted from this amount to allow for cost neutrality necessary for the standard medical expense deduction. Effective October 1, 2008, an additional two dollars, for a total of four dollars, will be subtracted from this amount to achieve continued cost neutrality.

ARC 8757B

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 234.6, the Department of Human Services proposes to amend Chapter 118, "Child Care Quality Rating System," Iowa Administrative Code.

The proposed amendments update the quality rating system by removing some criteria, adding additional criteria, and recalibrating the points within the system and the total points required for

each level. During the system's three years of operation, providers and stakeholders have brought to the Department's attention changes needed to make the awarding of points more equitable. These amendments include the following changes:

- Clarification that there are separate application forms for child development homes and for centers and preschools, to present the requirements for each provider type more clearly.
- A limit on applications for a Level 1 rating to one 24-month period. Subsequent applications by the same provider must be for a higher level.
- Removal of requirements for the child care business-partnership agreement and the director/owner survey for a Level 2 rating.
- More points required for Levels 3 to 5 to allow scoring of more variables in each category and to give more weight to facility accreditation and to higher educational achievement by staff.
- Addition of points for parent meetings and parent satisfaction surveys used to inform program practices.
- Requirement of a minimum score of 5.0 on the applicable environment rating scale to receive a Level 5 rating.

The amendments provide for a six-month transition period during which providers may apply for a quality rating under either the current standards or the new standards.

These amendments do not provide for waivers in specified situations. Providers have a variety of ways to meet the rating requirements. Requests for the waiver of any rule may be submitted under the Department's general rule on exceptions at 441—1.8(17A,217).

Any interested person may make written comments on the proposed amendments on or before June 8, 2010. Comments should be directed to Mary Ellen Imlau, Bureau of Policy Coordination, Iowa 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.

These amendments are intended to implement Iowa Code section 237A.30.

The following amendments are proposed.

ITEM 1. Amend **441—Chapter 118**, preamble, as follows:

This chapter establishes rules for the child care quality rating system, which is designed for child care programs that primarily serve children between birth and the age of 12. Participation in the quality rating system is voluntary. The chapter includes application ~~and renewal~~ procedures and standards ~~and criteria~~ for the quality rating ~~system~~.

ITEM 2. Amend rule **441—118.1(237A)**, definition of "Environment rating scale," as follows:

"Environment rating scale" means a ~~series of~~ child care program assessment ~~instruments~~ instrument (~~scales~~ scale) developed through the auspices of the Frank Porter Graham Child Development Center of the University of North Carolina at Chapel Hill. The scale is the measurement tool used by an assessor during an on-site observation of a child care classroom to evaluate and provide a score to a child care program. Scales must be administered by entities approved by the department of human services or the department's designee. Four scales are available, based on the type of program being assessed:

1. Family child care environment rating scale for programs conducted in a provider's own home for children from infancy through school age.
2. Infant/toddler environment rating scale for group programs for children from birth to 2½ years of age.
3. Early childhood environment rating scale for group programs for children of preschool through kindergarten age, 2½ to 5 years.
4. School-age care environment rating scale for group programs for children of school age, 5 to 12 years.

ITEM 3. Adopt the following **new** definition in rule **441—118.1(237A)**:

"Department" means the department of human services.

ITEM 4. Amend rule 441—118.2(237A) as follows:

441—118.2(237A) Application for quality rating. Before April 1, 2011, eligible applicants may apply for a quality rating either under subrule 118.2(1), based on the standards in rule 441—118.3(237A) or 441—118.4(237A), or under subrule 118.2(2), based on the standards in rule 441—118.5(237A) or 441—118.6(237A). Effective April 1, 2011, eligible applicants must apply for a quality rating under subrule 118.2(2), based on the standards in rule 441—118.5(237A) or 441—118.6(237A).

118.2(1) *Applications for a rating based on rule 441—118.3(237A) or 441—118.4(237A).* Eligible applicants applying under this subrule shall apply to the department ~~of human services~~ or the department's designee for a quality rating on Form 470-4229, Application for Quality Rating—Center/Preschool, or Form 470-4302, Application for Quality Rating—Child Development Home. Any required supporting documentation must be included as part of the application.

118.2(2) *Applications for a rating based on rule 441—118.5(237A) or 441—118.6(237A).* Eligible applicants shall apply to the department or the department's designee for a quality rating by submitting:

a. Form 470-4901, Quality Rating System Application for Child Development Homes, or Form 470-4902, Quality Rating System Application for Licensed Centers, Preschools, and School-Based Programs; and

b. Any required supporting documentation.

118.2(3) *Applications for a Level 1 rating.* Applications will not be accepted for a Level 1 rating from programs that have previously been rated at Level 1.

~~**118.2(1)**~~ **118.2(4)** *Change in location of facility.* ~~Participants~~ If the location of a rated program changes, the program must notify the department ~~of human services~~ or the department's designee and complete a new ~~Form 470-4229, Application for Quality Rating, if the location of the facility changes~~ application form as specified in subrule 118.2(1) or 118.2(2). The department or the department's designee shall make a new determination of the appropriate rating.

~~**118.2(2)** *Renewal.* Participants shall renew participation in the quality rating system every 24 months. To request renewal, eligible applicants shall submit Form 470-4229, Application for Quality Rating, and any required supporting documentation.~~

ITEM 5. Amend rule 441—118.3(237A), introductory paragraph, as follows:

441—118.3(237A) Rating standards for child care centers and preschools. ~~To~~ For applications submitted under subrule 118.2(1), to participate in the quality rating system, a child care center or preschool shall certify that its facility meets the applicable criteria as defined in subrule 118.3(1).

ITEM 6. Amend rule 441—118.4(237A), introductory paragraph, as follows:

441—118.4(237A) Rating criteria for child development homes. ~~To~~ For applications submitted under subrule 118.2(1), to participate in the quality rating system, a child development home provider shall certify that the home meets the applicable criteria as defined in subrule 118.4(1).

ITEM 7. Renumber rules **441—118.5(237A)** and **441—118.6(237A)** as **441—118.7(237A)** and **441—118.8(237A)**.

ITEM 8. Adopt the following **new** rules 441—118.5(237A) and 441—118.6(237A):

441—118.5(237A) Rating standards for child care centers, preschools, and programs operating under the authority of an accredited school district or nonpublic school. To participate in the quality rating system, a child care center, preschool, or program operating under the authority of an accredited school district or nonpublic school applying under subrule 118.2(2) shall certify that its facility meets the applicable criteria as defined in subrule 118.5(1).

118.5(1) *Criteria.* Criteria for each rating level are defined as follows:

a. Level 1. To be rated at Level 1, a facility must either:

(1) Have a full or provisional license from the department with no action pending to revoke or deny the license; or

(2) Operate under the authority of an accredited school district or nonpublic school.

b. Level 2. To be rated at Level 2, a facility must meet the following criteria:

(1) The facility must have a full license from the department with no action pending to revoke or deny the license or must operate under the authority of an accredited school district or nonpublic school.

(2) If eligible, the facility must participate in the child and adult care food program (CACFP), unless children are in attendance less than four hours per day and the program does not serve meals.

(3) The facility must have on duty in each room at all times at least one staff member who has completed training in mandatory reporting of child abuse, universal precautions and infectious disease control, cardiopulmonary resuscitation, and first aid as specified in 441—subrule 109.7(1) and subparagraphs 109.7(2)*"a"*(1) and (2).

(4) The facility must provide basic orientation for all staff before they begin work.

(5) All staff, including the facility's director, must complete Form 470-4234, Child Care Center Staff Self-Assessment, no more than 12 months before application for quality rating. The director must also complete Form 470-4233, Child Care Center Self-Assessment.

c. Level 3. To be rated at Level 3, a facility must meet the following criteria in addition to meeting the criteria for Level 2:

(1) The facility must earn a minimum of 14 points from the categories listed in subrules 118.5(2) through 118.5(6).

(2) The facility must earn at least one point from each category.

d. Level 4. To be rated at Level 4, a facility must meet the following criteria in addition to meeting the criteria for Level 2:

(1) The facility must earn a minimum of 23 points from the categories listed in subrules 118.5(2) through 118.5(6).

(2) The facility must earn at least one point from each category.

e. Level 5. To be rated at Level 5, a facility must meet the following criteria in addition to meeting the criteria for Level 2:

(1) The facility must earn a minimum of 28 points from the categories listed in subrules 118.5(2) through 118.5(6).

(2) The facility must earn at least one point from each category.

(3) The facility must earn a minimum score of 5.0 in each assessed classroom on the appropriate environment rating scale. An assessor approved by the department or the department's designee must perform the environment rating assessment. At least one-third of the facility's classrooms must be assessed, including at least one classroom in each age group served by the facility.

118.5(2) *Professional development.* A maximum of 30 points may be earned in the professional development category. Points are awarded as follows:

a. Credential. A maximum of five points may be earned in the credential category.

(1) Five points are awarded if the facility director has a current national administrator credential.

(2) Five points are awarded if the facility director is a school principal licensed by the Iowa board of educational examiners.

(3) Five points are awarded if a staff member has completed the two-year Head Start management acceleration program covering all aspects of Head Start management, services and systems.

b. Education and experience. A maximum of 25 points may be earned for education and experience. To arrive at the total number of points earned, each staff member shall indicate the highest applicable education and experience qualification. Points will be assigned for each staff member based on the following criteria, and the total points will be divided by the number of staff.

(1) Has a master's degree in education appropriate to the age group for whom care is provided: 25 points.

(2) Has a bachelor's degree in education appropriate to the age group for whom care is provided: 20 points.

(3) Has an associate's degree in education appropriate to the age group for whom care is provided: 10 points.

(4) Has a one-year diploma in education appropriate to the age group for whom care is provided: 8 points.

(5) Has an apprenticeship certificate: 7 points.

(6) Has a child development associate credential: 6 points.

(7) Has an Iowa board of educational examiners paraeducator certificate at level 2, early childhood, plus two years of experience in early childhood education under the supervision of a licensed early childhood teacher: 6 points.

(8) Has nine college credit hours in education specific to the age group for whom care is provided: 5 points.

(9) Has 30 hours of annual approved training beyond regulatory requirements and at least five years of experience working in a child care facility or a program operating under the authority of an accredited school district or nonpublic school: 4 points.

(10) Has 15 hours of annual approved training beyond regulatory requirements: 2 points.

118.5(3) *Health and safety.* A maximum of 12 points may be earned in the health and safety category. Points are awarded as follows:

a. Five points are awarded if the center director, assistant director, or on-site supervisor successfully completes a three-semester-hour health, safety, and nutrition class through an approved community college or four-year college.

b. Three points are awarded if the center director, assistant director, or on-site supervisor successfully completes a health and safety training approved by the department for the specific purpose of receiving points in the quality rating system.

c. Two points are awarded if the provider develops and implements an emergency preparedness plan in a format prescribed by the department.

d. Two points are awarded if the provider develops and implements enhanced health and safety policies in a format prescribed by the department.

118.5(4) *Environment.* A maximum of 27 points may be earned in the environment category. Points are awarded as follows:

a. Training and self-assessment. A maximum of nine points may be earned in training and self-assessment.

(1) Two points are awarded if the facility director or assistant director completes approved training on the use of an environment rating scale to evaluate and improve the facility before outside evaluation.

(2) Two points are awarded if, after completing approved training on how to use the environment rating scale, the facility director or assistant director completes a self-assessment and score sheet of at least one-third of the facility's classrooms, including at least one classroom in each age group served by the facility using the applicable environment rating scale.

(3) Two points are awarded if, after completing approved training on how to use the environment rating scale, the facility director or assistant director completes Form 470-4288, Child Care Center Improvement Plan, based on the environment rating scale self-assessment. Form 470-4288 must be completed for each room for which a self-assessment was completed.

(4) Three points are awarded if, after completing approved training on Iowa quality preschool program standards, the facility director or assistant director completes the Iowa quality preschool program standards self-assessment and develops a quality improvement plan.

b. Enhanced ratios. A facility may earn a maximum of three points for enhanced staff-to-child ratios. Three points are awarded if the facility meets accreditation standards for group or class size and staff-to-child ratio from an accrediting body identified at subparagraph 118.5(4)*"d"*(3) that is appropriate to the child care setting. These points may not be awarded to programs receiving points under subparagraph 118.5(4)*"d"*(3).

c. Accreditation preparation. A facility may earn a maximum of five points for accreditation preparation. Five points are awarded if the facility's accreditation self-assessment is approved by the National Association for the Education of Young Children. These points may not be awarded to programs receiving points under subparagraph 118.5(4)*"d"*(3).

d. Accreditation. A facility may earn a maximum of 18 points for accreditation. Points are awarded as follows:

(1) Five points are awarded if the program is verified by the Iowa quality preschool program standards.

(2) Six points are awarded if a Head Start program demonstrates compliance with Head Start program performance standards.

(3) Eighteen points are awarded if the facility is accredited by the National Association for the Education of Young Children, the National Afterschool Association, or another accrediting body approved by the department.

118.5(5) *Family and community partnerships.* A maximum of eight points may be earned in the family and community partnership category. Points are awarded as follows:

a. One point is awarded if the facility or the facility director is a member of a professional organization specific to the age group for whom care is provided.

b. One point is awarded if the facility provides orientation for new parents.

c. One point is awarded if the facility holds annual conferences with parents.

d. One point is awarded if the facility holds at least one parent meeting annually.

e. Two points are awarded if a parent advisory board coordinated by the facility meets quarterly.

f. Two points are awarded if the facility collects annual parent surveys and uses the results to inform program practices.

118.5(6) *Leadership and administration.* A maximum of seven points may be earned in the leadership and administration category. Points are awarded as follows:

a. Two points are awarded if the facility completes yearly written evaluations for all staff.

b. One point is awarded if the facility develops an improvement plan using Form 470-4235, Child Care Center Improvement Plan, and updates the form annually.

c. One point is awarded if all staff complete Form 470-4236, Professional Development Plan.

d. Three points are awarded if all staff who have direct contact with children complete one of the following within four months of beginning employment with the facility:

(1) The new staff orientation training delivered by Iowa state university that provides new center and preschool staff a full, program-based orientation, or

(2) Another curriculum approved by the department.

441—118.6(237A) Rating criteria for child development homes. To participate in the quality rating system, a child development home provider applying under subrule 118.2(2) shall certify that the home meets the applicable criteria as defined in subrule 118.6(1).

118.6(1) *Criteria for each rating level.*

a. Level 1. To be rated at Level 1, the home must be a registered child development home.

b. Level 2. To be rated at Level 2, the home must meet the following criteria in addition to meeting the criterion for Level 1:

(1) The provider completes and maintains ChildNet certification.

(2) The provider participates in the child and adult care food program (CACFP).

(3) The provider completes Form 470-4231, Child Development Home Professional Development Self-Assessment.

(4) The provider completes Form 470-4236, Professional Development Plan.

c. Level 3. To be rated at Level 3, the home must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The home must earn a minimum of 12 points from the categories listed in subrules 118.6(2) through 118.6(5).

(2) The home must earn at least one point from each category.

d. Level 4. To be rated at Level 4, the home must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The home must earn a minimum of 19 points from the categories listed in subrules 118.6(2) through 118.6(5).

(2) The home must earn at least one point from each category.

e. Level 5. To be rated at Level 5, the home must meet the following criteria in addition to meeting the criteria for Levels 1 and 2:

(1) The home must earn a minimum of 23 points from the categories listed in subrules 118.6(2) through 118.6(5).

(2) The home must earn at least one point from each category.

(3) The home must earn a minimum score of 5.0 on the family child care environment rating scale. An assessor approved by the department or the department's designee must perform the assessment.

118.6(2) *Professional development.* A child development home may earn a maximum of 33 points in the professional development category. For child development homes registered as Category C, points will be awarded only to the coprovider who has earned the most points. Points are awarded as follows:

a. Experience and training. A home may earn a maximum of eight points for experience and training. Points are awarded as follows:

(1) Two points are awarded if the provider has at least two years of experience working in a child care facility or a program operating under the authority of an accredited school district or nonpublic school and 10 hours of additional training per year beyond regulatory requirements.

(2) Four points are awarded if the provider has at least five years of experience working in a child care facility or a program operating under the authority of an accredited school district or nonpublic school and 20 hours of additional training per year beyond regulatory requirements.

(3) Two points are awarded if the provider successfully completes approved positive behavior support training developed by the Center on Social and Emotional Foundations for Learning (CSEFEL), which focuses on promoting effective classroom and center practices that enhance the social and emotional competency of young children.

(4) Two points are awarded if the provider successfully completes modules 1 through 4 of the program for infant and toddler care developed by WestEd and the California department of education, covering social-emotional growth and socialization, group care, learning and development, culture, and family and providers.

b. Education. A home may earn a maximum of 25 points for education. Points are awarded as follows:

(1) Twenty-five points are awarded if the provider has completed a master's degree in education appropriate to the age group for whom care is provided.

(2) Twenty points are awarded if the provider has completed a bachelor's degree in education appropriate to the age group for whom care is provided.

(3) Fifteen points are awarded if the provider has completed an associate's degree in education appropriate to the age group for whom care is provided.

(4) Twelve points are awarded if the provider has completed a one-year diploma in education appropriate to the age group for whom care is provided.

(5) Ten points are awarded if the provider has a current apprenticeship certificate.

(6) Nine points are awarded if the provider has a current child development associate credential.

(7) Eight points are awarded if the provider has completed at least nine college credit hours in education specific to the age group for whom care is provided.

118.6(3) *Health and safety.* A child development home may earn a maximum of 12 points in the health and safety category. Points are awarded as follows:

a. Five points are awarded if the provider successfully completes a three-semester-hour health, safety, and nutrition class through an approved community college or four-year college.

b. Three points are awarded if the provider successfully completes a health and safety training approved by the department for the specific purpose of receiving points in the quality rating system.

c. Two points are awarded if the provider develops and implements an emergency preparedness plan in a format prescribed by the department.

d. Two points are awarded if the provider develops and implements enhanced health and safety policies in a format prescribed by the department.

118.6(4) *Environment.* A child development home may earn a maximum of 23 points in the environment category. Points are awarded as follows:

a. Environment rating scale training and self-assessment. A home may earn a maximum of six points for environment rating scale training and self-assessment. Points are awarded as follows:

(1) Two points are awarded if the provider completes approved training on how to use the environment rating scale to assess the child development home environment.

(2) Two points are awarded if, after completing training on how to use the environment rating scale, the provider completes a self-assessment and score sheet using the environment rating scale.

(3) Two points are awarded if, after completing training on how to use the environment rating scale and completion of the environment rating scale self-assessment and score sheet, the provider completes Form 470-4232, Child Development Home Improvement Plan, based on the environment rating scale self-assessment.

b. Enhanced ratios. A home may earn a maximum of two points for enhanced staff-to-child ratios. Two points are awarded if no more than two children under the age of two are in care at any one time and no more than six children total are in care at any one time, including the provider's own children under school age.

c. Accreditation. A home may earn a maximum of 15 points for accreditation. Fifteen points are awarded if the home is accredited by the National Association for Family Child Care or another accrediting body approved by the department.

118.6(5) *Family and community partnerships.* A child development home may earn a maximum of six points in the family and community partnerships category. Points are awarded as follows:

a. One point is awarded if the provider is a member of a professional organization specific to the age group for whom care is provided.

b. One point is awarded if the provider offers an orientation for new parents.

c. One point is awarded if the provider holds annual conferences with parents.

d. One point is awarded if the provider holds at least one parent meeting annually.

e. Two points are awarded if the provider collects annual parent surveys and uses the results to inform program practices.

ITEM 9. Amend renumbered subrule 118.7(3) as follows:

118.7(3) Participants may request another quality rating for the purpose of increasing their rating no sooner than 12 months after issuance of a quality rating certificate.

ITEM 10. Adopt the following **new** subrule 118.7(4):

118.7(4) Ratings are effective for 24 months from the date of issuance.

ITEM 11. Adopt the following **new** subrule 118.8(4):

118.8(4) Ratings are effective for 24 months from the date of issuance.

ITEM 12. Amend **441—Chapter 118**, implementation sentence, as follows:

These rules are intended to implement Iowa Code section 237A.30 ~~as amended by 2005 Iowa Acts, House File 761, section 20~~.

ARC 8768B

INSURANCE DIVISION[191]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 507B.12, the Insurance Division hereby gives Notice of Intended Action to amend Chapter 15, "Unfair Trade Practices," Iowa Administrative Code.

The rules in Chapter 15 provide standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately addressed. The proposed amendments to the rules are intended to bring the rules into accord with a new model regulation drafted by the National Association of Insurance Commissioners. The Division intends that the amendments shall become effective January 1, 2011. The Division also intends that insurance companies and producers shall comply with the rules beginning January 1, 2011, for policies sold in Iowa on or after January 1, 2011.

Any interested person may make written suggestions or comments on these proposed amendments on or before June 8, 2010. Such written materials should be directed to Rosanne Mead, Assistant Insurance Commissioner, Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa 50319; fax (515)281-3059.

Also, there will be a public hearing on June 8, 2010, at 10 a.m. at the offices of the Iowa Insurance Division, 330 Maple Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

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

These amendments are intended to implement Iowa Code chapter 507B.

The following amendments are proposed.

ITEM 1. Amend rule 191—15.68(507B) as follows:

191—15.68(507B) Purpose. The purpose of these rules is to require insurers to establish a system to supervise recommendations and to set forth standards and procedures for recommendations to consumers that result in transactions involving annuity products so that the insurance needs and financial objectives of consumers at the times of the transactions are appropriately addressed. ~~The rules in this division apply to all annuities not exempted under rule 15.69(507B) that are issued on or after January 1, 2007.~~

ITEM 2. Amend rule 191—15.69(507B) as follows:

191—15.69(507B) Applicability and scope.

15.69(1) These rules shall apply to any recommendation to purchase, ~~or~~ exchange or replace an annuity made to a consumer on or after January 1, 2011, by an insurer or by an insurer where no producer is involved, that results in the purchase, ~~or~~ exchange or replacement recommended.

15.69(2) Unless otherwise specifically included, this rule shall not apply to ~~recommendations~~ transactions involving:

a. Direct-response solicitations where there is no recommendation based on information collected from the consumer pursuant to these rules.

b. No change.

INSURANCE DIVISION[191](cont'd)

ITEM 3. Amend rule **191—15.70(507B)**, definitions of "Annuity" and "Recommendation," as follows:

"Annuity" means ~~a fixed annuity or variable~~ an annuity that is an insurance product under state law, individually solicited, whether the product is classified as an individual or group annuity.

"Recommendation" means advice provided by an insurance producer, or an insurer where no producer is involved, to an individual consumer that results in a purchase, ~~or~~ exchange or replacement of an annuity in accordance with that advice.

ITEM 4. Adopt the following **new** definitions in rule **191—15.70(507B)**:

"Continuing education credit" or *"CE credit"* means one credit as defined in rule 191—11.2(505,522B).

"Continuing education provider" or *"CE provider"* means a CE provider as defined in rule 191—11.2(505,522B).

"FINRA" means the Financial Industry Regulatory Authority or a succeeding agency.

"Replacement" means a transaction in which a new policy or contract is to be purchased, and it is known or should be known to the proposing producer, or to the proposing insurer if there is no producer, that, by reason of the transaction, an existing policy or contract has been or is to be:

1. Lapsed, forfeited, surrendered or partially surrendered, assigned to the replacing insurer or otherwise terminated;
2. Converted to reduced paid-up insurance, continued as extended term insurance, or otherwise reduced in value by the use of nonforfeiture benefits or other policy values;
3. Amended so as to effect either a reduction in benefits or in the term for which coverage would otherwise remain in force or for which benefits would be paid;
4. Reissued with any reduction in cash value; or
5. Used in a financed purchase.

"Suitability information" means information that is reasonably appropriate to determine the suitability of a recommendation, including the following:

1. Age;
2. Annual income;
3. Financial situation and needs, including the financial resources used for the funding of the annuity;
4. Financial experience;
5. Financial objectives;
6. Intended use of the annuity;
7. Financial time horizon;
8. Existing assets, including investment and life insurance holdings;
9. Liquidity needs;
10. Liquid net worth;
11. Risk tolerance; and
12. Tax status.

ITEM 5. Amend subrules 15.71(1) and 15.71(2) as follows:

15.71(1) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the insurance producer, or the insurer where no producer is involved, shall have reasonable grounds for believing that the recommendation is suitable for the consumer on the basis of the facts disclosed by the consumer as to the consumer's investments and other insurance products and as to the consumer's financial situation and needs~~.~~, including the consumer's suitability information, and that there is a reasonable basis to believe all of the following:

a. The consumer has been reasonably informed of various features of the recommended annuity, such as: the potential surrender period and surrender charge; potential tax penalty if the consumer sells, exchanges, surrenders or annuitizes the annuity; mortality and expense fees; investment advisory fees;

potential charges for and features of riders; limitations on interest returns; insurance and investment components; and market risk;

b. The consumer would benefit from certain features of the annuity, such as tax-deferred growth, annuitization, death benefit, or living benefit;

c. The particular annuity as a whole, the underlying subaccounts to which funds are allocated at the time of purchase or exchange of the annuity, and riders and similar product enhancements, if any, are suitable (and in the case of an exchange or replacement, the transaction as a whole is suitable) for the particular consumer based on the consumer's suitability information; and

d. In the case of an exchange or replacement of an annuity, the exchange or replacement is suitable, including taking into consideration whether:

(1) The consumer will incur a surrender charge, be subject to the commencement of a new surrender period, lose existing benefits (such as death benefit, living benefit, or other contractual benefits), or be subject to increased fees, investment advisory fees or charges for riders and similar product enhancements;

(2) The consumer would benefit from product enhancements and improvements; and

(3) The consumer has had another annuity exchange or replacement and, in particular, an exchange or replacement within the preceding 36 months.

15.71(2) Prior to the execution of a purchase, ~~or~~ exchange or replacement of an annuity resulting from a recommendation, an insurance producer, or an insurer where no producer is involved, shall make reasonable efforts to obtain the consumer's suitability information ~~concerning:~~.

~~*a.* The consumer's financial status;~~

~~*b.* The consumer's tax status;~~

~~*c.* The consumer's investment objectives; and~~

~~*d.* Such other information used or considered to be reasonable by the insurance producer, or the insurer where no producer is involved, in making recommendations to the consumer.~~

ITEM 6. Rescind subrules **15.71(3)** to **15.71(5)**.

ITEM 7. Adopt the following **new** subrules 15.71(3) to 15.71(8):

15.71(3) Except as permitted under subrule 15.71(4), an insurer shall not issue an annuity recommended to a consumer unless there is a reasonable basis to believe the annuity is suitable based on the consumer's suitability information.

15.71(4) Exceptions.

a. Except as provided under paragraph 15.71(4)*"b,"* neither an insurance producer, nor an insurer, shall have any obligation to a consumer under subrule 15.71(1) or 15.71(3) related to any annuity transaction if:

(1) No recommendation is made;

(2) A recommendation was made and was later found to have been prepared based on inaccurate material information provided by the consumer;

(3) A consumer refuses to provide relevant suitability information and the annuity transaction is not recommended; or

(4) A consumer decides to enter into an annuity transaction that is not based on a recommendation of the insurer or the insurance producer.

b. An insurer's issuance of an annuity subject to paragraph 15.71(4)*"a"* shall be reasonable under all the circumstances actually known to the insurer at the time the annuity is issued.

15.71(5) An insurance producer or, where no insurance producer is involved, the responsible insurer representative, shall at the time of sale:

a. Make a record of any recommendation subject to subrule 15.71(1);

b. Obtain a customer-signed statement documenting a customer's refusal to provide suitability information, if any; and

c. Obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if a customer decides to enter into an annuity transaction that is not based on the insurance producer's or insurer's recommendation.

15.71(6) Insurers' duties to supervise.

a. An insurer shall establish a supervision system that is reasonably designed to achieve the insurer's and its insurance producers' compliance with rules 191—15.68(507B) through 191—15.75(507B) including, but not limited to, the following:

(1) The insurer shall maintain reasonable procedures to inform its insurance producers of the requirements of these rules and shall incorporate the requirements of these rules into relevant insurance producer training manuals;

(2) The insurer shall establish standards for insurance producer product training and shall maintain reasonable procedures to require its insurance producers to comply with the requirements of rule 191—15.72(507B);

(3) The insurer shall provide product-specific training and training materials which explain all material features of its annuity products to its insurance producers;

(4) The insurer shall maintain procedures for review of each recommendation prior to issuance of an annuity that are designed to ensure that there is a reasonable basis to determine that a recommendation is suitable. Such review procedures may apply a screening system for the purpose of identifying selected transactions for additional review and may be accomplished electronically or through other means including, but not limited to, physical review. Such an electronic or other system may be designed to require additional review only of those transactions identified for additional review by the selection criteria;

(5) The insurer shall maintain reasonable procedures to detect recommendations that are not suitable. These procedures may include, but are not limited to, confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters and programs of internal monitoring. Nothing in this subparagraph prevents an insurer from complying with this subparagraph by applying sampling procedures or by confirming suitability information after issuance or delivery of the annuity; and

(6) The insurer shall annually provide a report to senior management, including to the senior manager responsible for audit functions, which details a review, with appropriate testing, reasonably designed to determine the effectiveness of the supervision system, the exceptions found, and corrective action taken or recommended, if any.

b. Third-party supervisor.

(1) Nothing in this subrule restricts an insurer from contracting for performance of a function (including maintenance of procedures) required under paragraph 15.71(6)*"a."* An insurer is responsible for taking appropriate corrective action and may be subject to sanctions and penalties pursuant to rule 191—15.73(507B) regardless of whether the insurer contracts for performance of a function and regardless of the insurer's compliance with subparagraph 15.71(6)*"b"*(2).

(2) An insurer's supervision system under paragraph 15.71(6)*"a"* shall include supervision of contractual performance under this subrule including, but not limited to, the following:

1. Monitoring and, as appropriate, conducting audits to assure that the contracted function is properly performed; and

2. Annually obtaining a certification from a senior manager who has responsibility for the contracted function that the manager has a reasonable basis to represent, and does represent, that the function is properly performed.

c. An insurer is not required to include in its system of supervision an insurance producer's recommendations to consumers of products other than the annuities offered by the insurer.

15.71(7) An insurance producer shall not dissuade, or attempt to dissuade, a consumer from:

a. Truthfully responding to an insurer's request for confirmation of suitability information;

b. Filing a complaint; or

c. Cooperating with the investigation of a complaint.

15.71(8) Compliance with FINRA.

a. Sales made in compliance with FINRA requirements pertaining to suitability and supervision of annuity transactions shall satisfy the requirements under these rules. This subrule applies to FINRA member broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision

are similar to those applied to variable annuity sales. However, nothing in this subrule shall limit the insurance commissioner's ability to enforce (including investigate) the provisions of this regulation.

b. For paragraph 15.71(8)*"a"* to apply, an insurer shall:

(1) Monitor the FINRA member broker-dealer using information collected in the normal course of an insurer's business; and

(2) Provide to the FINRA member broker-dealer information and reports that are reasonably appropriate to assist the FINRA member broker-dealer to maintain its supervision system.

ITEM 8. Renumber rules **191—15.72(507B)** and **191—15.73(507B)** as **191—15.73(507B)** and **191—15.74(507B)**.

ITEM 9. Adopt the following **new** rule 191—15.72(507B):

191—15.72(507B) Insurance producer training.

15.72(1) An insurance producer shall not solicit the sale of an annuity product unless the insurance producer has adequate knowledge of the product to recommend the annuity and the insurance producer is in compliance with the insurer's standards for product training. An insurance producer may rely on insurer-provided product-specific training standards and materials to comply with this subrule.

15.72(2) Training required.

a. One-time course.

(1) An insurance producer who engages in the sale of annuity products shall complete a one-time four-credit training course approved by the Iowa insurance division and provided by an education provider approved by the insurance division.

(2) Insurance producers may not engage in the sale of annuities until the annuity training course required under this rule has been completed.

b. The minimum length of the training required under this rule shall be sufficient to qualify for at least four CE credits, but may be longer.

c. The training required under this rule shall include information on the following topics:

(1) The types of annuities and various classifications of annuities;

(2) Identification of the parties to an annuity;

(3) How fixed, variable and indexed annuity contract provisions affect consumers;

(4) The application of income taxation of qualified and nonqualified annuities;

(5) The primary uses of annuities;

(6) Appropriate sales practices; and

(7) Replacement and disclosure requirements.

d. Providers of courses intended to comply with this rule shall cover all topics listed in the prescribed outline and shall not present any marketing information or provide training on sales techniques or provide specific information about a particular insurer's products. Additional topics may be offered in conjunction with and in addition to the required outline.

e. A provider of an annuity training course intended to comply with this rule shall register as a CE provider in this state and comply with the rules and guidelines applicable to insurance producer continuing education courses as set forth in 191—Chapter 11.

f. Annuity training courses may be conducted and completed by classroom or self-study methods in accordance with 191—Chapter 11.

g. Providers of annuity training shall comply with the reporting requirements and shall issue certificates of completion in accordance with 191—Chapter 11.

h. Satisfaction of the training requirements of another state that are substantially similar to the provisions of this subrule shall be deemed to satisfy the training requirements of this subrule in this state.

i. An insurer shall verify that an insurance producer has completed the annuity training course required under this subrule before allowing the producer to sell an annuity product for that insurer. An insurer may satisfy its responsibility under this subrule by obtaining certificates of completion of the training course or obtaining reports provided by Iowa insurance commissioner-sponsored database

systems or vendors or from a reasonably reliable commercial database vendor that has a reporting arrangement with approved continuing education providers.

ITEM 10. Amend renumbered rule 191—15.73(507B) as follows:

191—15.73(507B) ~~Mitigation of responsibility~~ Compliance; mitigation; penalties.

15.73(1) ~~The~~ An insurer is responsible for compliance with this regulation. If a violation occurs, either because of the action or inaction of the insurer or its insurance producer, the commissioner may order:

a. An insurer to take reasonably appropriate corrective action for any consumer harmed by the insurer's, or by its insurance producer's, violation of the rules of this division;

b. ~~An~~ A general agency, independent agency or the insurance producer to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the rules of this division; and

c. ~~A general agency or independent agency that employs or contracts with an insurance producer to sell or solicit the sale of annuities to consumers, to take reasonably appropriate corrective action for any consumer harmed by the insurance producer's violation of the rules of this division.~~ Appropriate penalties and sanctions.

15.73(2) Any applicable penalty under Iowa Code chapter 507B for a violation of the rules in Division V of this chapter may be reduced or eliminated if corrective action for the consumer was taken promptly after a violation was discovered or the violation was not part of a pattern or practice.

ARC 8761B

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 135K.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 26, "Backflow Prevention Assembly Tester Registration," Iowa Administrative Code.

The proposed amendments update references; add a periodic review of training courses and third-party certification programs; add additional grounds for denial of registration and discipline of a registered tester, including criminal history and discipline in another jurisdiction; add additional grounds for denial or revocation of approval for a training course; and raise registration fees and fees for trainers.

These proposed amendments have been reviewed by select individuals within the industry and posted on the Department's Web site.

Following is a summary of the major changes from the existing chapter:

The registration fee is increased from $60 to $72 for a biennial registration. The registration renewal period is changed from August-September to July-September in odd-numbered years. The training course review fee is raised from $100 to $200. A notification fee for courses to be held is increased from $25 to $50.

Training organizations are required to resubmit course information every five years. Third-party certification organizations are required to resubmit program information every five years.

Additional grounds for denial of registration and discipline are added, including fraud in obtaining registration, criminal history, and discipline in another jurisdiction. Additional grounds for denial or revocation of approval for a training course are added, including submission of false information, falsification of training records, and physical or sexual abuse or harassment of a student or instructor.

Any interested person may make written suggestions or comments on these amendments prior to June 8, 2010. Written materials should be directed to Michael Magnant, Department of Public Health, 321 E. 12th Street, Des Moines, Iowa 50319-0075; fax (515)281-4529; E-mail mmagnant@idph.state.ia.us.

There will be a public hearing on June 8, 2010, from 1 to 3 p.m. in Room 524, Lucas State Office Building, 321 E. 12th Street, Des Moines, at which time persons may present their views either orally or in writing.

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

These amendments are intended to implement Iowa Code chapter 135K.

The following amendments are proposed.

ITEM 1. Amend rule **641—26.2(135K)**, definitions of "ASSE" and "Backflow prevention assembly," as follows:

"ASSE" means the American Society of Sanitary Engineering, ~~28901 Clemens Road, Suite 100~~ 901 Canterbury Road, Suite A, Westlake, Ohio 44145.

"Backflow prevention assembly" for the purposes of this chapter means a device or means to prevent backflow into a potable water system for which a method of testing the device in-line has been published by the Foundation of Cross-Connection Control and Hydraulic Research at the University of Southern California.

NOTE: ~~As of May 7, 2003, the~~ The following assemblies are included under this definition. This is not intended to be an exclusive list. If new devices and test methods are introduced that meet the definition, they are included under the rules.

Backflow Prevention Assembly	Product Standards
Double Check Valve Assembly	ASSE 1015-~~99~~ 2009, AWWA C510-~~97~~ 07
Double Check Detector Assembly	ASSE 1048-~~99~~ 2009
Pressure Vacuum Breaker	ASSE 1020-~~98~~ 2004
Reduced Pressure Principle Backflow Preventer	ASSE 1013-~~99~~ 2009, AWWA 511-~~97~~ 07
Reduced Pressure Detector Assembly	ASSE 1047-~~99~~ 2009
Spill Resistant Pressure Vacuum Breaker	ASSE 1056-2001

ITEM 2. Amend paragraph **26.4(1)"a"** as follows:

a. A person or organization that plans to conduct or sponsor a backflow prevention assembly tester training course in Iowa shall apply to the department for approval of the course at least 15 days before the first time the course is held. ~~If a training course has been approved prior to May 7, 2003, the sponsor is not required to reapply for approval.~~ If a training course was approved before [insert the effective date of these amendments], the person or organization responsible for the content of the course shall resubmit the information required by 26.4(1)*"c."* The application shall include:

(1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address and telephone number.

(2) to (9) No change.

(10) A ~~$100~~ $200 nonrefundable fee.

ITEM 3. Reletter paragraphs **26.4(1)"c"** to **"f"** as **26.4(1)"d"** to **"g."**

ITEM 4. Adopt the following **new** paragraph **26.4(1)"c"**:

c. For a course approved after [insert the effective date of these amendments], the person or organization responsible for the course content shall submit to the department the information required in paragraph 26.4(1)*"a"* within 30 calendar days of the fifth anniversary of the initial approval by the department and within 30 calendar days of the anniversary date of each fifth year thereafter. For training courses approved prior to [insert the effective date of these amendments], the person or organization

responsible for the content of the course shall submit to the department the information required in paragraph 26.4(1)*"a"* within 30 calendar days of October 1, 2011, and within 30 calendar days of October 1 of each fifth year thereafter.

ITEM 5. Amend renumbered subparagraphs **26.4(1)"d"(1)** and **(4)** as follows:

(1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

(4) A ~~$25~~ $50 nonrefundable fee.

ITEM 6. Amend subparagraphs **26.4(2)"a"(1)** and **(8)** as follows:

(1) Sponsoring organization name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

(8) A ~~$25~~ $50 nonrefundable fee.

ITEM 7. Renumber subparagraphs **26.4(3)"a"(1)** to **(8)** as **26.4(3)"a"(2)** to **(9)**.

ITEM 8. Adopt the following **new** subparagraph **26.4(3)"a"(1)**:

(1) Agency name and Web site URL (if any), contact person, mailing address, E-mail address, and telephone number.

ITEM 9. Amend renumbered subparagraphs **26.4(3)"a"(2)** and **(9)** as follows:

(2) A ~~copy~~ description of the written examination and whether it is open- or closed-book and information about the arrangements for administration of the examination.

(9) A nonrefundable fee of ~~$100~~ $200.

ITEM 10. Adopt the following **new** paragraph **26.4(3)"c"**:

c. A third-party certification agency approved before [insert the effective date of these amendments] shall submit to the department the information required in paragraph 26.4(3)*"a"* on or within 30 calendar days before October 1, 2011, and on or within 30 calendar days before October 1 of each fifth year thereafter. A third-party certification agency approved after [insert the effective date of these amendments] shall submit to the department the information in paragraph 26.4(3)*"a"* on or within 30 calendar days before the fifth anniversary of the initial approval by the department and on or within 30 calendar days before the anniversary date of every fifth year thereafter.

ITEM 11. Amend subparagraph **26.5(1)"a"(3)**, Table, as follows:

Table 1

Registration Fees

Registration Month	Even Year		Odd Year	
	Fee	Registration Expiration	Fee	Registration Expiration
January - February	$~~55~~ 66	October 31 + one year	$~~25~~ 30	October 31
March - April	$~~50~~ 60	October 31 + one year	$~~20~~ 24	October 31
May - June	$~~45~~ 54	October 31 + one year	$~~15~~ 18	October 31
July - August	$~~40~~ 48	October 31 + one year	$~~70~~ 84	October 31 + two years
September - October	$~~35~~ 42	October 31 + one year	$~~65~~ 78	October 31 + two years
November - December	$~~30~~ 36	October 31	$~~60~~ 72	October 31 + one year

ITEM 12. Amend paragraph **26.5(2)"a"** as follows:

a. ~~Starting in 2005, except~~ Except as provided in subrule 26.5(1), each registered tester shall renew the registration between ~~August~~ July 1 and October 1 of each odd-numbered year. The registered tester shall submit:

(1) No change.

(2) Documentation that the registered tester has completed at least five hours of training in approved continuing education courses after October 31 of the previous odd-numbered year ~~(after June 30, 2003, for 2005)~~ or documentation that the registered tester is certified. Registered testers with

an initial registration date of January 1 or later in an odd-numbered year are not required to obtain continuing education prior to renewal in that year.

(3) A nonrefundable fee of ~~$60~~ $72.

(4) No change.

ITEM 13. Rescind subrule 26.8(1) and adopt the following **new** subrule in lieu thereof:

26.8(1) The department may deny an application for registration or renewal, may suspend or revoke a registration, or may order a registered tester not to test or repair backflow prevention assemblies when the department finds that the applicant or registered tester has committed any of the following acts:

a. Negligence or incompetence in the testing of a backflow prevention assembly, including failure to report improper application or installation of a backflow prevention assembly to the facility owner and the administrative authority.

b. Knowingly submitting a false report of a test of a backflow prevention assembly to the owner of the facility, the local administrative authority, or the department.

c. Fraud in obtaining registration or renewal including, but not limited to:

(1) Intentionally submitting false information on an application for registration or renewal;

(2) Submitting a false or forged certificate or other record of training or certification.

d. Falsification of the assembly records required by subrule 26.6(2).

e. Failure to comply with these rules and with the ordinances of an administrative authority in whose jurisdiction the registered tester tests a backflow prevention assembly.

f. Failure to pay a required registration, renewal or late fee.

g. Habitual intoxication or addiction to drugs.

h. Violating a statute of this state, another state, or the United States, without regard to its designation as either a felony or misdemeanor, which relates to backflow prevention assembly testing, including but not limited to crimes involving dishonesty, fraud, theft, controlled substances, substance abuse, assault, sexual abuse, sexual misconduct, or homicide. A copy of the record of conviction or plea of guilty is conclusive evidence of the violation.

i. Having the authorization to test backflow prevention assemblies suspended or revoked or having other disciplinary action taken by a licensing or certifying authority of another state, territory or country. A copy of the record or order of suspension, revocation or disciplinary action is conclusive evidence.

j. Knowingly making misleading, deceptive, untrue, or fraudulent representations regarding the testing of backflow prevention assemblies, or engaging in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established. Acts which may constitute unethical conduct include, but are not be limited to:

(1) Verbally or physically abusing a client or coworker.

(2) Improper sexual contact with or making suggestive, lewd, lascivious, or improper remarks or advances to a client or coworker.

ITEM 14. Rescind subrule 26.8(2) and adopt the following **new** subrule in lieu thereof:

26.8(2) The department may deny or revoke the approval for a training course or a continuing education course when it finds:

a. The lead instructor for a training course is not qualified in accordance with paragraph 26.4(1)*"f."*

b. The training course did not comply with paragraph 26.4(1)*"e."*

c. That the training course testing laboratory did not comply with paragraph 26.4(1)*"g."*

d. The organization or person applying for approval of a training or continuing education course intentionally submitted false information to the department in support of such approval.

e. The organization or person conducting or sponsoring training has falsified training or continuing education records, including issuance of a certificate or other record of training to a person who did not successfully complete a training course or who did not attend continuing education training.

f. The organization or person responsible for a training or continuing education course has permitted physical or verbal abuse or sexual harassment of a student or instructor. Sexual harassment

includes sexual advances, sexual solicitation, requests for sexual favors, and other verbal or physical conduct of a sexual nature.

g. The organization or person responsible for training courses and continuing education courses consistently fails to notify the department of such courses in a timely fashion as required by 26.4(1)*"d"* and 26.4(2)*"a"* or fails to pay the required fee.

ITEM 15. Amend subrule 26.8(4) as follows:

26.8(4) Complaints. Complaints regarding a registered tester, an approved training course or a third-party certification agency shall be made in writing and sent to the department at Iowa Department of Public Health, Division of ~~Health Protection and~~ Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. to *d.* No change.

ITEM 16. Amend paragraphs **26.8(5)"b"** and **"j"** as follows:

b. An appeal of a denial, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of receipt of the department's notice. The appeal shall be sent to Iowa Department of Public Health, Division of ~~Health Protection and~~ Environmental Health, Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the notice of denial, suspension or revocation 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 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. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

j. Any petition for judicial review of a decision and order shall be filed in the district court within 30 days after the decision and order becomes final. A copy of the notice of appeal shall be sent by certified mail, return receipt requested, or by personal service to the department at Iowa Department of Public Health, Division of ~~Health Protection and~~ Environmental Health, 321 East 12th Street, Des Moines, Iowa 50319-0075.

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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 136C.3, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 38, "General Provisions for Radiation Machines and Radioactive Materials," Chapter 39, "Registration of Radiation Machine Facilities, Licensure of Radioactive Materials and Transportation of Radioactive Materials," Chapter 40, "Standards for Protection Against Radiation," Chapter 41, "Safety Requirements for the Use of Radiation Machines and Certain Uses of Radioactive Materials," and Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," Iowa Administrative Code.

Items 1, 9, 21, 32, and 62 amend rules to reflect current federal regulations. Items 5 and 6 add electronic brachytherapy devices to subrule 38.8(1). Item 7 adds the radioactive material fee schedule to rule 641—38.8(136C) and includes a general license registration fee. Item 8 clarifies payment requirements to obtain permits for radioactive material shipments. Item 10 resolves comment #1 in Nuclear Regulatory Commission (NRC) letter to the Department dated 9/16/2009. Item 31 corrects the location of values for Sulfer-35. Item 33 clarifies the requirement for assay of doses. Item 63 ensures

proper training is completed prior to the examination. The remaining items amend the rules to meet NRC compatibility requirements.

Any interested person may make written suggestions or comments on these proposed amendments on or before June 8, 2010. Such written materials should be directed to Chief of Bureau of Radiological Health, Iowa Department of Public Health, Lucas State Office Building, Fifth Floor, 321 East 12th Street, Des Moines, Iowa 50319; fax (515)281-4529; or E-mail atostleb@idph.state.ia.us.

These amendments are intended to implement Iowa Code chapter 136C.

The following amendments are proposed.

ITEM 1. Amend subrule 38.1(2) as follows:

38.1(2) All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~July 9, 2008~~ September 15, 2010.

ITEM 2. Rescind the definition of "Authorized medical physicist" in rule **641—38.2(136C)**.

ITEM 3. Amend rule **641—38.2(136C)**, definitions of "By-product material," "Total effective dose equivalent" and "Waste," as follows:

"By-product material" means:

1. ~~(1) any~~ Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material~~, and~~;

2. ~~(2) the~~ The tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "by-product material" within this definition~~.~~;

3. Any discrete source of radium-226 that is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity or any material that:

- Has been made radioactive by use of a particle accelerator; and
- Is produced, extracted, or converted after extraction, before, on, or after August 8, 2005, for use for a commercial, medical, or research activity; and

4. Any discrete source of naturally occurring radioactive material, other than source material, that:

- The Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat to the public health and safety or the common defense and security similar to the threat posed by a discrete source of radium-226; and
- Before, on, or after August 8, 2005, is extracted or converted after extraction for use in a commercial, medical, or research activity.

"Total effective dose equivalent" (TEDE) means the sum of the ~~deep~~ effective dose equivalent (for external exposures) and the committed effective dose equivalent (for internal exposures).

"Waste" means those low-level radioactive wastes containing source, special nuclear, or by-product material that are acceptable for disposal in a land disposal facility. For the purposes of this definition, low-level radioactive waste ~~has the same meaning as in the Low-Level Radioactive Waste Policy Act, P.L. 96-573, as amended by P.L. 99-240, effective January 15, 1986; that is, radioactive waste (1)~~ means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or by-product material as defined in ~~Section 11e(2) of the Atomic Energy Act (uranium or thorium tailings and waste) and (2) classified as low-level radioactive waste consistent with existing law and in accordance with (1) by the U.S. Nuclear Regulatory Commission~~ paragraphs "2," "3" and "4" of the definition of "by-product material" set forth in this chapter.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ITEM 4. Adopt the following **new** definitions of "Consortium," "Discrete source" and "Positron emission tomography (PET) radionuclide production facility" in rule **641—38.2(136C)**:

"Consortium" means an association of medical use licensees and a PET radionuclide production facility in the same geographical area that jointly own or share in the operation and maintenance cost of the PET radionuclide production facility that produces PET radionuclides for use in producing radioactive drugs within the consortium for noncommercial distributions among its associated members for medical use. The PET radionuclide production facility within the consortium must be located at an educational institution, a federal facility or a medical facility.

"Discrete source" means a radionuclide that has been processed so that its concentration within a material has been purposely increased for use for commercial, medical, or research activities.

"Positron emission tomography (PET) radionuclide production facility" means a facility operating a cyclotron or accelerator for the purpose of producing PET radionuclides.

ITEM 5. Amend paragraph **38.8(1)"a"** as follows:

a. Each registrant shall, at the time of registration and the anniversary date thereafter, as long as the registrant owns the radiation machine, remit to the agency a nonrefundable fee sufficient to defray the cost of registering the equipment with the department. All fees shall be paid annually in the form of a check or money order made payable to the Iowa Department of Public Health. The fees to be paid shall be in the amount computed by the following schedule:

ANNUAL FEE SCHEDULE

Type of X-ray machine	Fee per tube	Maximum fee
1. Medical	$51	$1500
2. Osteopathy	$51	$1500
3. Chiropractic	$51	$1500
4. Dentistry	$39	$1000
5. Podiatry	$39	$1000
6. Veterinary Medicine	$25	–
7. (Industrial/Nonmedical Use)	$50	–
8. Food Sterilization	$1000	–
9. Accelerators and Electronic Brachytherapy Units	$100	–
10. Electron Microscope	$20	–
11. Bone Densitometry	$25	–

Fees for radiation machines not listed in the above schedule shall not be less than $50 per unit/tube.

ITEM 6. Amend subparagraph **38.8(1)"b"(3)** as follows:

(3) Industrial and oncology accelerator registrants and electronic brachytherapy registrants shall pay for each inspection a fee of $400 for the first unit and $100 for each additional unit.

ITEM 7. Rescind subrule 38.8(2) and adopt the following **new** subrule in lieu thereof:

38.8(2) *Radioactive material fee schedule.* Fees associated with the possession and use of radioactive materials in Iowa shall not exceed those specified in 10 CFR 170.31 and 10 CFR 171.16. The following fee schedule shall apply.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

	Program Code	Category	Type	New License Fee	Inspection Priority	Annual Fee
(3.L.)	01100	AAB	Academic Type A Broad	$5,000	1	$10,500
(8.A.)	03710	CD	Civil Defense	$1,000	5	$1,000
(3.E.)	03510	I1	Irradiators, Self-Shielding <10,000 Curies	$2,000	5	$650
(3.O.)	03320	IR1	Industrial Radiography – Temporary Job Sites	$4,500	1	$4,300
(3.P.)	03120	FG	Measuring Systems – Fixed Gauge	$1,300	5	$650
(3.P.)	03121	PG	Measuring Systems – Portable Gauge	$1,300	5	$650
(3.P.)	02410	IVL	*In-Vitro* Testing Laboratory	$1,300	5	$650
(7.C.)	02230	HDR	High Dose Rate Afterloader	$2,300	1	$3,400
(7.C.)	02120	M1	Medical – Diagnostic & Therapy	$2,300	3	$1,500
(7.C.)	02121	M2	Medical – Diagnostic Only	$2,300	4	$1,200
(7.C.)	02240	MET	Medical – Diagnostic, Therapeutic, Emerging Technologies	$2,300	2	$2,000
(3.S.)	03210	PET	Accelerator-Produced RAM	$3,000	1	$4,300
(3.C.)	02500	NP	Nuclear Pharmacy	$3,000	1	$3,500
(7.C.)	02231	NV1	Nuclear Medical Van	$2,300	2	$1,800
(7.C.)	22160	PMM	Pacemaker – By-Product and/or SNM	$2,300	T	Note 5
(3.M.)	03620	RD2	Research & Development – Other	$2,500	3	$1,350
(2.C.)	11300	SM1	Source Material, Other, >150 Kilograms	$6,000	3	$2,250
(1.D.)	22120	SNM2	SNM Plutonium – Neutron Source	$1,500	5	$500
(3.P.)	03221	CAL	Calibration and W/L Tests	$1,300	5	$650
(3.P.)	03122	XRF	X-Ray Fluorescent Analyzer	$1,300	7	$650
(3.P.)	02400	VMT	Veterinary Medicine – Therapy	$1,300	3	$650
(3.B.)	03214	MD	Manufacturing/Distribution	$3,500	3	$1,800

Notes:

1 Reciprocity fee is $1,800 annually (180 days).

2 Inspection priorities are based on NRC inspection manual chapter 2800. Priority "T" is a telephonic contact and is not considered an inspection.

3 License amendment fee for all categories is $400.

4 Annual fees are due no later than September 1 of each year. A 10% late charge will be accessed per month for late payments. Licensees with more than two authorized locations of use will be charged an additional 10% of the annual fee per location.

5 Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses with the agency.

6 General license registration fee is $250 annually on registration anniversary.

ITEM 8. Amend paragraph **38.8(11)"b"** as follows:

b. All fees must be ~~received~~ paid by the ~~department~~ shipper prior to shipment. ~~Fees must be in the form of a check or money order made payable to the Iowa Department of Public Health and sent to the Iowa Bureau of Radiological Health, Lucas State Office Building, 5th Floor, Des Moines, Iowa 50319.~~ Shippers must request an application for a permit to ship radioactive material from the Iowa Department of Transportation, Office of Motor Carrier Services. Assistance may be obtained by calling the Bureau of Radiological Health at (515)281-3478. Other methods of fee payment may be considered by the department on a case-by-case basis upon request of the shipper. A request for an alternative method of payment must be made to the department prior to shipment.

ITEM 9. Amend subrule 39.1(3) as follows:

39.1(3) All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~September 2, 2009~~ September 15, 2010.

ITEM 10. Amend subparagraph **39.4(3)"c"(1)** as follows:

(1) Certain items containing radioactive material. Except for persons who apply radioactive material to or persons who incorporate radioactive material into the following products, or persons who initially transfer for sale or distribution the following products containing radioactive material, any person is exempt from the requirements for a license set forth in this chapter and from these rules to the extent that the person receives, possesses, uses, transfers, owns, or acquires the following products:

1. Timepieces or hands or dials containing not more than the following specified quantities of radioactive material and not exceeding the following specified radiation dose rate:

- 25 millicuries (925 MBq) of tritium per timepiece;
- 5 millicuries (185 MBq) of tritium per hand;
- 15 millicuries (555 MBq) of tritium per dial (bezels when used shall be considered as part of the dial);
- 100 microcuries (3.7 MBq) of promethium-147 per watch or 200 microcuries (7.4 MBq) of promethium-147 per any other timepiece;
- 20 microcuries (0.74 MBq) of promethium-147 per watch hand or 40 microcuries (1.48 MBq) of promethium-147 per other timepiece hand;
- 60 microcuries (2.22 MBq) of promethium-147 per watch dial or 120 microcuries (4.44 MBq) of promethium-147 per other timepiece dial (bezels when used shall be considered as part of the dial)~~.~~;
- One microcurie (37 kBq) of radium-226 per timepiece in intact timepieces manufactured prior to November 30, 2007.

2. The radiation dose rate from hands and dials containing promethium-147 will not exceed, when measured through 50 milligrams per square centimeter of absorber:

- For wrist watches, 0.1 millirad (1 μGy) per hour at 10 centimeters from any surface.
- For pocket watches, 0.1 millirad (1 μGy) per hour at 1 centimeter from any surface.
- For any other timepiece, 0.2 millirad (2 μGy) per hour at 10 centimeters from any surface.
- ~~One microcurie (37 kBq) of radium-226 per timepiece in timepieces acquired prior to the effective date of this rule.~~

3. to 7. No change.

Any person who desires to apply by-product material to, or to incorporate by-product material into, the products exempted in subparagraph 39.4(3)*"c"*(1), or who desires to initially transfer for sale or distribution such products containing by-product material, should apply for a specific license with the Nuclear Regulatory Commission pursuant to 10 CFR 32.14, which license states that the product may be distributed by the licensee to persons exempt from the regulations pursuant to subparagraph 39.4(3)*"c"*(1).

ITEM 11. Amend subparagraph **39.4(3)"c"(3)** as follows:

(3) Gas and aerosol detectors containing radioactive material.

1. Except for persons who manufacture, process, produce, or initially transfer for sale or distribution gas and aerosol detectors containing radioactive material, any person is exempt from the requirements for a license set forth in this chapter and from the requirements contained in 641—Chapters

38, ~~39,~~ 40, and 41 to the extent that such person receives, possesses, uses, transfers, owns, or acquires radioactive material in gas and aerosol detectors designed to protect life or property from fires and airborne hazards and manufactured, processed, produced, or initially transferred in accordance with a specific license issued by the U.S. Nuclear Regulatory Commission pursuant to Section ~~32.27~~ 32.26 of 10 CFR Part 32; or a licensing state pursuant to 39.4(29)*"c,"* which authorizes the initial transfer of the product for use under this rule.

2. to 4. No change.

ITEM 12. Amend subparagraph **39.4(22)"d"(2)** as follows:

(2) The general license in 39.4(22)*"d"*(1) applies only to radioactive material contained in devices which have been manufactured or initially transferred and labeled in accordance with the specifications contained in a specific license by this agency issued under 39.4(29)*"d"*; or an equivalent specific license issued by the NRC or an agreement state or a licensing state~~,~~; or an equivalent specific license issued by a state with provisions comparable to 39.4(29)*"d,"* which authorizes distribution of the devices. The devices must have been received from one of the specific licensees described in 39.4(22)*"d"*(2) or through a transfer made under 39.4(22)*"d"*(3).

ITEM 13. Adopt the following **new** paragraph **39.4(22)"k"**:

k. Certain items and self-luminous products containing radium-226.

(1) A general license is hereby issued to any person to acquire, receive, possess, use, or transfer, in accordance with 39.4(22)*"k"*(2), (3), and (4), radium-226 contained in the following products manufactured prior to November 30, 2007.

1. Antiquities originally intended for use by the general public. For the purposes of this subrule, "antiquities" means products originally intended for use by the general public and distributed in the late nineteenth and early twentieth centuries including, but not limited to, radium emanator jars, revigators, radium water jars, radon generators, refrigerator cards, radium bath salts, and healing pads.

2. Intact and non-intact timepieces containing greater than 1 microcurie (0.037 megabecquerel), and timepiece hands and dials no longer installed in timepieces.

3. Luminous items installed in air, marine, or land vehicles.

4. All other luminous products, provided that no more than 100 items are used or stored at the same location at any one time.

5. Small radium sources containing no more than 1 microcurie (0.037 megabecquerel) of radium-226. For the purposes of this subrule, "small radium sources" means discrete survey instrument check sources, sources contained in radiation measuring instruments, sources used in educational demonstrations (such as cloud chambers and spinthariscopes), electron tubes, lightning rods, ionization sources, static eliminators, or as designated by the agency.

(2) Persons who acquire, receive, possess, use, or transfer by-product material under the general license issued in 39.4(22)*"k"*(1) shall comply with the provisions of 641—40.95(136C) and 641—40.96(136C), but shall be exempt from the other requirements of 641—Chapter 40, to the extent that the receipt, possession, use, or transfer of by-product material is within the terms of the general license; provided, however, that this exemption shall not be deemed to apply to any such person specifically licensed under 39.4(24).

(3) Any person who acquires, receives, possesses, uses, or transfers by-product material in accordance with the general license in 39.4(22)*"k"*(1) shall:

1. Notify the agency if there is any indication of possible damage to the product which could result in a loss of the radioactive material. A report containing a brief description of the event and the remedial action taken must be furnished to the Iowa Department of Public Health, Bureau of Radiological Health, Lucas State Office Building, 5th Floor, 321 East 12th Street, Des Moines, Iowa, within 30 calendar days.

2. Not abandon products containing radium-226. The product, and any radioactive material from the product, may only be disposed of according to 641—40.77(136C) or by transfer to a person authorized by a specific license to receive the radium-226 in the product or as otherwise approved by the agency.

3. Not export products containing radium-226 except in accordance with 10 CFR Part 110.

4. Dispose of products containing radium-226 at a disposal facility authorized to dispose of radioactive material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005, by transfer to a person authorized to receive radium-226 by a specific license issued under 39.4(24), or equivalent NRC or agreement state requirements, or as otherwise approved by the agency.

5. Respond in writing to a written request from the agency to provide information relating to the general license within 30 calendar days of the request, or other time specified in the request.

(4) The general license in 39.4(22)*"k"*(1) does not authorize the manufacture, assembly, disassembly, repair, or import of products containing radium-226, except that timepieces may be disassembled and repaired.

ITEM 14. Adopt the following **new** paragraphs **39.4(24)"g"** and **"h"**:

g. An application for a specific license to use radioactive material in the form of a sealed source or in a device that contains the sealed source must either:

(1) Identify the source or device by manufacturer and model number as registered with the Nuclear Regulatory Commission under 10 CFR 32.210 or with an agreement state, or for a source or a device containing radium-226 or accelerator-produced radioactive material as registered with a state under provisions comparable to 10 CFR 32.210; or

(2) Contain the information identified in 10 CFR 32.210(c); or

(3) For sources or devices containing naturally occurring or accelerator-produced radioactive material manufactured prior to November 30, 2007, that are not registered with the Nuclear Regulatory Commission under 10 CFR 32.210 or with an agreement state, and for which the applicant is unable to provide all the categories of information specified in 10 CFR 32.210(c), the applicant must provide:

1. All available information identified in 10 CFR 32.210(c) concerning the source and, if applicable, the device; and

2. Sufficient additional information to demonstrate that there is reasonable assurance that the radiation safety properties of the source or device are adequate to protect health and minimize danger to life and property. Such information must include a description of the source or device, a description of radiation safety features, the intended use and associated operating experience, and the results of a current leak test.

h. An application from a medical facility or an educational institution to produce positron emission tomography (PET) radioactive drugs for noncommercial transfer to licensees in the facility's or educational institution's consortium authorized for medical use under 641—41.2(136C) or equivalent NRC or agreement state requirements shall include:

(1) A request for authorization for the production of PET radionuclides or evidence of an existing license issued under this chapter or equivalent NRC or agreement state requirements for a PET production facility within its consortium from which it receives PET radionuclides.

(2) Evidence that the applicant is qualified to produce radioactive drugs for medical use by meeting one of the criteria in 39.4(29)*"j"*(1)"2."

(3) Identification of the individual(s) authorized to prepare the PET radioactive drugs if the applicant is a pharmacy, and documentation that each individual meets the requirements of an authorized nuclear pharmacist as specified in 39.4(29)*"j"*(2)"2."

(4) Information identified in 39.4(29)*"j"*(1)"3" on the PET drugs to be noncommercially transferred to members of the facility's consortium.

ITEM 15. Amend paragraph **39.4(29)"f"** as follows:

f. ~~Special requirements for license to manufacture calibration sources containing americium-241, plutonium or radium-226 for distribution to persons generally licensed under 39.4(22)*"g."*~~ An application for a specific license to manufacture or initially transfer calibration ~~and~~ or reference sources containing americium-241~~, plutonium~~ or radium-226 for distribution to persons generally licensed under 39.4(22)*"g"* will be approved if:

(1) The applicant satisfies the general requirements of 39.4(25); ~~and~~

(2) The applicant ~~satisfies the requirements of Sections 32.57, 32.58, 32.59, and 32.102 of 10 CFR Part 32 and Section 70.39 of 10 CFR Part 70, or their equivalent.~~ submits sufficient information regarding each type of calibration or reference source pertinent to evaluation of the potential radiation exposure, including:

1. Chemical and physical form and maximum quantity of americium-241 or radium-226 in the source;
2. Details of construction and design;
3. Details of the method of incorporation and binding of the americium-241 or radium-226 in the source;
4. Procedures for and the results of prototype testing of sources, which are designed to contain more than 0.005 microcuries of americium-241 or radium-226, to demonstrate that the americium-241 or radium-226 contained in each source will not be released or be removed from the source under normal conditions of use;
5. Details of quality control procedures to be followed in the manufacture of the source;
6. Description of labeling to be affixed to the source or storage container for the source;
7. Any additional information, including experimental studies and tests, required by the agency to facilitate a determination of the safety of the source.

(3) Each source contains no more than 5 microcuries of americium-241 or radium-226.

(4) The agency determines, with respect to any type of source containing more than 0.005 microcuries of americium-241 or radium-226, that:

1. The method of incorporation and binding of the americium-241 or radium-226 in the source is such that the americium-241 or radium-226 will not be released or be removed from the source under normal conditions of use and handling of the source; and
2. The source has been subjected to and has satisfactorily passed the prototype tests prescribed by 10 CFR Part 32.102, Schedule C.

(5) Each person licensed under this subrule affixes to each source, or storage container for the source, a label in accordance with 10 CFR Part 32.58.

(6) Each person licensed under this subrule conducts a leak test on sealed sources in accordance with 10 CFR Part 32.59.

ITEM 16. Amend subparagraph **39.4(29)"h"(2)** as follows:

(2) The radioactive material is to be prepared for distribution in prepackaged units of:

1. to 7. No change.
8. Cobalt-57 in units not exceeding 10 microcuries (370 kBq) each.

ITEM 17. Amend subparagraph **39.4(29)"j"(1)** as follows:

(1) An application for a specific license to manufacture, prepare, or transfer for commercial distribution radioactive drugs containing by-product material for use by persons authorized pursuant to 641—41.2(136C) will be approved if:

1. No change.
2. The applicant submits evidence that the applicant is at least one of the following:

- Registered ~~or licensed~~ with the U.S. Food and Drug Administration (FDA) as the owner or operator of a drug establishment that engages in the ~~manufacturer~~ manufacture, preparation, propagation, compounding, or processing of a drug under 21 CFR 207.20(a);
- Registered or licensed with a state agency as a drug manufacturer;
- Licensed by the Iowa board of pharmacy ~~examiners~~ as a nuclear pharmacy; ~~or~~
- Operating as a nuclear pharmacy within a federal medical institution; or
- A positron emission tomography (PET) drug production facility registered or licensed with a state agency;

3. and 4. No change.

ITEM 18. Amend subparagraph **39.4(29)"j"(2)** as follows:

(2) A licensee as described by 39.4(29)*"j"*(1)"2":

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1. May prepare radioactive drugs for medical use, as defined in 641—38.2(136C), provided that the radioactive drug is prepared by either an authorized nuclear pharmacist, as specified in 39.4(29)*"j"*(2)"2" and 39.4(29)*"j"*(2)"3" or an individual under the supervision of an authorized nuclear pharmacist as specified in 641—paragraph 41.2(11)*"c."*

2. May allow a pharmacist to work as an authorized nuclear pharmacist if:

- This individual qualifies as an authorized nuclear pharmacist as defined in 641—subrule 41.2(2),
- This individual meets the requirements specified in 641—subrules 41.2(77) and 41.2(78) and the licensee has received an approved license amendment identifying this individual as an authorized nuclear pharmacist, or
- This individual is designated as an authorized nuclear pharmacist in accordance with 39.4(29)*"j"*(2)"~~2~~ 3."

3. May designate a pharmacist (as defined in 641—subrule 41.2(2)) as an authorized nuclear pharmacist if the individual ~~is identified as of July 9, 1997, as an "authorized user" on a nuclear pharmacy license issued by the agency, the Nuclear Regulatory Commission or an Agreement State~~ was a nuclear pharmacist preparing only radioactive drugs containing accelerator-produced radioactive material and the individual practiced at a pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other pharmacies before August 8, 2009, or an earlier date as noticed by the NRC.

4. No change.

5. Shall provide to the agency a copy of each individual's:

- Certification by a specialty board whose certification process has been recognized by the NRC or an agreement state as specified in 641—paragraph 41.2(78)*"a"* with the written attestation signed by a preceptor as required by 641—paragraph 41.2(78)*"c"*; or
- NRC or agreement state license; or
- ~~Permit issued by a licensee of broad scope; and~~ NRC master materials licensee permit; or
- Permit issued by a licensee or NRC master materials permittee of broad scope or authorization from a commercial nuclear pharmacy authorized to list its own authorized nuclear pharmacist; or
- Documentation that only accelerator-produced radioactive materials were used in the practice of nuclear pharmacy at a government agency or federally recognized Indian Tribe before November 30, 2007, or at all other locations of use before August 8, 2009, or an earlier date as noticed by the NRC; and
- State pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to 39.4(29)*"j"*(2)"2," first and third bulleted paragraphs, the individual to work as an authorized nuclear pharmacist.

ITEM 19. Amend subrule 39.4(32) as follows:

39.4(32) *Specific terms and conditions of licenses.*

a. to *d.* No change.

e. Each licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators or rubidium-82 from strontium-82/rubidium-82 generators shall test the generator eluates for molybdenum-99 breakthrough or strontium-82 and strontium-85 contamination, respectively, in accordance with 641—subrule 41.2(34). The licensee shall record the results of each test and retain each record for three years after the record is made.

~~*e.*~~ *f.* Each general licensee that is required to register by 39.4(21) or 39.4(22) and each specific licensee shall notify the agency in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(1) The licensee;

(2) An entity (as that term is defined in 11 U.S.C. 101(14)) controlling the licensee or listing the license or licensee as property of the estate; or

(3) An affiliate (as that term is defined in 11 U.S.C. 101(2)) of the licensee.

f. The notification specified in 39.4(32)*"e f"* shall indicate the bankruptcy court in which the petition for bankruptcy was filed and the date of the filing of the petition.

g. (1) Authorization under 39.4(29)*"h"* to produce positron emission tomography (PET) radioactive drugs for noncommercial transfer to medical use licensees in the licensee's consortium does not relieve the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

(2) Each licensee authorized under 39.4(29)*"h"* to produce PET radioactive drugs for noncommercial transfer to medical use licensees in the licensee's consortium shall:

1. Satisfy the labeling requirements in 39.4(29)*"j"*(1)"4" for each PET radioactive drug transport radiation shield and each syringe, vial, or other container used to hold a PET radioactive drug intended for noncommercial distribution to members of the licensee's consortium.

2. Possess and use instrumentation to measure the radioactivity of the PET radioactive drugs intended for noncommercial distribution to members of the licensee's consortium and meet the procedural, radioactivity measurement, instrument test, instrument check, and instrument adjustment requirements in 39.4(29)*"j"*(3).

(3) A licensee that is a pharmacy authorized under 39.4(24)*"h"* to produce PET radioactive drugs for noncommercial transfer to medical use licensees in the pharmacy's consortium shall require that any individual who prepares PET radioactive drugs shall be:

1. An authorized nuclear pharmacist who meets the requirements in 39.4(29)*"j"*(2)"2," or

2. An individual under the supervision of an authorized nuclear pharmacist as specified in 641—subrule 41.2(11).

(4) A pharmacy authorized under 39.4(29)*"j"* to produce PET radioactive drugs for noncommercial transfer to medical use licensees in the pharmacy's consortium that allows an individual to work as an authorized nuclear pharmacist shall meet the requirements in 39.4(29)*"j"*(2)"5."

ITEM 20. Adopt the following **new** radioactive material in alphabetical order in **641—Chapter 39**, Appendix G:

Radioactive Material	Release Fraction	Quantity (curies)
Radium-226	0.001	100

ITEM 21. Amend subrule 40.1(5) as follows:

40.1(5) All references to Code of Federal Regulations (CFR) in this chapter are those in effect on or before ~~July 9, 2008~~ September 15, 2010.

ITEM 22. Rescind subrule 40.15(3) and adopt the following **new** subrule in lieu thereof:

40.15(3) When the external exposure is determined by measurement with an external personal monitoring device, the deep dose equivalent must be used in place of the effective dose equivalent, unless the effective dose equivalent is determined by a dosimetry method approved by the agency. The assigned deep dose equivalent must be for the part of the body receiving the highest exposure. The assigned shallow dose equivalent must be the dose averaged over the contiguous 10 square centimeters of skin receiving the highest exposure. The deep dose equivalent, lens dose equivalent, and shallow dose equivalent may be assessed from surveys or other radiation measurements for the purpose of demonstrating compliance with the occupational dose limits, if the individual monitoring device was not in the region of highest potential exposure, or the results of individual monitoring are unavailable.

ITEM 23. Amend paragraph **40.70(1)"d"** as follows:

d. As authorized pursuant to 641—40.71(136C), 641—40.72(136C), 641—40.73(136C), ~~or~~ 641—40.74(136C), or 641—40.77(136C).

ITEM 24. Adopt the following **new** subrule 40.75(4):

40.75(4) Any licensee shipping licensed material, as defined in paragraphs "3" and "4" of the definition of "by-product material" set forth in 641—Chapter 38, intended for ultimate disposal at a land disposal facility licensed under 10 CFR Part 61 must document the information required on the

Uniform Low-Level Radioactive Waste Manifest and transfer this recorded manifest information to the intended consignee in accordance with Appendix D of this chapter.

ITEM 25. Adopt the following **new** rule 641—40.77(136C):

641—40.77(136C) Disposal of certain by-product material.

40.77(1) Licensed material, as defined in paragraphs "3" and "4" of the definition of "by-product material" set forth in 641—Chapter 38, may be disposed of in accordance with 10 CFR Part 61, even though the material is not defined as low-level radioactive waste. Therefore, any licensed by-product material being disposed of at a facility, or transferred for ultimate disposal at a facility licensed under 10 CFR Part 61, must meet the requirements of 641—40.75(136C).

40.77(2) A licensee may dispose of licensed material, as defined in paragraphs "3" and "4" of the definition of "by-product material" set forth in 641—Chapter 38, at a disposal facility authorized to dispose of such material in accordance with any federal or state solid or hazardous waste law, including the Solid Waste Disposal Act, as authorized under the Energy Policy Act of 2005.

ITEM 26. Amend subrule 40.97(3) as follows:

40.97(3) All licensees or registrants who make reports pursuant to ~~40.97(1)~~ 641—40.97(136C) or 641—40.98(136C) to the agency regarding exposure of an identified occupationally exposed individual, or of an identified member of the public, to radiation or radioactive material shall also provide a copy of the report to the individual or member of the public. Transmittal shall be at the same time as the transmittal to the agency.

ITEM 27. Rescind subrule 40.112(2) and adopt the following **new** subrule in lieu thereof:

40.112(2) Each licensee or registrant shall make dose information available to workers as shown in records maintained by the licensee or registrant under the provisions of 641—40.86(136C). The licensee or registrant shall provide to each individual monitored under 641—40.37(136C) an annual report of the dose received in that monitoring year if:

a. The individual's occupational dose exceeds 100 mrem (1 mSv) TEDE or 100 mrem (1 mSv) to any individual organ or tissue, or

b. The individual requests the individual's annual dose report.

ITEM 28. Amend subrule 40.112(4) as follows:

40.112(4) When a licensee or registrant is required pursuant to 641—40.96(136C), 641—40.97(136C), or 641—40.98(136C) to report to the agency any exposure of an individual to ~~sources of~~ radiation or radioactive material, the licensee or the registrant shall also provide the individual a report on the individual's exposure data included ~~therein~~ in the report to the agency. Such reports shall be transmitted at a time not later than the transmittal to the agency.

ITEM 29. Adopt the following **new** entries in alphabetical order in **641—Chapter 40**, Appendix B, List of Elements:

		Atomic
Name	**Symbol**	**Number**
Nitrogen	N	7
Oxygen	O	8

ITEM 30. Adopt the following **new** entries in numerical order in **641—Chapter 40**, Appendix B, Table:

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			Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	INHALATION				Monthly Average
Atomic Radio-nuclide No.		Class	ALI (μCi)	ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Concentration (μCi/ml)
7	Nitrogen-13[2]	Submersion[1]			4E-6	2E-8		
8	Oxygen-15[2]	Submersion[1]			4E-6	2E-8		

ITEM 31. Amend number **"16,"** Sulfer-35, in **641—Chapter 40**, Appendix B, Table, as follows:

			Table I Occupational Values			Table II Effluent Concentrations		Table III Releases to Sewers
			Col. 1	Col. 2	Col. 3	Col. 1	Col. 2	
			Oral Ingestion	INHALATION				Monthly Average
Atomic Radio-nuclide No.		Class	ALI (μCi)	ALI (μCi)	DAC (μCi/ml)	Air (μCi/ml)	Water (μCi/ml)	Concentration (μCi/ml)
16	Sulfer-35	Vapor	~~1E+4~~	~~6E-6~~ 1E+4	~~2E-8~~ 6E-6	2E-8		

ITEM 32. Amend paragraph **41.2(1)"b"** as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~September 2, 2009~~ September 15, 2010.

ITEM 33. Amend subrule 41.2(19) as follows:

41.2(19) *Assay of radiopharmaceutical dosages.* A licensee shall:

a. Assay, prior to medical use, the activity of each radiopharmaceutical dosage that contains ~~more than 30 microcuries (1.1 megabecquerels) of~~ a photon-emitting radionuclide;

~~*b.* Assay, before medical use, the activity of each radiopharmaceutical dosage of a photon-emitting radionuclide to verify that the dosage does not exceed 30 microcuries (1.1 MBq);~~

~~*c.*~~ *b.* Measure, by direct measurement or by combination of measurements and calculations, the activity of each dosage of an alpha- or beta-emitting radionuclide prior to medical use, except for unit dosages obtained from a manufacturer or preparer licensed pursuant to 641—paragraph 39.4(29)*"j"* or equivalent NRC or agreement state requirements;

~~*d.*~~ *c.* Not use a dosage if the dosage does not fall within the prescribed dosage range or if the dosage differs from the prescribed dosage by more than 20 percent unless otherwise directed by the authorized user; and

~~*e.*~~ *d.* Retain a record of the assays required by 41.2(19)*"a"* for three years. To satisfy this requirement, the record shall contain the:

(1) to (5) No change.

ITEM 34. Amend subrule 41.2(31) as follows:

41.2(31) *Use of unsealed radioactive material for uptake, dilution, or excretion studies for which a written directive is not required.* Except for quantities that require a written directive under 41.2(87), a licensee may use for uptake, dilution, or excretion ~~and imaging~~ studies any unsealed radioactive material prepared for medical use that ~~is either~~:

a. ~~Obtained~~ Is obtained from a manufacturer or preparer licensed pursuant to 641—paragraph 39.4(29)*"j"* or equivalent ~~U.S. Nuclear Regulatory Commission~~ NRC or agreement state