



IOWA ADMINISTRATIVE BULLETIN

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Pages 2537 to 2628

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PREFACE

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

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; and agricultural credit corporation maximum loan rates [535.12].

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

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CITATION of Administrative Rules

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

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

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

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

NOTE: In accordance with Iowa Code section 7.17, a rule number within the Iowa Administrative Code includes a reference to the statute which the rule is intended to implement: 441—79.1(249A).

Schedule for Rule Making 2010

NOTICE 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
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PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
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—dependent 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”

Licenseses’ 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
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Burlington, Iowa 52601

Senator Wally Horn
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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
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Cedar Rapids, Iowa 52406

Representative Nathan Reichert
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Muscatine, Iowa 52761

Representative Linda Upmeyer
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Garner, Iowa 50438

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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.

Boating speed and distance zoning,
amendments to ch 40
IAB 5/5/10 **ARC 8728B**

Fifth Floor East Conference Room
Wallace State Office Bldg.
Des Moines, Iowa

May 25, 2010
1 p.m.

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.
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The following list will be updated as changes occur.

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

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

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

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ARC 8772B

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.

AGING, DEPARTMENT ON[17](cont'd)

“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.

~~*e.* One of the~~ The following statements ~~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.”

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21](cont'd)

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):

HUMAN SERVICES DEPARTMENT[441](cont'd)

- 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.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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.~~

HUMAN SERVICES DEPARTMENT[441](cont'd)

(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

HUMAN SERVICES DEPARTMENT[441](cont'd)

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.

HUMAN SERVICES DEPARTMENT[441](cont'd)

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

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(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.

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(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).

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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).

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(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.

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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 insurance producer, 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.

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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;

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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.

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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

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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

INSURANCE DIVISION[191](cont'd)

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. ~~A~~ 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.

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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 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.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

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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 <u>66</u>	October 31 + one year	\$25 <u>30</u>	October 31
March - April	\$50 <u>60</u>	October 31 + one year	\$20 <u>24</u>	October 31
May - June	\$45 <u>54</u>	October 31 + one year	\$15 <u>18</u>	October 31
July - August	\$40 <u>48</u>	October 31 + one year	\$70 <u>84</u>	October 31 + two years
September - October	\$35 <u>42</u>	October 31 + one year	\$65 <u>78</u>	October 31 + two years
November - December	\$30 <u>36</u>	October 31	\$60 <u>72</u>	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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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

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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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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.

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	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	<i>In-Vitro</i> 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 assessed per month for late payments. Licensees with more than two authorized locations of use will be charged an additional 10% of the annual fee per location.
- 5 Separate annual fees will not be assessed for pacemaker licenses issued to medical institutions that also hold nuclear medicine licenses with the agency.
- 6 General license registration fee is \$250 annually on registration anniversary.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

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 μ Gy) per hour at 10 centimeters from any surface.
- For pocket watches, 0.1 millirad (1 μ Gy) per hour at 1 centimeter from any surface.
- For any other timepiece, 0.2 millirad (2 μ Gy) 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

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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.

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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~~

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(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.

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ƒ The notification specified in 39.4(32) “ef” 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

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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:

Name	Atomic	
	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			Table II		Table III
			Occupational Values			Effluent Concentrations		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			Table II		Table III
			Occupational Values			Effluent Concentrations		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 <u>1E+4</u>	2E-8 <u>6E-6</u>	<u>2E-8</u>		

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

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requirements; or from a PET radioactive drug producer licensed pursuant to 641—paragraph 39.4(24) “h” or equivalent NRC or agreement state requirements; or

~~b. Prepared~~ Excludes production of PET radionuclides, prepared by:

(1) An authorized nuclear pharmacist;
 (2) A physician who is an authorized user and who meets the requirements specified in 41.2(68) or 41.2(69) and has work experience in eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; ~~or before May 3, 2006, who meets the requirements of 10 CFR 35.290; or~~

(3) No change.

c. ~~Obtained~~ Is obtained from and prepared by an NRC or agreement state licensee for use in research in accordance with Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

d. ~~Prepared~~ Is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

ITEM 35. Amend subrule 41.2(33) as follows:

41.2(33) ~~Use of radiopharmaceuticals, generators, and reagent kits unsealed by-product material for imaging and localization studies for which a written directive is not required.~~ Except for the quantities that require a written directive under 41.2(87), a licensee may use for imaging and localization studies any unsealed by-product 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 NRC or agreement state requirements or a PET radioactive drug producer licensed pursuant to 641—paragraph 39.4(24) “h” or equivalent NRC or agreement state requirements; or

b. ~~Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements specified in 41.2(68) or 41.2(69), or an individual under the supervision of either as specified in 41.2(11);~~ Excludes production of PET radionuclides, prepared by:

(1) An authorized nuclear pharmacist;

(2) A physician who is an authorized user and who meets the requirements specified in 41.2(68) or 41.2(69);

(3) An individual under the supervision, as specified in 41.2(11), of the authorized nuclear pharmacist in 41.2(33) “b”(1) or the physician who is an authorized user in 41.2(33) “b”(2); or

c. ~~Obtained~~ Is obtained from and prepared by an NRC or agreement state licensee for use in research in accordance with Radioactive Drug Research Committee-approved protocol or an Investigational New Drug (IND) protocol accepted by FDA; or

d. ~~Prepared~~ Is prepared by the licensee for use in research in accordance with a Radioactive Drug Research Committee-approved application or an Investigational New Drug (IND) protocol accepted by FDA.

ITEM 36. Amend subrule 41.2(34) as follows:

41.2(34) ~~Permissible molybdenum-99 concentration, strontium-82, and strontium-85 concentrations.~~

a. A licensee shall not administer to humans a radiopharmaceutical ~~containing more than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m).~~ that contains:

(1) More than 0.15 microcurie of molybdenum-99 per millicurie of technetium-99m (0.15 kilobecquerel of molybdenum-99 per megabecquerel of technetium-99m); or

(2) More than 0.02 microcurie of strontium-82 per millicurie of rubidium-82 chloride injection (0.02 kilobecquerel strontium-82 per megabecquerel rubidium-82 chloride); or more than 0.02 microcurie of strontium-85 per millicurie of rubidium-82 chloride injection (0.02 kilobecquerel strontium-85 per megabecquerel rubidium-82 chloride).

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~~b. A licensee preparing technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each eluate or extract.;~~

~~(1) Technetium-99m radiopharmaceuticals from molybdenum-99/technetium-99m generators shall measure the molybdenum-99 concentration in each eluate or extract; or~~

~~(2) Rubidium-82 radiopharmaceuticals from strontium-82/rubidium-82 generators shall measure the strontium-82 and strontium-85 concentration in each eluate or extract.~~

~~c. A licensee who must measure molybdenum-99, strontium-82, or strontium-85 concentration shall retain a record of each measurement for three years. The record shall include, for each elution or extraction of technetium-99m, the measured activity of the technetium expressed in millicuries (megabecquerels), the measured activity of molybdenum expressed in microcuries (kilobecquerels), the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium (kilobecquerels of molybdenum per megabecquerel of technetium), the date of the test, and the initials of the individual who performed the test.;~~

~~(1) For each elution or extraction of technetium-99m, the ratio of the measures expressed as microcuries of molybdenum per millicurie of technetium (kilobecquerels of molybdenum per megabecquerel of technetium), the date of the test, and the initials of the individual who performed the test.~~

~~(2) For each elution or extraction of rubidium-82, the ratio of the measures expressed as microcuries of strontium-82 per millicurie of rubidium-82 (kilobecquerels of strontium-82 per megabecquerel of rubidium-82), microcuries of strontium-85 per millicurie of rubidium-82 (kilobecquerels of strontium-85 per millicurie of rubidium-82), the date of the test, and the initials of the individual who performed the test.~~

~~d. A licensee shall report immediately to the agency each occurrence of molybdenum-99 concentration exceeding the limits specified in 41.2(34)“a.” 41.2(34)“a”(1) and strontium-82 or strontium-85 concentration exceeding the limits specified in 41.2(34)“a”(2).~~

ITEM 37. Amend subrule 41.2(37) as follows:

~~41.2(37) Use of radiopharmaceuticals for therapeutic use or unsealed by-product material for which a written directive is required. Material must be~~ A licensee may use any unsealed by-product material prepared for medical use and for which a written directive is required that:

~~a. Obtained Is obtained from a manufacturer or preparer licensed by the NRC or an agreement state to manufacture and prepare by-product material for medical use; or;~~

~~(1) A manufacturer or preparer licensed under 641—paragraph 39.4(29)“j” or equivalent NRC or agreement state requirements; or~~

~~(2) A PET radioactive drug producer licensed under 641—paragraph 39.4(24)“h” or equivalent NRC or agreement state requirements; or~~

~~b. Prepared by an authorized nuclear pharmacist, a physician who is an authorized user and who meets the requirements of 41.2(68) or 41.2(69), or an individual under the supervision of either as specified in 41.2(11); or Excludes production of PET radionuclides, prepared by:~~

~~(1) An authorized nuclear pharmacist;~~

~~(2) A physician who is an authorized user and who meets the requirements of 41.2(68) or 41.2(69);~~

~~or~~

~~(3) An individual under the supervision, as specified in 41.2(11), of the authorized nuclear pharmacist in 41.2(37)“b”(1) or the physician who is an authorized user in 41.2(37)“b”(2); or~~

~~c. Obtained Is obtained from and prepared by an NRC or agreement state licensee for use in research in accordance with the Investigational New Drug (IND) protocol accepted by FDA; or~~

~~d. Prepared Is prepared by the licensee for use in research in accordance with an Investigational New Drug (IND) protocol accepted by FDA.~~

ITEM 38. Amend subparagraph **41.2(65)“a”(2)** as follows:

(2) Require all candidates for certification to:

1. No change.

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2. Have two years of either full-time practical training or supervised experience in medical physics either under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the agency, NRC, or an agreement state, or in clinical nuclear medicine facilities providing either diagnostic or therapeutic services under the direction of physicians who meet the requirements for authorized users in 41.2(68), ~~or 41.2(69), or 41.2(75)~~; and

3. No change.

ITEM 39. Amend paragraph **41.2(67)“b”** as follows:

b. Is an authorized user under 41.2(68) or 41.2(69); ~~or before May 3, 2006, meets the requirements in 10 CFR 35.190, 35.290, or 35.390, or~~ meets equivalent NRC or agreement state requirements; or

ITEM 40. Amend subparagraph **41.2(67)“c”(1)** as follows:

(1) Has completed 60 hours of training and experience, including a minimum of 8 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for uptake, dilution, and excretion studies. The training and experience must include:

1. No change.

2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(67), 41.2(68), ~~or 41.2(69), or 41.2(75) or before May 3, 2006, the requirements in 10 CFR 35.190, 35.290, or 35.390, or~~ equivalent NRC or agreement state requirements, involving:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- Calculating, measuring, and safely preparing patient or human research subject dosages;
- Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- Administering dosages of radioactive drugs to patients or human research subjects; and

ITEM 41. Amend subparagraph **41.2(67)“c”(2)** as follows:

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(67), 41.2(68), ~~or 41.2(69), or 41.2(75) or before May 3, 2006, the requirements in 10 CFR 35.190, 35.290, or 35.390, or~~ equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(67)“a”(1) or 41.2(67)“c”(1) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in 41.2(31).

ITEM 42. Amend subrule 41.2(68), introductory paragraph, as follows:

41.2(68) *Training for imaging and localization studies.* Except as provided in 41.2(75), the licensee shall require the authorized user of unsealed radioactive material ~~specified in~~ for the uses authorized under 41.2(33) to be a physician who:

ITEM 43. Amend paragraph **41.2(68)“b”** as follows:

b. Is an authorized user under 41.2(69) and meets the requirements in 41.2(68)“c”(1)“2,” seventh bulleted paragraph, ~~or before May 3, 2006, meets the requirements in 10 CFR 35.290, or~~ equivalent NRC or agreement state requirements; or

ITEM 44. Amend subparagraph **41.2(68)“c”(1)** as follows:

(1) Has completed 700 hours of training and experience, including a minimum of 80 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material for imaging and localization studies. The training and experience must include, at a minimum:

1. No change.

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2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(68); ~~or 41.2(68) "c"(1)"2," seventh bulleted paragraph, and 41.2(69); 41.2(75); or before May 3, 2006, meets the requirements in 10 CFR 35.290, or equivalent NRC or agreement state requirements,~~ involving:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- Calculating, measuring, and safely preparing patient or human research subject dosages;
- Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
- Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
- Administering dosages of radioactive drugs to patients or human research subjects; and
- Eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; and

ITEM 45. Amend subparagraph **41.2(68)“c”(2)** as follows:

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(68); ~~or 41.2(69) and 41.2(68) "c"(1)"2," seventh bulleted paragraph; 41.2(75); or before May 3, 2006, meets the requirements in 10 CFR 35.290, or equivalent NRC or agreement state requirements,~~ that the individual has satisfactorily completed the requirements in 41.2(68)“a”(1) or 41.2(68)“c”(1) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under 41.2(31) and 41.2(33).

ITEM 46. Amend subparagraph **41.2(69)“b”(1)** as follows:

(1) Has completed 700 hours of training and experience, including a minimum of 200 hours of classroom and laboratory training, in basic radionuclide handling techniques applicable to the medical use of unsealed radioactive material requiring a written directive. The training and experience must include:

1. No change.
2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(69); ~~or 41.2(75) or before May 3, 2006, meets the requirements in 10 CFR 35.390, or equivalent NRC or agreement state requirements.~~ A supervising authorized user who meets the requirements in 41.2(69)“b,”“b” ~~or before May 3, 2006, meets the requirements in 10 CFR 35.390(b)~~ must also have experience in administering dosages in the same dosage category or categories (i.e., 41.2(69)“b”(1)"2," seventh bulleted paragraph) as the individual requesting authorized user status. The work experience must involve:
 - Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
 - Calculating, measuring, and safely preparing patient or human research subject dosages;
 - Using administrative controls to prevent a medical event involving the use of unsealed radioactive material;
 - Using procedures to contain spilled radioactive material safely and using proper decontamination procedures;
 - Reserved.
 - Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

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- Oral administration of less than or equal to 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) of sodium iodide I-131, for which a written directive is required;
- Oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) of sodium iodide I-131 (experience with at least three cases in this category also satisfies the requirement in the above category);
- Parenteral administration of either any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV for which a written directive is required; or
- Parenteral administration of any other radionuclide for which a written directive is required; and

ITEM 47. Amend subparagraph **41.2(69)“b”(2)** as follows:

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(69) “a”(1) and 41.2(69) “b”(1)“2,” seventh bulleted paragraph, or 41.2(69) “b”(1), and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under 41.2(37). The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69); or 41.2(75) ~~or before May 3, 2006, meets the requirements in 10 CFR 35.390,~~ or equivalent NRC or agreement state requirements. The preceptor authorized user who meets the requirements in 41.2(69) “b,” ~~or before May 3, 2006, meets the requirements in 10 CFR 35.390(b),~~ must have experience in administering dosages in the same dosage category or categories (i.e., 41.2(69) “b”(1)“2,” seventh bulleted paragraph) as the individual requesting authorized user status.

ITEM 48. Amend paragraph **41.2(69)“c”** as follows:

c. For training only for oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) or quantities greater than 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels), see 41.2(81) or 41.2(82).

ITEM 49. Amend subrule 41.2(70), introductory paragraph, as follows:

41.2(70) Training for use of manual brachytherapy sources. Except as provided in 41.2(75), the licensee shall require an authorized user of a manual brachytherapy source for the uses authorized ~~in~~ under 41.2(43) to be a physician who:

ITEM 50. Amend paragraph **41.2(70)“b”** as follows:

b. (1) Has completed a structured educational program in basic radionuclide handling techniques applicable to the use of manual brachytherapy sources that includes:

1. No change.
2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in 41.2(70); or 41.2(75) ~~or before May 3, 2006, meets the requirements in 10 CFR 35.490,~~ or equivalent NRC or agreement state requirements at a medical institution, involving:
 - Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
 - Checking survey meters for proper operation;
 - Preparing, implanting, and removing brachytherapy sources;
 - Maintaining running inventories of material on hand;
 - Using administrative controls to prevent a medical event involving the use of radioactive material; and
 - Using emergency procedures to control radioactive material; and

(2) Has completed three years of supervised clinical experience in radiation oncology under an authorized user who meets the requirements in 41.2(70); or 41.2(75) ~~or before May 3, 2006, meets the requirements in 10 CFR 35.490,~~ or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in 41.2(70) “b”(1)“2”; and

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(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(70), or 41.2(75) or before May 3, 2006, meets the requirements in 10 CFR 35.490, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(70)“a”(1) or 41.2(70)“b”(1) and (2), and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses ~~in~~ authorized under 41.2(43).

ITEM 51. Amend paragraph **41.2(71)“a”** as follows:

a. Is an authorized user under 41.2(70); or before May 3, 2006, meets the requirements in 10 CFR 35.490 or 35.491, or equivalent NRC or agreement state requirements; or

ITEM 52. Amend subparagraph **41.2(71)“b”(3)** as follows:

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(70), or 41.2(71), or 41.2(75) or before May 3, 2006, meets the requirements in 10 CFR 35.490 or 35.491, or equivalent NRC or agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(71)“b”(1) and (2) and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

ITEM 53. Amend subrule 41.2(73), introductory paragraph, as follows:

41.2(73) *Training for use of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.* Except as provided in 41.2(75), the licensee shall require an authorized user of a sealed source for a use authorized ~~in~~ under 41.2(49) to be a physician who:

ITEM 54. Amend paragraph **41.2(73)“b”** as follows:

b. (1) Has completed a structured educational program in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical unit that includes:

1. No change.
2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in 41.2(73); or 41.2(75) or before May 3, 2006, meets the requirements in 10 CFR 35.690, or equivalent NRC or agreement state requirements at a medical institution, involving:
 - Reviewing full calibration measurements and periodic spot checks;
 - Preparing treatment plans and calculating treatment doses and times;
 - Using administrative controls to prevent a medical event involving the use of radioactive material;
 - Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
 - Checking and using survey meters; and
 - Selecting the proper dose and how it is to be administered; and

(2) Has completed three years of supervised clinical experience in radiation therapy under an authorized user who meets the requirements in 41.2(73); or 41.2(75) or before May 3, 2006, meets the requirements in 10 CFR 35.690, or equivalent NRC or agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by 41.2(73)“b”(1)“2”; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(73)“a”(1) or 41.2(73)“b”(1) and (2), and 41.2(73)“c,” and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(73); or 41.2(75) or before May 3, 2006, the requirements in 10 CFR 35.690, or equivalent NRC or agreement state requirements

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for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

ITEM 55. Amend subparagraph **41.2(74)“a”(2)** as follows:

(2) Have two years of either full-time practical training or supervised experience in medical physics:

1. No change.
2. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in 41.2(70)₂ ~~or 41.2(73)₂~~ or 41.2(75); and

ITEM 56. Amend subparagraph **41.2(74)“b”(2)** as follows:

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(74)“a”(1) and (2) and 41.2(74)“c” or 41.2(74)“b”(1) and 41.2(74)“c,” and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in 41.2(74), or 41.2(75), ~~before May 3, 2006, the requirements in 10 CFR 35.51,~~ or equivalent NRC or agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

ITEM 57. Adopt the following new paragraph **41.2(75)“c”**:

c. Individuals who need not comply with training requirements as described in this subrule may serve as preceptors for, and supervisors of, applicants seeking authorization on an agency license for the same uses for which these individuals are authorized.

ITEM 58. Amend subrule 41.2(81) as follows:

41.2(81) *Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels)*. Except as provided in 41.2(75), the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities less than or equal to 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) to be a physician who:

- a. No change.
- b. Is an authorized user under 41.2(69)“a” or “b” for uses in the oral administration of less than or equal to 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) of sodium iodide I-131 for which a written directive is required, or oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) of sodium iodide I-131; or 41.2(82) or ~~before May 3, 2006, who meets the requirements in 10 CFR 35.390, 35.392, or 35.394, or meets equivalent NRC or agreement state requirements;~~ or

c. (1) No change.

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69)“a” or “b,” 41.2(75), 41.2(81) or 41.2(82); or ~~before May 3, 2006, meets the requirements in 10 CFR 35.390, 35.392, or 35.394, or~~ equivalent NRC or agreement state requirements. A supervising authorized user who meets the requirements in 41.2(69)“b” must also have experience in administering dosages as follows: oral administration of less than or equal to 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) of sodium iodide I-131, for which a written directive is required; or oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels~~ gigabecquerels) of sodium iodide I-131. The work experience must involve:

1. to 6. No change.

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(81)“c”(1) and (2), and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under 41.2(37). The written

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attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69), 41.2(75), 41.2(81), or 41.2(82); or ~~before May 3, 2006, meets the requirements in 10 CFR 35.390, 35.392, or 35.394, or equivalent NRC or agreement state requirements.~~ A preceptor authorized user who meets the requirements in 41.2(69)“b” must also have experience in administering dosages as follows: oral administration of less than or equal to 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~) of sodium iodide I-131, for which a written directive is required; or oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~) of sodium iodide I-131.

ITEM 59. Amend subrule 41.2(82) as follows:

41.2(82) *Training for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~).* Except as provided in 41.2(75), the licensee shall require an authorized user for the oral administration of sodium iodide I-131 requiring a written directive in quantities greater than 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~) to be a physician who:

a. No change.

b. Is an authorized user under 41.2(69)“a” or “b” for oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~) of sodium iodide I-131; or ~~before May 3, 2006, meets the requirements in 10 CFR 35.390 or 35.394, or~~ meets equivalent NRC or agreement state requirements; or

c. (1) No change.

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69)“a” or “b,” 41.2(75) or 41.2(82); or ~~before May 3, 2006, meets the requirements in 10 CFR 35.390 or 35.394, or equivalent NRC or agreement state requirements.~~ A supervising authorized user who meets the requirements in 41.2(69)“b” must also have experience in oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~) of sodium iodide I-131. The work experience must involve:

1. to 5. No change.

6. Administering dosages to patients or human research subjects that include at least three cases involving the oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~) of sodium iodide I-131; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(82)“c”(1) and (2), and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in 41.2(37). The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69), 41.2(75) or 41.2(82); or ~~before May 3, 2006, meets the requirements in 10 CFR 35.390 or 35.394, or equivalent NRC or agreement state requirements.~~ A preceptor authorized user who meets the requirements in 41.2(69)“b” must also have experience in oral administration of greater than 33 millicuries (1.22 ~~Gigabecquerels gigabecquerels~~) of sodium iodide I-131.

ITEM 60. Amend subrule 41.2(87) as follows:

41.2(87) *Written directives.* Each licensee or registrant shall meet the following objectives:

a. A written directive must be dated and signed by an authorized user before the administration of I-131 sodium iodide greater than 30 microcuries, any therapeutic dosage of unsealed by-product material or any therapeutic dose of radiation from by-product material.

(1) If, because of the emergent nature of the patient’s condition, a delay in order to provide a written directive would jeopardize the patient’s health, an oral directive is acceptable.

(2) The information contained in the oral directive must be documented as soon as possible in writing in the patient’s record. A written directive must be prepared within 48 hours of the oral directive.

~~a. b.~~ Prior to administration, a written directive must contain the patient’s or human research subject’s name and the following information:

(1) and (2) No change.

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(3) For gamma stereotactic radiosurgery: ~~target coordinates, collimator size, plug pattern, and total dose~~ the total dose, treatment site, and values for the target coordinate setting per treatment for each anatomically distinct treatment site;

(4) No change.

(5) For high-dose-rate remote afterloading brachytherapy: the radioisotope, treatment site, dose per fraction, number of fractions and total dose; or

(6) For all other brachytherapy, including low-, medium-, and pulsed-dose-rate remote afterloaders:

1. Prior to implantation: treatment site, the radioisotope, number of sources, and source strengths and dose; and

2. No change.

(7) For therapeutic use of radiation machines, see 41.3(14);

~~b. c.~~ Prior to each administration, the patient's or human research subject's identity is verified by more than one method as the individual named in the written directive;

~~e. d.~~ The final plans of treatment and related calculations for brachytherapy, teletherapy, and gamma stereotactic radiosurgery are in accordance with the respective written directives;

~~d. e.~~ Each administration is in accordance with the written directive through checking both manual and computer-generated dose calculations and verifying that any computer-generated dose calculations are correctly transferred into the consoles of the medical units authorized by 641—Chapter 41;

~~e. f.~~ Any unintended deviation from the written directive is identified and evaluated, and appropriate action is taken;

~~f. g.~~ If, because of the emergent nature of the patient's or human research subject's condition, a delay in order to provide a written directive jeopardizes the patient's or human research subject's health, an oral directive is acceptable. The information contained in the oral directive must be documented as soon as possible in writing in the patient's or human research subject's record. A written directive must be prepared within 48 hours of the oral directive; and A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed by-product material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

(1) If, because of the patient's condition, a delay in order to provide a written revision to an existing written directive would jeopardize the patient's health, an oral revision to an existing written directive is acceptable.

(2) The oral revision must be documented as soon as possible in the patient's record. A revised written directive must be signed by the authorized user with 48 hours of the oral revision.

~~g. h.~~ A copy of the written directive in auditable form shall be retained for three years after the date of administration.

~~h.~~—A written revision to an existing written directive may be made if the revision is dated and signed by an authorized user before the administration of the dosage of unsealed by-product material, the brachytherapy dose, the gamma stereotactic radiosurgery dose, the teletherapy dose, or the next fractional dose.

ITEM 61. Amend subrule 41.2(89) as follows:

41.2(89) *Training for the parenteral administration of unsealed by-product material requiring a written directive.* Except as provided in 41.2(75), the licensee shall require an authorized user for the parenteral administration requiring a written directive to be a physician who:

a. Is an authorized user under 41.2(69); for parenteral administration of either any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV for which a written directive is required or before May 3, 2006, meets the requirements in 10 CFR 35.390, for uses listed in 41.2(89), or meets equivalent NRC or agreement state requirements; or

b. Is an authorized user under 41.2(70) or 41.2(73); or before May 3, 2006, meets the requirements in 10 CFR 35.490 or 35.690, or meets equivalent NRC or agreement state requirements, and who meets the requirements in 41.2(89) "d"; or

PUBLIC HEALTH DEPARTMENT[641](cont'd)

c. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an agreement state under 41.2(70) or 41.2(73), ~~or before May 3, 2006, meets the requirements in 10 CFR 35.490 or 35.690,~~ and who meets the requirements in 41.2(89)“*d*”; or

d. (1) Has successfully completed 80 hours of classroom and laboratory training, applicable to parenteral administrations, for which a written directive is required, of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required. The training must include:

1. to 5. No change.

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69), 41.2(75) or 41.2(89); ~~or before May 3, 2006, meets the requirements in 10 CFR 35.390,~~ or equivalent NRC or agreement state requirements, in the parenteral administration for which a written directive is required, of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in 41.2(69) ~~or before May 3, 2006, meets the requirements in 10 CFR 35.390~~ must have experience in administering dosages of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required. The work experience must involve:

1. to 6. No change.

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(89)“*b*” or “*c*,” and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed by-product material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69), 41.2(75) or 41.2(89); ~~or before May 3, 2006, meets the requirements in 10 CFR 35.390,~~ or equivalent NRC or agreement state requirements. A preceptor authorized user who meets the requirements in 41.2(69), ~~or before May 3, 2006, meets the requirements in 10 CFR 35.390,~~ must have experience in administering dosages of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or at least three cases involving the parenteral administration of any other radionuclide for which a written directive is required.

ITEM 62. Amend paragraph **45.1(1)“b”** as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 3, 2006~~ September 15, 2010.

The provisions of 641—Chapter 38 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 39 to 45.

ITEM 63. Amend subparagraph **45.1(10)“f”(1)** as follows:

(1) Application.

1. An application for taking the examination shall be on forms prescribed and furnished by the agency along with the fee required in 641—subrule 38.8(3). The application shall be submitted only after the training requirements of 45.1(10)“a” and “b” have been completed.

2. No change.

ARC 8763B**PUBLIC HEALTH DEPARTMENT[641]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 135.17, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 51, “Dental Screening,” Iowa Administrative Code.

The rules in Chapter 51 describe the school dental screening requirement, including dental screening applicants, providers, and documentation. These amendments incorporate changes made in 2010 Iowa Acts, House File 2144.

Any interested person may make written suggestions or comments on the proposed amendments on or before June 8, 2010. Such written comments should be directed to Sara Schlievert, Department of Public Health, Oral Health Bureau, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319. Comments may be sent by fax to (515)242-6384 or by E-mail to sschliev@idph.state.ia.us.

Also, there will be a public hearing on June 8, 2010, from 3 to 4 p.m. at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the amendments.

This hearing will originate from the Iowa Communications Network (ICN) Room on the Sixth Floor of the Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, and will be accessible over the ICN from the following additional locations:

- Room 7A, Buena Vista University, 610 W. 4th Street, Storm Lake
- Conference Room A, Ottumwa Regional Health Center, 1001 E. Pennsylvania, Ottumwa
- Tech. Building, Red Oak High School, 2011 N. 8th Street, Red Oak
- Cedar Falls Public Library, 524 Parkade, Cedar Falls

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

These amendments are intended to implement 2009 Iowa Code Supplement section 135.17 as amended by 2010 Iowa Acts, House File 2144, sections 2 and 3.

The following amendments are proposed.

ITEM 1. Amend **641—Chapter 51**, parenthetical implementation statute, as follows:
(~~82GA, ch 146, SF 2111~~ 135)

ITEM 2. Amend the following definitions in rule **641—51.2(135)**:

“*Applicant*” means any person seeking first-time enrollment in ~~an Iowa elementary school or high school kindergarten or ninth grade in a public or accredited nonpublic elementary school or high school in Iowa.~~

“*Dental hygienist*” means a person licensed to practice as a dental hygienist ~~pursuant to Iowa Code chapter 153.~~

“*Dentist*” means a person licensed to practice as a dentist ~~pursuant to Iowa Code chapter 153.~~

“*Elementary school*” means kindergarten, ~~if provided, and grades one through grade six~~ in an Iowa school district or accredited nonpublic school.

“~~Infection or injury~~ *Severe infection*” means ~~soft tissue laceration, excessive bleeding, or swelling, or a broken or dislodged tooth or pus discharge; or an abscess.~~

“*Nurse*” means a person licensed to practice as a registered nurse or advanced registered nurse practitioner pursuant to Iowa Code chapter 152.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

“*Physician*” means a person licensed to practice medicine and surgery or osteopathic medicine and surgery pursuant to Iowa Code chapter 148, 150, or 150A.

“*Physician assistant*” means a person licensed to practice as a physician assistant pursuant to Iowa Code chapter 148C.

“*Requires dental care*” means that tooth decay or a white spot lesion is suspected in one or more teeth or that gum infection is suspected.

“*Requires urgent dental care*” means that obvious tooth decay is present in one or more teeth, ~~the child is experiencing pain, or there is evidence of injury or severe infection or injury,~~ or the child is experiencing pain.

ITEM 3. Rescind the definition of “Transfer student” in rule 641—51.2(135).

ITEM 4. Adopt the following **new** definitions in rule 641—51.2(135):

“*Gum infection*” means that gum (gingival) tissue is red, bleeding, or swollen.

“*Injury*” means soft tissue laceration or a broken or dislodged tooth.

“*Recorder*” means a dentist, dental hygienist, physician, physician assistant, or nurse who is authorized to record screening information and sign the Certificate of Dental Screening form.

ITEM 5. Amend rule 641—51.3(135) as follows:

641—51.3(135) Persons included. The dental screening requirements specified in this chapter apply to all persons ~~newly enrolled or attempting to enroll for the first time~~ seeking first-time enrollment in kindergarten or ninth grade in a public or accredited nonpublic elementary school or high school in Iowa.

ITEM 6. Amend subrules 51.7(1) and 51.7(2) as follows:

51.7(1) Elementary school. To be valid, a minimum of one dental screening shall be performed on an applicant no earlier than three years of age but ~~prior to reaching six years of age~~ no later than four months after the enrollment date.

51.7(2) High school. To be valid, a minimum of one dental screening shall be performed on an applicant ~~with~~ no earlier than one year prior to the enrollment date and no later than four months after the enrollment date.

ITEM 7. Amend subrule 51.8(1) as follows:

51.8(1) To be valid, the certificate of dental screening shall be the department certificate or a form approved in writing by the department.

a. The Certificate of Dental Screening form is available on the department’s Web site at http://www.idph.state.ia.us/hpcdp/oral_health.asp or is available by calling the department at (866)528-4020.

~~*b.* Elementary school. The certificate of dental screening shall be signed by a dentist, dental hygienist, physician, physician assistant, or nurse.~~

~~*c.* High school. The certificate of dental screening shall be signed by a dentist or dental hygienist.~~

~~*b.* The certificate of dental screening shall include all information required by 641—51.9(82GA, ch146, SF2111 135).~~

c. The certificate of dental screening may also be deemed valid by the department if the department determines that the information on the certificate substantially complies with the dental screening requirements.

ITEM 8. Amend rule 641—51.9(135) as follows:

641—51.9(135) Dental screening documentation.

51.9(1) Student information. A person ~~performing~~ authorized to perform a dental screening required by this chapter shall record the following student information or ensure that such information is recorded on the certificate of dental screening provided or approved in writing by the department of public health in cooperation with the department of education:

1. Name (first and last);
2. Birth date;

PUBLIC HEALTH DEPARTMENT[641](cont'd)

3. Parent or guardian name;
4. Telephone numbers (home or mobile);
5. Address (street, city, and county);
6. School;
7. Grade level; and
8. Gender; ;
9. ~~Treatment needs (no obvious problems, requires dental care, requires urgent dental care);~~
10. ~~Date of dental screening;~~
11. ~~Provider type;~~
12. ~~Provider name, business address, and telephone number; and~~
13. ~~Provider signature.~~

51.9(2) Screening information. A person authorized to perform a dental screening required by this chapter shall record the following screening information on the certificate of dental screening provided or approved in writing by the department of public health in cooperation with the department of education:

1. Date of dental screening;
2. Treatment needs (no obvious problems, requires dental care, requires urgent dental care);
3. Provider type;
4. Provider name, business address, and telephone number; and
5. Provider or recorder signature and credentials.

ITEM 9. Amend subrule 51.12(2) as follows:

51.12(2) By ~~June 30~~ May 31 annually, each local board of health shall furnish the department with evidence for the preceding school year that each child enrolled in any public or accredited nonpublic school within the local board's jurisdiction met the dental screening requirement.

ITEM 10. Amend ~~641—~~**Chapter 51**, implementation sentence, as follows:

These rules are intended to implement ~~2007 Iowa Acts, chapter 146, and 2008 Iowa Acts, Senate File 2111~~ 2009 Iowa Code Supplement section 135.17 as amended by 2010 Iowa Acts, House File 2144, sections 2 and 3.

ARC 8765B

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 135M.4, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 109, “Prescription Drug Donation Repository Program,” Iowa Administrative Code.

The rules in Chapter 109 describe the requirements for medical facilities and pharmacies to accept and dispense donated prescription drugs and supplies and the eligibility criteria for individuals to receive donated prescription drugs and supplies. The proposed rule in Item 2 allows the Department of Public Health to be a local repository for the Prescription Drug Donation Repository Program in disaster and emergency situations.

Any interested person may make written comments or suggestions on the proposed rule on or before June 8, 2010. Such written comments should be directed to Katie Jerkins, Bureau of Health Care Access, Department of Public Health, 321 East 12th Street, Des Moines, Iowa 50319. E-mail may be sent to kjerkins@idph.state.ia.us.

This rule is intended to implement Iowa Code chapter 135M.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The following amendments are proposed.

ITEM 1. Reserve rules **641—109.12** and **641—109.13**.

ITEM 2. Adopt the following **new** rule 641—109.14(135M):

641—109.14(135M) Prescription drug donation repository in disaster emergencies. The following are the requirements for the department to receive and distribute prescription drugs and supplies in preparation for a disaster emergency proclaimed by the governor or in preparation for a public health disaster.

109.14(1) The department may receive prescription drugs and supplies directly from the prescription drug donation repository contractor and dispense prescription drugs and supplies through licensed personnel during or in preparation for a disaster emergency proclaimed by the governor pursuant to Iowa Code section 29C.6 or during or in preparation for a public health disaster as defined in 2009 Iowa Code Supplement section 135.140, subsection 6.

109.14(2) The department may receive and distribute prescription drugs and supplies as defined in Iowa Code section 135.142 to any Iowan who has been a victim of a disaster emergency proclaimed by the governor.

ARC 8769B

PUBLIC SAFETY DEPARTMENT[661]

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 692.10, the Department of Public Safety hereby gives Notice of Intended Action to rescind Chapter 11, “Identification Section of the Division of Criminal Investigation,” and to adopt a new Chapter 82, “Criminal History and Fingerprint Records,” Iowa Administrative Code.

Iowa Code chapters 690, 692, and 692B establish the responsibility and authority of the Division of Criminal Investigation of the Department of Public Safety to act as the central state repository for official criminal history records for the State of Iowa and provide that such records shall be made available to criminal justice agencies without cost and to other organizations and persons upon payment of fees to be established by the Department. The rules proposed herein update the requirements and procedures related to collection and dissemination of criminal history records to recognize various technological and statutory changes and to update the fees to reflect current operating costs. In addition, the rules regarding criminal history records are being moved to new 661—Chapter 82 as part of an ongoing effort to renumber and reorganize the administrative rules of the Department to make them more accessible and understandable to the public.

Any person may submit comments regarding the amendments proposed herein in writing to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; or via E-mail to admrule@dps.state.ia.us. Comments should be submitted no later than 4:30 p.m. on June 8, 2010.

A public hearing to accept comments on these proposed amendments will be held at 9:30 a.m. on June 8, 2010, in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons who wish to be heard at the public hearing are asked to indicate their interest in being heard via E-mail to admrule@dps.state.ia.us at least one day prior to the hearing.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Administrative rules of the Department of Public Safety are subject to the waiver provisions of rule 661—10.222(17A).

These amendments are intended to implement Iowa Code chapter 692.

The following amendments are proposed.

ITEM 1. Rescind and reserve **661—Chapter 11**.

ITEM 2. Adopt the following **new** 661—Chapter 82:

CHAPTER 82
CRIMINAL HISTORY AND FINGERPRINT RECORDS

661—82.1(690,692) Records and identification section. The records and identification section of the division of criminal investigation of the department of public safety maintains information necessary to identify persons with criminal histories. The section collects, files and disseminates criminal history data to authorized criminal justice agencies and to the public upon request and updates criminal history records on a continuing basis.

661—82.2(690,692) Definitions. The following definitions apply to rules 661—82.1(690,692) through 661—82.301(692):

“Authorized agency” means a division or office of the state of Iowa designated to report, receive, or disseminate information under Iowa state law, administrative rule or Public Law 103-209.

“Criminal identification records” means either of the following records, the forms for which are provided by the department to law enforcement agencies:

1. Department of public safety arrest fingerprint cards.
2. State of Iowa final disposition reports.

“Department” means the Iowa department of public safety.

“Division” means the division of criminal investigation of the department of public safety.

“Employee” means a person who provides services and is compensated for those services.

“Fee” means any cost associated with conducting a state or national criminal history record check.

“Felony” and *“misdemeanor”* shall have the same meanings and classifications as described in Iowa Code sections 701.7 and 701.8.

“Fitness determination” means an analysis of criminal history information to determine whether or not the criminal history information disqualifies an individual from holding a particular position or license either as an employee or a volunteer.

“National record check” means a criminal history record check from the FBI or another state central criminal history repository that is fingerprint-based and is transmitted through the state central repository.

“Nonlaw enforcement agency” means an agency that is authorized by law to receive criminal history data from the department; that is not a “criminal justice agency” as defined in Iowa Code section 692.1, subsection 10; and that is not an institution which trains law enforcement officers for certification under Iowa Code chapter 80B.

“Qualified entity” means a business or organization, whether public, private, for-profit, not-for-profit or voluntary, that provides care or care placement services, including a business or organization that licenses or certifies persons or entities to provide care or care placement services, treatment, education, training, instruction, supervision or recreation to children, the elderly or individuals with disabilities.

“Taking of fingerprints” means obtaining a fully rolled set of inked fingerprint impressions of suitable quality for fingerprint classification and identification.

“Volunteer” means a person who provides services without compensation.

“Working day” means any day except any of the following:

1. Saturday.
2. Sunday.
3. State holiday.
4. Federal holiday during which the administrative office of the submitting agency is closed.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

5. Any day during which the administrative office of the submitting agency is closed or relocated due to weather or road conditions or any condition related to a disaster emergency proclamation issued by the governor pursuant to Iowa Code section 29C.6.

661—82.3 to 82.100 Reserved.

DIVISION I
CRIMINAL HISTORY RECORDS

661—82.101(690,692) Release of information. Criminal history records maintained by the records and identification section are public records and are released to criminal justice agencies and the public as authorized by statute. Only the department of public safety may release criminal history information maintained by the department to noncriminal justice agencies or persons.

661—82.102(690,692) Right of review. Any person who has a criminal history record on file with the division of criminal investigation has the right to review and obtain a copy of the record. This right may be exercised by an attorney acting on behalf of a person with a criminal history record only with written authorization and fingerprint identification of the person with the criminal history record. A copy of a criminal history record provided pursuant to this rule is subject to the fee provided in rule 661—82.109(692).

661—82.103(690,692) Review of record. An individual or an individual's attorney, acting with written authorization from the individual, may review or obtain a copy of the individual's criminal history record during normal business hours at the headquarters of the division or by submitting a request on a form provided by the department of public safety. A copy of this request form may be obtained by writing to Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by telephoning the records and identification section at (515)725-6066; or by sending a request by electronic mail to cchinfo@dps.state.ia.us. The request form may also be downloaded from the division's Web site. The completed request form must be notarized, if submitted by mail; be accompanied by a set of the fingerprints of the individual whose criminal history record is being requested; and include submission of the fee established in rule 661—82.109(692). After the record check has been completed, the fingerprints submitted for verification shall be returned, upon request, or destroyed.

NOTE: As of April 1, 2010, the Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

661—82.104(17A,690,692) Inaccuracies in criminal history record. If an individual believes inaccuracies exist in the individual's criminal history record, notice may be filed with the division outlining the alleged inaccuracies and should be accompanied by any available supporting data. In all instances where a notice is so filed, the division shall contact the appropriate arresting agencies, courts of record or institutions to verify accuracy of the criminal history record. Any necessary changes shall be made to the individual's criminal history record. Any agency that previously received a copy of the inaccurate record shall be so notified with a corrected copy. A final report shall be made to the individual who filed a notice of correction within 20 days of said filing. If, after notice is filed and the division makes its final report, the individual is still of the opinion that inaccuracies exist within the record, an appeal of the final decision of the division to the Polk County district court may be made.

661—82.105(17A,690,692) Arresting agency portion of final disposition form. The sheriff of each county and the chief of police of each city shall complete the arresting agency portion of the final disposition forms with the arrest information for all persons whose fingerprints are taken in accordance with these rules or Iowa Code section 690.2, and thereafter forward the form to the appropriate county attorney or, at the discretion of the county attorney, to the clerk of district court, or if the case remains in juvenile court, to the juvenile court officer who received the referral.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—82.106(690,692) Final disposition form. When a preliminary information or citation is dismissed without new charges being filed or when a case is ignored by a grand jury, the county attorney or juvenile court officer who received the referral shall complete a final disposition form and submit it to the division of criminal investigation within 30 days. When an indictment is returned or a county attorney's information is filed, the final disposition form shall be forwarded by the county attorney to the clerk of the court having jurisdiction. The clerk of court shall forward a copy to the division of criminal investigation within 30 days after judgment. If a juvenile is processed through juvenile court, the juvenile court officer shall forward the disposition form to the division of criminal investigation.

661—82.107(692) Release of information to the public.

82.107(1) The department may release criminal history information to any person or public or private agency upon request by any method approved by the department. Noncriminal justice agencies may not receive information regarding arrests older than 18 months that do not have dispositions or deferred judgments when the department has received official notice of successful completion of probation, unless a waiver has been provided to the requester from the person who is the subject of the criminal history information and the waiver is presented to the department at the time the request for the information is made.

82.107(2) Each record released to a noncriminal justice agency shall prominently display the statement: "AN ARREST WITHOUT DISPOSITION IS NOT AN INDICATION OF GUILT."

661—82.108(692) Scope of record checks for noncriminal justice agencies and individuals. Record checks made for noncriminal justice agencies and individuals pursuant to these rules are based upon name, including maiden name and aliases, if any, and birth date. This information may not be sufficient to effect a precise identification of a subject. A record check based solely upon name and birth date may refer to multiple subjects or may not result in positive identification of the subject of the request. The records of the department are based upon reports from other agencies. The department, therefore, cannot warrant the completeness or accuracy of the information provided. Agencies and individuals that receive criminal history information are therefore advised to verify all information received from the department to the extent possible (e.g., by contacting the reported arresting agency or court).

661—82.109(692) Fees. All individuals, their attorneys, and other noncriminal justice agencies requesting criminal history information shall be assessed a fee. The department may accept cash, money orders, checks, or credit cards. Other arrangements may be made, such as a prepaid account. The fee for receipt of criminal history information from the department shall be not more than \$15 for each name for which information is requested. The fee shall be prominently posted at the headquarters of the division of criminal investigation. Each alias or maiden name submitted shall be considered a separate name for purposes of computing this fee. The employer must pay the cost of the criminal history fee of a potential employee, if the employer requires receipt of criminal history information as a condition of employment.

661—82.110(17A,22,692) Requests for criminal history data.

82.110(1) *Requests for criminal history data.*

a. Persons or agencies requesting criminal history data should direct requests in writing using forms or methods approved by the commissioner of public safety. Forms to use in requesting criminal history information may be requested by mail to the Division of Criminal Investigation, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; by electronic mail to cchinfo@dps.state.ia.us; by telephone at (515)725-6066, or from the Web site of the division.

NOTE: As of April 1, 2010, the Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

b. The commissioner may authorize additional methods of requesting criminal history information. These other methods may include fax transmission or computer access. Authorization by

PUBLIC SAFETY DEPARTMENT[661](cont'd)

the commissioner of public safety shall be based on the ability to securely, efficiently and accurately receive and disseminate criminal history information.

82.110(2) *Public complaints.* Public complaints concerning the operation of criminal history or intelligence data systems should be directed in writing to the commissioner of public safety. Complaints should specify clearly the date, time and place of the alleged violation and any action requested of the commissioner.

82.110(3) *Required approvals.* Any agreement, arrangement or system for the transmission and exchange of criminal history data required to be approved by the commissioner shall be submitted in writing at least 30 days before its proposed effective date.

661—82.111(690) Administrative sanctions.

82.111(1) The commissioner of public safety may deny or restrict access to criminal history records maintained by the records and identification section of the division of criminal investigation to any agency that fails to comply with the requirements of Iowa Code chapters 690 and 692 for submission of fingerprints and disposition reports to the department of public safety. The commissioner shall notify the affected agency in writing prior to denying or restricting access and shall provide details of the requirements and the nature of the failure to comply.

82.111(2) Any agency that has received notification from the commissioner that the agency's access to criminal history records is to be denied or restricted may protest this action. Protests must be filed with the administrative services division within 30 days of the date of the notification from the commissioner in accordance with rule 661—10.101(17A).

661—82.112(692) Criminal history record checks for qualified entities or authorized entities.

82.112(1) The department of public safety may process requests for national criminal history record checks for a qualified entity.

82.112(2) All qualified entities or authorized agencies requesting criminal history record checks shall be required to pay any applicable state and federal fees associated with noncriminal justice record checks. The qualified entity or authorized agency is responsible for such fees whether the qualified entity requests or receives the information directly or through an agency authorized to make fitness determinations as provided in subrule 82.112(3).

82.112(3) Any public entity which has been duly authorized by statute or administrative rule to conduct fitness determinations of volunteers or employees of a qualified entity may receive state and national criminal history record checks in order to do so.

82.112(4) A school district considering an applicant for a teaching position is a qualified entity pursuant to Iowa Code section 279.13. A school district may submit a request for a national criminal history record check of an applicant for employment as a teacher. The request shall be submitted on a form designated by the division of criminal investigation and shall be accompanied by completed fingerprint cards for the applicant and the applicable fee. Prior to submitting the request, the district may contact the division of criminal investigation by telephone at (515)725-6066 or by electronic mail at cchinfo@dps.state.ia.us to obtain instructions on the submission or may consult the Web site of the division for such information.

NOTE: As of April 1, 2010, the Web site of the division of criminal investigation is www.dps.state.ia.us/dci.

661—82.113 to 82.200 Reserved.

DIVISION II
FINGERPRINT RECORDS

661—82.201(17A,690,692) Fingerprint files and crime reports. The department maintains all fingerprint files.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

661—82.202(690) Taking of fingerprints. The taking of fingerprints shall be in compliance with Iowa Code sections 232.148(2), 690.2 and 690.4. Fingerprints taken pursuant to these sections shall be submitted to the records and identification section of the division of criminal investigation within two working days, and the department shall submit the fingerprints to the Federal Bureau of Investigation.

661—82.203 to 82.300 Reserved.

DIVISION III
JUVENILE RECORDS

661—82.301(232) Juvenile fingerprints and criminal histories.

82.301(1) Authority to fingerprint. A law enforcement agency shall fingerprint and photograph any juvenile who has been taken into custody and charged with the commission of an offense which would be a serious misdemeanor, aggravated misdemeanor or felony if committed by an adult. Fingerprints of juveniles taken pursuant to this subrule shall be submitted to the division of criminal investigation.

82.301(2) Fingerprints of juveniles waived to adult court. If jurisdiction over a juvenile suspect has been transferred from juvenile court to adult court, then fingerprints of that suspect taken pursuant to Iowa Code section 232.148 and transmitted to the division of criminal investigation shall be handled by the division in the same manner as fingerprints of adult suspects are handled, and the fingerprints are subject to the same provisions of law and these rules which govern fingerprints of adult criminal suspects.

82.301(3) Fingerprints entered into Automated Fingerprint Identification System (AFIS). Fingerprints of juveniles shall be entered into the AFIS maintained by the department of public safety.

82.301(4) Juvenile criminal histories.

a. A fingerprint card received for a juvenile suspect shall be used to establish a criminal history record for the suspect.

b. Criminal histories of juveniles over whom jurisdiction has been transferred from juvenile court to adult court shall be handled in the same manner as criminal histories of adults.

c. Criminal histories of juveniles who remain under the jurisdiction of the juvenile court shall be maintained only if the juvenile is adjudicated delinquent based upon an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult. The criminal history record established in response to the division's receiving a fingerprint card shall be expunged if the delinquency petition is dismissed. Juvenile court judges shall order that a juvenile be fingerprinted and the prints submitted to the division of criminal investigation if the juvenile has been adjudicated delinquent for an offense which would be a serious or aggravated misdemeanor or felony if committed by an adult.

d. Criminal history records of juveniles over whom jurisdiction has not been transferred from juvenile to adult court shall be expunged when the subject reaches the age of 21 unless the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21 or unless the retention of the records is necessary for the purpose of administering Iowa Code chapter 692A. If the subject has been convicted of a serious or aggravated misdemeanor or a felony between the ages of 18 and 21, the criminal history record shall be maintained in the same manner as adult criminal history records.

82.301(5) Tracking criminal history records. For audit purposes only, the division of criminal investigation shall establish an internal procedure for tracking criminal history records expunged from the files of the division.

These rules are intended to implement Iowa Code chapters 690, 692, and 692B.

ARC 8770B**PUBLIC SAFETY DEPARTMENT[661]****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 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby gives Notice of Intended Action to amend Chapter 301, “State Building Code—General Provisions,” Iowa Administrative Code.

Iowa Code section 103A.7 authorizes the Building Code Commissioner, with the approval of the Building Code Advisory Council, to adopt provisions of the State of Iowa Building Code, including those relating to the installation of equipment and to the protection of the health, safety, and welfare of occupants and users. The Building Code Commissioner has authority to require installations of fire protection equipment in construction subject to the State of Iowa Building Code. As part of the general adoption of new editions of nationally recognized codes which are adopted by reference within the State Building Code, effective January 1, 2010, requirements were included to provide that all newly constructed one- and two-family residences and townhouses be equipped with fire sprinklers. These requirements were amended to delay the implementation date after which sprinklers would be required until January 1, 2013.

During its 2010 Session, the Iowa General Assembly adopted 2010 Iowa Acts, Senate Joint Resolution 2009, which nullified “portions of 661 Iowa administrative code, rule 301.8, that adopt by reference sections R313.1 and R313.2 of the international residential code, 2009 edition, and that amend sections R313.1 and R313.2, by deleting and inserting in lieu thereof and providing exceptions thereto.” Sections R313.1 and R313.2 of the International Residential Code, 2009 edition, are the sections which require the inclusion of sprinklers in new townhouse construction (section R313.1) and in one- and two-family residences (section R313.2). The rule making proposed here rescinds the whole of rule 661—301.8(103A) in which the International Residential Code, 2009 edition, is adopted by reference and readopts the International Residential Code, 2009 edition, with all of the amendments originally adopted except that the two sections which require installation of residential sprinklers are deleted. In addition, two amendments to the adoption of the 2009 edition of the International Residential Code which were not included in its previous adoption are added; these restore fire safety-related provisions from the previous (2006) edition of the International Residential Code which were lessened in the 2009 edition because the inclusion of sprinkler systems in new residential construction was assumed.

Any interested person may comment on the amendment proposed herein. Comments may be sent by mail to Agency Rules Administrator, Iowa Department of Public Safety, 215 East 7th Street, Des Moines, Iowa 50319; by fax to (515)725-6195, or by E-mail to admrule@dps.state.ia.us. Comments must be submitted by 4:30 p.m. on July 5, 2010.

A public hearing will be conducted at 10 a.m. on July 6, 2010, in the First Floor Public Conference Room (Room 125) of the State Public Safety Headquarters Building, 215 East 7th Street, Des Moines. Any person may request to speak at the hearing; persons wishing to speak are advised to contact the Agency Rules Administrator by E-mail to admrule@dps.state.ia.us at least one day prior to the hearing.

Provisions of the State Building Code are subject to procedures for approval of alternate materials and methods of construction, as set out in Iowa Code section 103A.13, rather than to a waiver process.

Portions of this amendment were Adopted and Filed Emergency and became effective May 1, 2010. The Adopted and Filed Emergency rule making is published herein as **ARC 8771B**.

This amendment is intended to implement Iowa Code section 103A.7 and is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

The following amendment is proposed.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Rescind rule 661—301.8(103A) and adopt the following **new** rule in lieu thereof:

661—301.8(103A) Residential construction requirements. The provisions of the International Residential Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

Delete section R101.1.

Delete sections R103 to R114 and sections therein.

NOTE: The values for table R301.2(1) shall be determined by the location of the project and referenced footnotes from table R301.2(1).

Delete chapter 11.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete section R302.2 and insert in lieu thereof the following new section:

R302.2 Townhouses. Each townhouse shall be considered a separate building and shall be separated by fire-resistance-rated wall assemblies meeting the requirements of section R302.1 for exterior walls.

EXCEPTION: A common 2-hour fire-resistance-rated wall assembly tested in accordance with ASTM E 119 or UL 263 is permitted for townhouses if such walls do not contain plumbing or mechanical equipment, ducts or vents in the cavity of the common wall. Electrical installations shall be installed in accordance with chapters 34 through 43. Penetrations of electrical outlet boxes shall be in accordance with section R302.4.

Delete section R302.2.4 and insert in lieu thereof the following new section:

R302.2.4 Structural independence. Each individual townhouse shall be structurally independent.

EXCEPTIONS:

1. Foundations supporting exterior walls or common walls.
2. Structural roof and wall sheathing from each unit may fasten to the common wall framing.
3. Nonstructural wall coverings.
4. Flashing at termination of roof covering over common wall.
5. Townhouses separated by a common 2-hour fire-resistance-rated wall as provided in section

R302.2.

Delete section R310.1 and insert in lieu thereof the following new section:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above an adjacent permanent interior standing surface. The adjacent permanent interior standing surface shall be no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

EXCEPTION: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m²).

Delete section R313.1.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

NOTE: Deletion of section R313.1, which would have required the installation of sprinklers in newly constructed townhouses, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

Delete section R313.2.

NOTE: Deletion of section R313.2, which would have required the installation of sprinklers in newly constructed one- and two-family residences, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

Amend section R322.1.7 by striking the words “Chapter 3 of the International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete section R907.3 and insert in lieu thereof the following new section:

R907.3 Recovering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings where any of the following conditions exist:

1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.
2. Where the existing roof covering is wood shake, slate, clay, cement or asbestos cement tile.
3. Where the existing roof has two or more applications of any type of roof covering.

Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661—301.9(103A).

Delete chapters 25 to 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer’s data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15) “e.”

Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

All electrical installations shall comply with National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A).

Delete appendices A through Q.

ARC 8767B

PUBLIC SAFETY DEPARTMENT[661]

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 97A.5, the Board of Trustees of the Public Safety Peace Officers’ Retirement, Accident, and Disability System hereby gives Notice of Intended Action to amend Chapter 400, “Peace Officers’ Retirement, Accident, and Disability System—Governance and Administration,” Chapter 401, “Peace Officers’ Retirement, Accident, and Disability System—Administrative Procedures,” and Chapter 402, “Peace Officers’ Retirement, Accident, and Disability System—Eligibility, Benefits, and Payments,” and to rescind Chapter 404, “Peace Officers’ Retirement, Accident, and Disability System—Temporary Incapacity,” Iowa Administrative Code.

Iowa Code chapter 97A creates the Public Safety Peace Officers’ Retirement, Accident, and Disability System, which provides for retirement and disability benefits for peace officer members of the Iowa Department of Public Safety and which establishes within the Department of Public Safety

PUBLIC SAFETY DEPARTMENT[661](cont'd)

a Board of Trustees with authority to administer the system, including establishing policies for the system through administrative rule making. The rules providing such policies are found in Chapters 400 through 404. Amendments to these rules are proposed herein to respond to legislative changes made during the 2010 session of the Iowa General Assembly. Major provisions included in these amendments are the following:

- Decisions regarding temporary incapacity of members of the system were made the province of the Commissioner of Public Safety, rather than of the Board of Trustees. Consequently, Chapter 404 regarding temporary incapacity is rescinded because the subject matter of the chapter is beyond the authority of the Board of Trustees.
- Provisions regarding the “escalator” for payments to retired members are clarified.
- Language regarding reimbursements for medical expenses of members is added, codifying practices established by the Board.
- Language is added regarding “purchase of eligible service credit” for members who previously served in agencies subject to the “411” retirement system, which covers many local law enforcement officers and firefighters, and for members who have completed active military service.

Any person who wishes to do so may submit comments in writing to Agency Rules Administrator, Iowa Department of Public Safety, State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319; or via E-mail to admrule@dps.state.ia.us. Comments should be submitted no later than 4:30 p.m. on June 8, 2010.

A public hearing to accept comments on these proposed amendments will be held at 9 a.m. on June 8, 2010, in the First Floor Public Conference Room (Room 125), State Public Safety Headquarters Building, 215 East 7th Street, Des Moines, Iowa 50319. Persons who wish to be heard at the public hearing are asked to indicate their interest in being heard via E-mail to admrule@dps.state.ia.us at least one day prior to the hearing.

Rules of the Public Safety Peace Officers’ Retirement, Accident, and Disability System are subject to the waiver provisions of rule 661—401.113(97A).

These amendments are intended to implement Iowa Code chapter 97A as amended by 2010 Iowa Acts, House File 2518 and Senate File 2318.

The following amendments are proposed.

ITEM 1. Amend rule 661—400.1(97A) as follows:

661—400.1(97A) Establishment of system. The Iowa department of public safety peace officers’ retirement, accident, and disability system is established by Iowa Code chapter 97A. The administrative rules governing the system are found in this chapter and in 661—Chapters 401, 402, and 403, ~~and 404~~.

ITEM 2. Amend rule 661—400.2(97A), introductory paragraph, as follows:

661—400.2(97A) Definitions. The following definitions apply to 661—Chapters 400 through 404 403.

ITEM 3. Amend rule **661—400.2(97A)**, definition of “Board,” as follows:

“*Board*” means the board of trustees of the ~~peace officers’ retirement~~ system.

ITEM 4. Rescind the definitions of “Temporary” and “Temporary incapacity” in rule **661—400.2(97A)**.

ITEM 5. Adopt the following new definitions of “Medical attention” and “System” in rule **661—400.2(97A)**:

“*Medical attention*” means services provided by licensed medical personnel including, but not limited to, office, hospital, in-home nursing care, nursing home care, long-term care and prescriptions for medicine or equipment.

“*System*” means the Iowa department of public safety peace officers’ retirement, accident, and disability system.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

ITEM 6. Amend rule 661—401.1(97A), introductory paragraph, as follows:

661—401.1(97A) Applications. Applications for benefits under Iowa Code chapter 97A shall be filed with the secretary on forms provided by the secretary. Applications for service retirement shall be made not more than 90 days nor less than 30 days in advance of the date of retirement. Applications for service retirement, ordinary disability or accidental disability, ~~or temporary incapacity~~ shall be reviewed by the secretary for completeness and then forwarded to the board of trustees.

ITEM 7. Amend subrule 401.1(1), introductory paragraph, as follows:

401.1(1) Manner of review for ordinary or accidental disability ~~or for temporary incapacity.~~ The secretary shall compile the following materials, if available and applicable, for the board's review of a claim:

ITEM 8. Adopt the following new rule 661—401.3(97A):

661—401.3(97A) Applications for reimbursement for medical attention. Member beneficiaries may make application for reimbursement of the costs of medical attention as defined in rule 661—400.2(97A). This rule provides for the requirements of making application for reimbursement, the process for review and disposition of the application, and payment of approved applications.

401.3(1) Making application.

a. An application for reimbursement must be filed on a form provided by the secretary within 12 months of the member beneficiary's receiving treatment or incurring a cost for medical attention.

b. In the event there is a dispute with an insurance company regarding covered expenses, to remain eligible for reimbursement, the member beneficiary must file a request for extension, on a form provided by the secretary, if resolution of the dispute is expected to exceed 12 months.

c. Expenses shall only be reimbursed if the member beneficiary is retired as a result of an injury, illness or exposure occurring while in the performance of duty and is receiving a benefit as provided in Iowa Code section 97A.6(6).

d. Expenses shall be reimbursed only if the member beneficiary received medical attention for a condition with direct correlation to the disabling condition, the costs of which were not covered by insurance.

e. The system shall not reimburse for insurance premiums.

401.3(2) Processing the application.

a. Upon receipt of the application and supporting documentation, the secretary shall review the application for timeliness, completeness and validity. This subrule does not impose a responsibility on the secretary to discover documents or evidence not included on the application form.

b. The secretary shall refer the written application to the board for review at the next regularly scheduled meeting.

c. The member beneficiary does not need to be in attendance at the board meeting. In order to comply with Title II of the Health Insurance Portability and Accountability Act of 1996 (HIPAA), specific information pertaining to an application for reimbursement or the member beneficiary's disabling condition will not be discussed in open forum of the board meeting unless the member beneficiary is present and approves discussion in a public meeting.

d. The board may approve or deny all or part of a reimbursement application. The board may request additional information to support the application for reimbursement or to determine the correlation of the expense to the disabling condition. The member beneficiary shall provide the documents to the secretary within a reasonable time period. In no case shall the application remain valid for a period of more than 12 months.

e. If the board denies any part of a request for reimbursement, the member beneficiary may request judicial review in accordance with Iowa Code section 97A.6(13).

f. The system will make reimbursements only to the member beneficiary or to the surviving spouse in the event the member beneficiary is deceased.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

401.3(3) Other provisions.

a. Reimbursements for claimed expenses shall be reduced by any amount already received by the member beneficiary from workers' compensation or from a third party as a result of subrogation proceedings entered into as a result of the disabling injury.

b. In the event the member beneficiary is restored to active service pursuant to Iowa Code section 97A.6(7) "b," consideration of reimbursement for expenses pursuant to Iowa Code section 97A.14 shall not extend beyond the date of restoration to active service.

c. If the member beneficiary receiving a disability retirement pursuant to Iowa Code section 97A.6(6) becomes employed in a public safety occupation pursuant to Iowa Code section 97A.6(7) "d," consideration of reimbursement for expenses pursuant to Iowa Code section 97A.14 shall not extend beyond the date of employment with the employing jurisdiction.

ITEM 9. Rescind subrule **402.201(3)**.

ITEM 10. Adopt the following new rules 661—402.212(97A) to 661—402.214(97A):

661—402.212(97A) Method of calculating annual adjustment for members who retire on or after July 1, 2010. For members retiring on or after July 1, 2010, there shall be an adjustment occurring on July 1 for which the following applicable amount shall be added to the member's monthly allowance:

402.212(1) On the first July 1 following the retirement of a member there shall be added to the monthly allowance the amount of \$15. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(2) applies.

402.212(2) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least five years, but less than ten years, prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$20. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(3) applies.

402.212(3) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least 10 years, but less than 15 years, prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$25. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(4) applies.

402.212(4) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least 15 years, but less than 20 years, prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$30. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(5) applies.

402.212(5) An additional \$5 shall be added to the member's monthly allowance when the member's retirement date was at least 20 years prior to the effective date of the adjustment, the total adjustment to the member's monthly allowance then being \$35.

661—402.213(97A) Method of calculating annual adjustment for members who retired prior to July 1, 2010. For members having retired before July 1, 2010, there shall be an adjustment occurring on July 1 for which the following applicable amount shall be added to the member's monthly allowance:

402.213(1) For members having retired on or after July 2, 2009, but before July 1, 2010, there shall be added to the monthly pension allowance the amount of \$15. There shall be no other adjustment to the monthly allowance under the provisions of this rule until the adjustment provided in subrule 402.212(2) applies.

402.213(2) For members having retired on or after July 2, 2008, but before July 2, 2009, no adjustment to the monthly allowance shall be made until the adjustment provided in subrule 402.212(2) applies.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

402.213(3) For members having retired on or after July 2, 2007, but before July 2, 2008, no adjustment to the monthly allowance shall be made until the adjustment provided in subrule 402.212(5) applies.

402.213(4) For those members having retired on or before July 1, 2007, thus having received more than a total of \$35 added to the monthly allowance, there shall be no additional adjustments made to monthly allowances. Adjustments having resulted in more than \$35 added to the monthly allowance prior to July 1, 2010, shall not be considered overpayments, and the monthly allowances of members so affected shall not be reduced, nor shall members be required to repay any amount to the system.

NOTE: The following table summarizes the adjustments provided for in this rule.

Retirement Date	July 1 Monthly Allowance Adjustment	Adjustment Date
July 2, 2009 – June 30, 2010	\$15.00	July 1, 2010
July 2, 2008 – July 1, 2009	\$5.00	July 1, 2013
July 2, 2007 – July 1, 2008	\$5.00	July 1, 2028
Retired before July 2, 2007	\$0.00	Not applicable

661—402.214(97A) Determination of survivor's pension. For the purposes of determining a survivor's pension, the adjustments to monthly allowance provided in rules 661—402.212(97A) and 661—402.213(97A) shall be reduced in the same manner as is provided for the member's optional retirement benefit election made under rule 661—402.207(97A) or as provided in Iowa Code section 97A.6(12).

NOTE: Section 17 of 2010 Iowa Acts, House File 2518, reads as follows:

Sec. 17. PUBLIC SAFETY PEACE OFFICERS' RETIREMENT, ACCIDENT, AND DISABILITY SYSTEM—ADJUSTMENT OF PENSIONS PAYABLE. It is the intent of the general assembly that the applicable amount for each adjustment occurring on July 1 as provided in section 97A.6, subsection 14, paragraph "a", subparagraph (2), subparagraph division (a), shall be the exact dollar amount listed in each subparagraph subdivision of subparagraph division (a) for each July 1 in which that particular subparagraph subdivision applies and shall not be increased above the amount listed in that subparagraph subdivision for each year that the subparagraph subdivision applies. However, the applicable amount for each adjustment occurring on or after July 1, 2010, as provided by this section, shall not be less than the applicable amount for the adjustment for the previous July 1.

ITEM 11. Rescind rules 661—402.300(97A) to 661—402.306(97A) and adopt the following new rules in lieu thereof:

661—402.300(97A) Purchase of eligible service credit. Effective July 1, 2010, and no later than July 1, 2011, an active member may make application to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service.

661—402.301(97A) Determination of eligible service.

402.301(1) Eligible qualified service. "Eligible qualified service" means service as a member of a city fire retirement system or police retirement system operating under Iowa Code chapter 411 prior to January 1, 1992, for which service has not previously been credited. Eligible qualified service does not include service if the receipt of credit for such service would result in the member's receiving a retirement benefit under more than one retirement plan for the same period of service.

402.301(2) Permissive service credit.

a. Permissive service credit is credit that will be recognized by the system for purposes of calculating a member's benefit, for which the member did not previously receive service credit in the system, and for which the member voluntarily contributes to the system the amount required by the system, not in excess of the amount necessary to fund the benefit attributable to such service.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

b. Permissive service credit shall be calculated in years at the rate of one year of service for six months or more of a year actually worked with no more than one year of service to be credited for all service in one calendar year.

c. An active member may make contributions to the system to purchase up to the maximum amount of permissive service credit for eligible qualified service as determined by the system, pursuant to Internal Revenue Code Section 415(n).

661—402.302(97A) Determination of cost to member.

402.302(1) *Determination of service credit.* A member may determine the amount of permissive service credit, which shall be documented on a form provided by the secretary. Such documentation shall include the notarized certification by an official of the city or agency that employed the member and shall include periods of service and member retirement contributions to the former system during the indicated time of service. In the event member contribution information is not available from the employing city or agency, documentation may be provided in another form acceptable to the board. Acceptable documentation may include, but is not limited to, IRS form W-2, Social Security earnings statements, pay stubs or Iowa tax form 1040 or 1040A.

402.302(2) *Actuarial cost quote of permissive service credit.*

a. A member may submit certification of service credit to the secretary to obtain a cost quote of permissive service.

b. The secretary shall review and verify the submitted certification of service credit to ensure that the requirements of subrule 402.302(1) have been met.

c. When service credit has been verified, the secretary shall submit a request to the actuary contracted by the system to determine the cost to purchase permissive service credit.

d. A member may request cost quotes to purchase permissive service credit for a maximum of two time periods at no cost to the member.

e. If a member requests a third or subsequent cost quote, the member shall be required to pay for the cost of the quote.

f. A second or subsequent cost quote for the same period of permissive service credit shall replace all previous cost quotes for that time period.

g. If the requirements of subrule 402.302(1) cannot be verified, the request for a cost quote shall not be submitted to the actuary but rather shall be referred to the board for review at the next regularly scheduled meeting.

661—402.303(97A) Application process.

402.303(1) *Actuarial cost quote of permissive service credit.* When made available to the secretary by the actuary, the cost quote shall be forwarded to the member promptly. Such delivery may be made through electronic mail, facsimile transmission, regular mail, or personal service. The cost quote of permissive service credit shall remain valid for six months from the date of the cost quote unless replaced by a subsequent cost quote for the same time period of permissive service credit.

402.303(2) *Submission of application to purchase permissive service credit.* The member may submit to the secretary an application to purchase years of permissive service credit in an amount no greater than the maximum certified years of permissive service credit at a rate quoted by the actuary less an amount equal to the member's contributions pursuant to Iowa Code chapter 411 for the period of eligible qualified service together with interest at a rate determined by the board. Full payment in the form of a check or money order payable to the Peace Officers' Retirement, Accident, and Disability System, or certification of intent to pay through a qualified plan, or a combination thereof, shall accompany the application to purchase permissive service credit. Contributions shall be made by the member within the six-month period the quote is valid.

402.303(3) *Acceptance of application to purchase permissive service credit.* If the application is accepted, the secretary shall deposit the full payment into the system's account and shall adjust the member's years of service and contributions to reflect the purchase of service. Prior to the receipt of full payment, the secretary shall make no adjustment to the member's years of service or contributions.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

402.303(4) *Rejection of application to purchase permissive service credit.* If the application is rejected, the secretary shall refer the rejected application to the board for review at the next regularly scheduled meeting.

661—402.304(97A) Service adjustment irrevocable. An adjustment of a member's years of service which has been completed pursuant to subrule 402.303(3) is irrevocable. However, this rule shall not be interpreted to limit the system's ability to refund service credit purchase amounts when required in order to meet the provisions of the Internal Revenue Code.

661—402.305(97A) Board review.

402.305(1) *Review of rejection of certification of service credit.* The board shall review a rejected certification of service credit. If the board overrules the rejection, the secretary shall submit the certification of service credit to the actuary to determine the member's cost to purchase permissive service credit. If the board sustains the rejection, the member may appeal the action pursuant to 661—subrule 401.2(2).

402.305(2) *Review of rejection of application to purchase service credit.* The board shall review any application to purchase service credit which has been rejected. If the board overrules the action, the secretary shall process the application pursuant to subrule 402.303(3). If the board sustains the rejection, the secretary shall return the payment to the member. The member may appeal the action pursuant to 661—subrule 401.2(2).

661—402.306(97A) Other provisions.

402.306(1) Within 60 days following the entry of an adjustment to a member's years of service based on a purchase of permissive service credit, the secretary shall report the purchase to the system under which the service credit was originally earned.

NOTE: This notification is intended to meet the requirement that a member not receive a retirement benefit under more than one retirement plan for the same period of service.

402.306(2) The average final compensation of the member shall not be affected by the purchase of permissive service credit.

ITEM 12. Adopt the following new rule 661—402.307(97A):

661—402.307(97A) Purchase of service credit for military service.

402.307(1) *Eligibility.* Effective July 1, 2010, an active member of the system who has been a member of the retirement system five or more years may purchase service credit for military service under this chapter.

NOTE: Determination of length of active membership will be made pursuant to Iowa Code section 97A.3.

402.307(2) *Service eligible for purchase.* An eligible member may elect to purchase up to five years of service for military service that is not already recognized by the system or required to be recognized by the system under Internal Revenue Code Section 414(u) or the federal Uniformed Services Employment and Reemployment Rights Act (USERRA).

a. Permissive service credit shall be calculated in years at the rate of one year of service for six months or more of a year actually worked with no more than one year of service to be credited for all service in one calendar year.

b. A member may elect to purchase service credit for all or part of the member's eligible service up to the five-year limitation and limitations of Internal Revenue Code Section 415(n).

c. For purposes of this rule, "military service" means active duty service in any of the following:

- (1) The United States Army, Navy, Marine Corps, Air Force or Coast Guard;
- (2) The United States Army Reserves, Naval Reserves, Marine Corps Reserves, Air Force Reserves or Coast Guard Reserves;
- (3) The Army National Guard or Air National Guard;
- (4) The Commissioned Corps of the Public Health Service; or

PUBLIC SAFETY DEPARTMENT[661](cont'd)

(5) Any other category of persons designated by the President in a time of war or emergency.

402.307(3) Application. A member seeking to purchase service credit under this rule shall file a written application with the system requesting an actuarial determination of the purchase cost of the requested service credit. Applications shall be on forms provided by the secretary. The member shall include with the application:

- a. Periods of military service for which credit is requested.
- b. Proof of applicable military service. Records that may be acceptable for this purpose include the member's DD Form 214, discharge papers or other records as determined by the system.
- c. Any other documentation reasonably requested by the system.

402.307(4) Determination of cost to member. Upon receipt of the written application and supporting documentation, the secretary shall review and verify the submitted documents. The secretary shall submit the application and pertinent member information to the actuary contracted by the system to determine the cost to purchase the military service. The cost of actuarial determinations shall be borne by the member, payable upon receipt of the cost quote.

402.307(5) Application process.

a. *Actuarial cost quote of military service credit.* When made available to the secretary by the actuary, the cost quote shall be forwarded to the member promptly. Such delivery may be made through electronic mail, facsimile transmission, regular mail, or personal service. The cost quote for purchase of credit for military service shall remain valid for six months from the date of the cost quote unless replaced by a subsequent cost quote for the same time period of military service.

b. *Submission of application to purchase military service credit.* The member may submit to the secretary an application to purchase years of military credit in a cumulative amount no greater than five years. Full payment in the form of a check or money order payable to the Peace Officers' Retirement, Accident, and Disability System, or certification of intent to pay through a qualified plan, or a combination thereof, shall accompany the application to purchase military service credit.

c. *Acceptance of application to purchase military service credit.* If the application is accepted, the secretary shall deposit the full payment in the system's account and shall adjust the member's years of service and contributions to reflect the purchase of credit for military service. Prior to the receipt of full payment, the secretary shall make no adjustment to the member's years of service or contributions.

402.307(6) Revocation. A member may revoke a service purchase election and receive a refund without interest of the purchase cost paid, provided that the revocation request is in writing and is received by the system no later than 60 days following the date of the receipt of the payment of the purchase cost by the system and prior to the date of the commencement of benefits to the member under Iowa Code section 97A.6.

402.307(7) Refund when required by Internal Revenue Code. This rule shall not be construed to limit the system's ability to refund service credit purchase amounts when required in order to meet the provisions of the Internal Revenue Code.

402.307(8) Rejection of application to purchase military service credit. If the application is rejected, the secretary shall refer the rejected application to the board for review at the next regularly scheduled meeting.

402.307(9) Board review. The board shall review any rejected application for purchase of military service credit. If the board overrules the action, the secretary shall process the application. If the board sustains the rejection, the secretary shall return the payment to the member. The member may appeal the action pursuant to 661—subrule 401.2(2).

402.307(10) Average final compensation. The average final compensation of the member shall not be affected by the purchase of credit for military service.

ITEM 13. Amend **661—Chapter 402**, implementation sentence, as follows:

These rules are intended to implement Iowa Code ~~Supplement~~ chapter 97A as amended by 2010 Iowa Acts, House File 2518 and Senate File 2318.

ITEM 14. Rescind and reserve **661—Chapter 404**.

REVENUE DEPARTMENT

Notice of Electric and Natural Gas Delivery Tax Rate Changes

Pursuant to the authority of Iowa Code sections 437A.4 and 437A.5, the Director of Revenue hereby gives notice of the changes to the electric and the natural gas delivery tax rates. These rates will be used in conjunction with the number of kilowatt hours of electricity and the number of therms of natural gas delivered to consumers in calendar year 2009 by each taxpayer, for replacement taxes payable in the 2010-2011 fiscal year.

2009 ELECTRIC DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL ELECTRICS	DELIVERY TAX RATE
3207	Ames Municipal Electric System	0.00000094
3211	Bancroft Municipal Utilities	0.00087730
3228	Bigelow Municipal Electric Utility	0.00161562
3229	Bloomfield Municipal Electric Utility	0.00003481
3216	Buffalo Municipal Electric System	0.00000245
3079	Cascade Municipal Utilities	0.00143518
3230	City of Fredericksburg	0.00000502
3311	City of Pella	0.00007414
3242	Corning Municipal Utilities	0.00029978
3245	Denver Municipal Electric Utility	0.00006206
3085	Earlville Municipal Utilities	0.00114964
3095	Greenfield Municipal Utilities	0.00122039
3099	Hinton Municipal Electric/Water	0.00006507
3282	Manilla Municipal Elec. Utilities	0.00011564
3112	Manning Municipal Electric	0.00022637
3291	Milford Municipal Utilities	0.00017528
3234	Onawa Municipal Utilities	0.00010150
3324	Spencer Municipal Utilities	0.00010954
3327	Story City Municipal Electric Utility	0.00011022
3332	Traer Municipal Utilities	0.00071173
3342	Webster City Municipal Utilities	0.00033901
CO. #	IOU's — ELECTRIC	DELIVERY TAX RATE
7206	Amana Society Service Co.	0.00053494

REVENUE DEPARTMENT(cont'd)

CO. #	REC's	DELIVERY TAX RATE
4208	Atchison-Holt Electric Coop	0.00082007
4218	Butler County REC	0.00065667
4219	Calhoun County Electric Coop	0.00124147
4235	Clarke Electric Coop	0.00267985
4249	Farmers Electric Coop - Kalona	0.00040695
4251	Federated Rural Electric Association	0.00040981
4255	Glidden Rural Electric Coop	0.00051684
4259	Grundy County REC	0.00086459
4261	Guthrie County REC	0.00124657
4265	Harrison County REC	0.00081966
4266	Hawkeye Tri-County Electric Coop	0.00056469
4223	Heartland Power Coop	0.00034593
4273	Iowa Lakes Electric Coop	0.00062075
4279	Linn County REC	0.00151700
4280	Lyon Rural Electric Coop	0.00064282
4290	Midland Power Cooperative	0.00114829
4299	Nishnabotna Valley REC	0.00064164
4300	North West Rural Electric Coop	0.00034295
4308	Osceola Electric Coop	0.00036628
4313	Pleasant Hill Community Line	0.00021125
4316	Rideta Electric Coop	0.00274284
4320	Sac County Rural Electric Coop	0.00078707
4379	Southwest Iowa Service Coop	0.00284449
4333	Tri County Electric Coop	0.00125083
4348	Western Iowa Power Coop	0.00093858
4352	Woodbury County REC	0.00110852

2009 NATURAL GAS DELIVERY TAX RATES BY SERVICE AREA

CO. #	MUNICIPAL GAS	DELIVERY TAX RATE
5215	Brighton Gas	0.00701266
5241	Corning Municipal Gas	0.00012482
5275	Lamoni Municipal Gas	0.00080321
5283	Manning Municipal Gas	0.00013320
5317	Rock Rapids Municipal Gas	0.00008272
5344	West Bend Municipal Gas	0.00002363
5349	Winfield Municipal Gas	0.00039730

REVENUE DEPARTMENT(cont'd)

CO. #	IOU's — GAS	DELIVERY TAX RATE
5204	Allerton Gas	0.02635027
5270	IES Utilities	0.00761922
5289	MidAmerican Energy	0.01057313
5312	Peoples Natural Gas	0.00734412
5335	United Cities Gas	0.01769814

ARC 8773B

SECRETARY OF STATE[721]

Notice of Termination

Pursuant to the authority of Iowa Code section 17A.3(1)“b,” the Secretary of State hereby terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin as **ARC 8245B** on October 21, 2009.

The proposed amendments to Chapter 22 were also Adopted and Filed Emergency and published as **ARC 8244B**. The period for comments passed without the Secretary’s receiving any comments requiring changes to the amendments as they appeared in the Iowa Administrative Bulletin on October 21, 2009. The Secretary of State finds no further need to proceed with rule making for **ARC 8245B**.

TREASURER OF STATE

Notice—Public Funds Interest Rates

In compliance with Iowa Code chapter 74A and section 12C.6, the committee composed of Treasurer of State Michael L. Fitzgerald, Superintendent of Credit Unions James E. Forney, Superintendent of Banking Thomas B. Gronstal, and Auditor of State David A. Vaudt have established today the following rates of interest for public obligations and special assessments. The usury rate for May is 5.75%.

INTEREST RATES FOR PUBLIC OBLIGATIONS AND ASSESSMENTS

74A.2 Unpaid Warrants	Maximum 6.0%
74A.4 Special Assessments	Maximum 9.0%

RECOMMENDED Rates for Public Obligations (74A.3) and School District Warrants (74A.7). A rate equal to 75% of the Federal Reserve monthly published indices for U.S. Government securities of comparable maturities. All Iowa Banks and Iowa Savings Associations as defined by Iowa Code section 12C.1 are eligible for public fund deposits as defined by Iowa Code section 12C.6A.

The rate of interest has been determined by a committee of the state of Iowa to be the minimum interest rate that shall be paid on public funds deposited in approved financial institutions. To be eligible to accept deposits of public funds of the state of Iowa, a financial institution shall demonstrate a commitment to serve the needs of the local community in which it is chartered to do business. These needs include credit services as well as deposit services. All such financial institutions are required to provide the committee with a written description of their commitment to provide credit services in the community. This statement is available for examination by citizens.

New official state interest rates, effective May 11, 2010, setting the minimums that may be paid by Iowa depositories on public funds are listed below.

TREASURER OF STATE(cont'd)

TIME DEPOSITS

7-31 days	Minimum .05%
32-89 days	Minimum .05%
90-179 days	Minimum .05%
180-364 days	Minimum .20%
One year to 397 days	Minimum .50%
More than 397 days	Minimum 1.05%

These are minimum rates only. The one year and less are four-tenths of a percent below average rates. Public body treasurers and their depositories may negotiate a higher rate according to money market rates and conditions.

Inquiries may be sent to Michael L. Fitzgerald, Treasurer of State, State Capitol, Des Moines, Iowa 50319.

ARC 8764B

ADMINISTRATIVE SERVICES DEPARTMENT[11]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code sections 8A.104 and 8A.413, the Department of Administrative Services hereby amends Chapter 60, "Separations, Disciplinary Actions and Reduction in Force," Iowa Administrative Code.

The purpose of this amendment is to comply with 2010 Iowa Acts, Senate File 2088, enacted by the second session of the Eighty-Third General Assembly and signed by the Governor on March 10, 2010. 2010 Iowa Acts, Senate File 2088, division V, section 67, restricts the ability of a supervisory employee to bump a junior employee in a layoff. 2010 Iowa Acts, Senate File 2088, division V, effective upon enactment, requires the amendment of existing administrative rules.

In compliance with Iowa Code section 17A.4(3), the Department finds that notice and public participation are impracticable due to the immediate need for rule making to implement the statute.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and the amendment should be made effective upon filing with the Administrative Rules Coordinator on April 30, 2010, as it limits the ability of supervisory employees to bump junior employees during a layoff.

The Department adopted this amendment on April 30, 2010.

This amendment is intended to implement 2010 Iowa Acts, Senate File 2088, and Iowa Code section 8A.413.

This amendment became effective on April 30, 2010.

The following amendment is adopted.

Amend subrule 60.3(5) as follows:

60.3(5) Bumping (class change in lieu of layoff). Employees who are affected by a reduction in force may, in lieu of layoff, elect to exercise bumping rights.

a. Supervisory employees, with the exception of supervisory employees of the department of public safety, may not bump or replace junior employees who are not being laid off. For purposes of this subrule, "junior" employee means an employee with less seniority or fewer retention points than a supervisory employee.

~~a. b.~~ Employees who choose to exercise bumping rights must do so to a position in the applicable reduction in force unit. Bumping may be to a lower class in the same series or to a lower formerly held class (or its equivalent if the class has been retitled) in which the employee had nontemporary status while continuously employed in the state service. Bumping shall not be permitted to classes from which employees were voluntarily or disciplinarily demoted. Bumping by nonsupervisory employees shall be limited to positions in nonsupervisory classes. Bumping to classes that have been designated as collective bargaining exempt shall be limited to persons who occupy classes with that designation at the time of the reduction in force. Bumping shall be limited to positions covered by merit system provisions and positions covered by a collective bargaining agreement. The director may, at the request of the appointing authority, approve specific exemptions from the effects of bumping where special skills or abilities are required and have been previously documented in the records of the department of ~~personnel~~ administrative services as essential for performance of the assigned job functions.

~~b. c.~~ When bumping as set forth in paragraph "~~a b~~" of this subrule, the employee shall indicate the class, but the appointing authority shall designate the specific position assignment within the reduction in force unit. The appointing authority may designate a vacant position if the department of management certifies that funds are available and after all applicable contract transfer and recall provisions have been exhausted. The appointing authority shall notify the employee in writing of the exact location of the position to which the employee will be assigned. After receipt of the notification, the employee shall have five calendar days in which to notify the appointing authority in writing of the acceptance of the position or be laid off.

ADMINISTRATIVE SERVICES DEPARTMENT[11](cont'd)

Bumping to another noncontract class in lieu of layoff shall be based on retention points regardless of full-time or part-time status and shall not occur if the result would be to cause the removal or reduction of an employee with more total retention points. If bumping occurs, the employee with the ~~least~~ fewest total retention points in the class shall then be subject to reduction in force.

~~Bumping to another class in lieu of layoff from a class covered by a collective bargaining agreement to a class not covered by a collective bargaining agreement, or vice versa, shall only occur if the move can be accomplished in accordance with the reduction in force order (retention points or seniority date) governing the class into which the employee moves.~~

Pay upon bumping shall be in accordance with 11—subrule 53.6(11).

[Filed Emergency 4/30/10, effective 4/30/10]

[Published 5/19/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/10.

ARC 8771B

PUBLIC SAFETY DEPARTMENT[661]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 103A.7, the Building Code Commissioner, with the approval of the Building Code Advisory Council, hereby amends Chapter 301, "State Building Code—General Provisions," Iowa Administrative Code.

Iowa Code section 103A.7 authorizes the Building Code Commissioner, with the approval of the Building Code Advisory Council, to adopt provisions of the State of Iowa Building Code, including those relating to the installation of equipment and to the protection of the health, safety, and welfare of occupants and users. The Building Code Commissioner has authority to require installations of fire protection equipment in construction subject to the State of Iowa Building Code. As part of the general adoption of new editions of nationally recognized codes which are adopted by reference within the State Building Code, effective January 1, 2010, requirements were included to provide that all newly constructed one- and two-family residences and townhouses be equipped with fire sprinklers. These requirements were amended to delay the implementation date after which sprinklers would be required until January 1, 2013.

During its 2010 Session, the Iowa General Assembly adopted 2010 Iowa Acts, Senate Joint Resolution 2009, which nullified "portions of 661 Iowa administrative code, rule 301.8, that adopt by reference sections R313.1 and R313.2 of the international residential code, 2009 edition, and that amend sections R313.1 and R313.2, by deleting and inserting in lieu thereof and providing exceptions thereto." Sections R313.1 and R313.2 of the International Residential Code, 2009 edition, are the sections which require the inclusion of sprinklers in new townhouse construction (section R313.1) and in one- and two-family residences (section R313.2). The rule making undertaken here rescinds the whole of rule 661—301.8(103A) in which the International Residential Code, 2009 edition, is adopted by reference and readopts the International Residential Code, 2009 edition, with all of the amendments originally adopted except that the two sections which require installation of residential sprinklers are deleted.

Pursuant to Iowa Code section 17A.4(3), the Building Code Commissioner finds that notice and public participation are unnecessary because 2010 Iowa Acts, Senate Joint Resolution 2009, was effective upon enactment. The adoption of the rule as phrased herein will serve to make it clear that the requirements which are contained in the International Residential Code for installation of sprinklers in one- and two-family residences and townhouses are not in effect in the State of Iowa Building Code. Since the point of the amendment is strictly clarification of the requirements in effect in the State Building Code, rather than to change the substance of those requirements, immediate adoption is appropriate.

Pursuant to Iowa Code section 17A.5(2)"b"(2), the Building Code Commissioner further finds that the normal effective date of this amendment, 35 days after publication, should be waived and the amendment

PUBLIC SAFETY DEPARTMENT[661](cont'd)

made effective May 1, 2010. Having the amendment go into effect immediately confers a benefit on the public by clarifying that requirements regarding residential sprinklers have been deleted.

This amendment is also being proposed in a Notice of Intended Action, published herein as **ARC 8770B**, in order to provide an opportunity for public comment. In addition, the Notice of Intended Action proposes two additional amendments to the adoption of the International Residential Code to restore fire safety requirements from the prior edition (2006) of the International Residential Code which were reduced because of the enhanced level of fire safety which would have been provided by residential sprinklers.

This amendment is intended to implement Iowa Code section 103A.7 and is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

This amendment became effective May 1, 2010.

The following amendment is adopted.

Rescind rule 661—301.8(103A) and adopt the following **new** rule in lieu thereof:

661—301.8(103A) Residential construction requirements. The provisions of the International Residential Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041, are hereby adopted by reference as the requirements for construction, alteration, movement, enlargement, replacement, repair, equipment, use and occupancy, location, removal, and demolition of detached one- and two-family dwellings and multiple single-family dwellings (townhouses) not more than three stories in height with a separate means of egress and their accessory structures, with the following amendments:

Delete section R101.1.

Delete sections R103 to R114 and sections therein.

NOTE: The values for table R301.2(1) shall be determined by the location of the project and referenced footnotes from table R301.2(1).

Delete chapter 11.

Delete all references to the “International Plumbing Code” and insert in lieu thereof “state plumbing code.”

Delete section R310.1 and insert in lieu thereof the following new section:

R310.1 Emergency escape and rescue required. Basements and every sleeping room shall have at least one operable emergency and rescue opening. Such opening shall open directly into a public street, public alley, yard or court. Where basements contain one or more sleeping rooms, emergency egress and rescue openings shall be required in each sleeping room, but shall not be required in adjoining areas of the basement. Where emergency escape and rescue openings are provided they shall have a sill height of not more than 44 inches (1118 mm) above an adjacent permanent interior standing surface. The adjacent permanent interior standing surface shall be no less than 36 inches wide and 18 inches deep and no more than 24 inches high. Where a door opening having a threshold below the adjacent ground elevation serves as an emergency escape and rescue opening and is provided with a bulkhead enclosure, the bulkhead enclosure shall comply with section R310.3. The net clear opening dimensions required by this section shall be obtained by the normal operation of the emergency escape and rescue opening from the inside. Emergency escape and rescue openings with a finished sill height below the adjacent ground elevation shall be provided with a window well in accordance with section R310.2. Emergency escape and rescue openings shall open directly into a public way, or to a yard or court that opens to a public way.

EXCEPTION: Basements used only to house mechanical equipment and not exceeding total floor area of 200 square feet (18.58 m²).

Delete section R313.1.

NOTE: Deletion of section R313.1, which would have required the installation of sprinklers in newly constructed townhouses, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

Delete section R313.2.

NOTE: Deletion of section R313.2, which would have required the installation of sprinklers in newly constructed one- and two-family residences, is consistent with 2010 Iowa Acts, Senate Joint Resolution 2009.

PUBLIC SAFETY DEPARTMENT[661](cont'd)

Amend section R322.1.7 by striking the words “Chapter 3 of the International Private Sewage Disposal Code” and inserting in lieu thereof “567 Iowa Administrative Code Chapter 69.”

Delete section R907.3 and insert in lieu thereof the following new section:

R907.3 Recovering versus replacement. New roof coverings shall not be installed without first removing all existing layers of roof coverings where any of the following conditions exist:

1. Where the existing roof or roof covering is water-soaked or has deteriorated to the point that the existing roof or roof covering is not adequate as a base for additional roofing.

2. Where the existing roof covering is wood shake, slate, clay, cement or asbestos cement tile.

3. Where the existing roof has two or more applications of any type of roof covering.

Delete chapter 24 and sections therein and insert in lieu thereof the following new section:

All fuel gas piping installations shall comply with rule 661—301.9(103A).

Delete chapters 25 to 33 and sections therein, except for section P2904, and insert in lieu thereof the following new section:

All plumbing installations shall comply with the state plumbing code as adopted by the state plumbing and mechanical systems board pursuant to Iowa Code chapter 105.

EXCEPTION: Factory-built structures, as referenced by Iowa Code section 103A.10(3), that contain plumbing installations are allowed to comply with either the state plumbing code or with the International Plumbing Code, 2009 edition, published by the International Code Council, 5203 Leesburg Pike, Suite 600, Falls Church, VA 22041. The manufacturer’s data plate must indicate which plumbing code was utilized for compliance with this rule, as required by 661—paragraph 16.610(15)“e.”

Delete chapters 34 to 43 and sections therein and insert in lieu thereof the following new section:

All electrical installations shall comply with National Electrical Code, 2008 edition, as amended by rule 661—301.5(103A).

Delete appendices A through Q.

[Filed Emergency 4/30/10, effective 5/1/10]

[Published 5/19/10]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/10.

ARC 8759B**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby amends Chapter 72, "Conveyances Installed On or After January 1, 1975," Iowa Administrative Code.

This amendment requires elevator hoistway door safety retainers for elevators installed between January 1, 1993, and December 31, 2000.

The purpose of this amendment is to protect the health and safety of the public and implement legislative intent.

Notice of Intended Action was published in the March 24, 2010, Iowa Administrative Bulletin as **ARC 8622B**. One person commented that the proposed adoption by reference of the American Society of Mechanical Engineer code was not sufficiently precise. As a result, the adopted language differs from the proposed amendment. The commenter also questioned the feasibility of the hoistway door safety retainer requirement. The Board discussed the objection and concluded that the issue the commenter raised was further rationale to amend the rule as proposed under Notice of Intended Action.

This amendment is intended to implement Iowa Code chapter 89A.

This amendment shall become effective on June 23, 2010.

The following amendment is adopted.

Amend paragraph **72.1(3)"a"** as follows:

a. ASME A17.1 shall mean ASME A17.1 (1990); and in addition shall mean the following:

(1) ASME A17.1b (1992), Rule 110.11h, for electric elevators installed between July 1, 1993, and December 31, 2000, and

(2) ASME A17.1b (1992), Rule 110.11h that is referenced by Rule 300.11, for hydraulic elevators installed between July 1, 1993, and December 31, 2000.

[Filed 4/29/10, effective 6/23/10]

[Published 5/19/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/10.

ARC 8760B**LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 89A.3, the Elevator Safety Board hereby amends Chapter 73, "Conveyances Installed Prior to January 1, 1975," Iowa Administrative Code.

This amendment requires that owners retrofit certain elevators to ensure safe access to the machine's governor for elevator inspectors and mechanics.

The purpose of this amendment is to protect the health and safety of the public and implement legislative intent.

Notice of Intended Action was published in the March 24, 2010, Iowa Administrative Bulletin as **ARC 8623B**. No public comment was received on the proposed amendment. This amendment is identical to the amendment that was published under Notice of Intended Action.

No variance provisions are included in these rules. Variances procedures are set forth in 875—Chapter 66.

This amendment is intended to implement Iowa Code chapter 89A.

This amendment shall become effective on June 23, 2010.

The following amendment is adopted.

LABOR SERVICES DIVISION[875](cont'd)

Adopt the following **new** subrule 73.14(9):

73.14(9) Access to a governor that is located inside a hoistway shall be provided in accordance with ASME A17.1-2007, Rule 2.7.6.3.4.

[Filed 4/29/10, effective 6/23/10]

[Published 5/19/10]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 5/19/10.

ARC 8753B

NATURAL RESOURCES DEPARTMENT[561]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 483A.24 and 456A.24, the Department of Natural Resources adopts amendments to Chapter 12, "Special Nonresident Deer and Turkey Licenses," Iowa Administrative Code.

These rules clarify the processes used to select recipients of special nonresident deer and wild turkey licenses and establish application deadlines and applicant restrictions. These amendments improve benefits to the state under this chapter.

Notice of Intended Action was published in the Iowa Administrative Bulletin on March 10, 2010, as **ARC 8595B**. Comments were accepted through March 30, 2010. The Department received five comments, two in support of the amendments and three suggesting changes.

One suggested change that has been incorporated into the definition of "conservation organization" in rule 561—12.2(483A) clarifies that a person who purchases a special deer license from a conservation organization is not restricted from obtaining a special deer license in the following year. The definition now reads as follows:

"'Conservation organization' means an organization that is licensed and managed pursuant to Iowa Code chapter 504, the revised Iowa nonprofit corporation Act, and whose mission emphasizes natural resource conservation or supports science-based natural resource management. A local or state chapter or division of a national or international conservation organization shall qualify as a conservation organization. A person who purchases a deer license from a conservation organization under these rules is not subject to the restriction provided in 12.5(1)'b.'"

A second change that has been incorporated into subrule 12.5(1) as new paragraph "c" allows persons receiving these special licenses to retain preference points for nonresident deer licenses that were purchased as a result of applying through the regular nonresident application process. New paragraph "c" reads as follows:

"c. Hunters awarded a deer license under this rule may purchase preference points for the regular nonresident deer license and shall not lose those preference points when awarded a deer license under this rule."

A suggestion that would have allowed exceptions to the "every other year" restriction for those hunters not buying special licenses from conservation organizations was not incorporated into this rule making. The Department specifically seeks to avoid allowing the same person to receive special licenses year after year, except when purchased from a conservation organization, and has instead opted to give other applicants a better opportunity to obtain special licenses.

These amendments are intended to implement Iowa Code section 483A.24.

NATURAL RESOURCES DEPARTMENT[561](cont'd)

These amendments shall become effective June 23, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [12.2, 12.3, 12.5 to 12.8] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 8595B**, IAB 3/10/10.

[Filed 4/19/10, effective 6/23/10]

[Published 5/19/10]

[For replacement pages for IAC, see IAC Supplement 5/19/10.]

ARC 8766B

SOIL CONSERVATION DIVISION[27]

Adopted and Filed

Pursuant to the authority of Iowa Code section 161A.4(1), the Division of Soil Conservation hereby amends Chapter 10, "Iowa Financial Incentive Program for Soil Erosion Control," Iowa Administrative Code.

The amendments change the supplemental allocation deadline from September 15 to September 1. The amendments increase slightly the cost-share rates for tree and shrub establishment. The amendments limit eligibility for land already enrolled in USDA's Conservation Reserve Program. The amendments remove practice descriptions which, by reference, can be found in the Natural Resources Conservation Service technical guide. The amendments also eliminate or modify outdated definitions.

Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8618B** on March 24, 2010. One comment was received about limitations to livestock watering systems, and one change from the Notice was made in paragraph 10.60(1)"e." The cost-share provision for a livestock watering system was amended by limiting cost share to 50 percent. Paragraph "e" now reads as follows:

"e. Where a livestock watering system is installed in a grade stabilization structure, cost share is limited to 50 percent of the estimated or eligible cost, whichever is less, not to exceed \$500 for the watering tank or holding facility, pipe and valves. Payment will be made only if the structure is fenced."

These amendments are intended to implement Iowa Code section 161A.2.

These amendments will become effective July 1, 2010.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [10.20, 10.41, 10.51, 10.60, 10.73, 10.74(1)"c," 10.81 to 10.83, 10.92] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 8618B**, IAB 3/24/10.

[Filed 4/30/10, effective 7/1/10]

[Published 5/19/10]

[For replacement pages for IAC, see IAC Supplement 5/19/10.]

ARC 8755B

SOIL CONSERVATION DIVISION[27]

Adopted and Filed

Pursuant to the authority of Iowa Code section 161C.2(4), the Division of Soil Conservation hereby amends Chapter 12, "Water Protection Practices—Water Protection Fund," Iowa Administrative Code.

The amendments change the supplemental allocation deadline from October 15 to September 1. The amendments also split the appropriated funds equally between projects and practices regardless of the total appropriation.

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Notice of Intended Action was published in the Iowa Administrative Bulletin as **ARC 8633B** on March 24, 2010. No comments were received from the public. The following changes have been made since publication of the Notice of Intended Action:

An amendment was added that makes a technical change in the appeals provision in rule 27—12.30(161C). In subrules 12.82(1) and 12.82(2), the definitions of windbreaks, which were struck by an amendment, were reinserted. An amendment in the forest management plan provision in subrule 12.81(2) was added that changes a reference about “timber” to “forest.”

These amendments are intended to implement Iowa Code chapter 161C.

These amendments will become effective July 1, 2010.

The following amendments are adopted.

ITEM 1. Amend rule 27—12.30(161C) as follows:

27—12.30(161C) Compliance, refund, reviews and appeals. ~~Rule~~ Rules 27—10.30(161A) through 27—10.33(161A) shall apply.

ITEM 2. Amend rule 27—12.40(161C) as follows:

27—12.40(161C) Appropriations. Resource enhancement and protection program, soil and water enhancement account funds are allocated to the water protection fund. Each year’s allocation of water protection funds is divided equally between the water quality protection projects account and the water protection practices account ~~until the water quality protection account has received \$1 million. The balance of funds is deposited in the water protection practices account.~~

ITEM 3. Amend rule 27—12.51(161C) as follows:

27—12.51(161C) Allocation to soil and water conservation districts.

12.51(1) No change.

12.51(2) Recall of funds. Any funds allocated ~~to in the current fiscal year that the districts that have not been spent or obligated by June 30 and any funds that were obligated for projects for which construction has not been started during that time period~~ may be recalled by the division.

12.51(3) Supplemental allocations. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by ~~October 15~~ September 1. The allocation to any district will be the lesser amount of:

a. and *b.* No change.

12.51(4) No change.

12.51(5) Woodland, native grass and forbs fund. Twenty-five percent of the funds and any additional appropriations for reforestation will be allocated to districts.

a. No change.

b. Supplemental allocation. The districts shall identify valid applications and cost estimates, if any, for supplemental allocations to the division by ~~October 15~~ September 1. The allocation to any district will be the lesser amount of:

(1) and (2) No change.

c. No change.

12.51(6) No change.

ITEM 4. Amend subrule 12.63(2) as follows:

12.63(2) Practices installed on adjoining public lands. Where water protection practices which benefit adjoining private lands are installed on public lands and costs of the installation are to be shared by the parties, state water protection practices funds may be used to cost-share only the private landowner cost of the water protection practice.

ITEM 5. Amend rule 27—12.72(161C) as follows:

27—12.72(161C) Eligible practices. Practices listed in this rule are eligible for water protection practices fund reimbursement.

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~~12.72(1) *Critical area planting.* Establishment of vegetative planting to control sediment movement from severely eroding areas by stabilizing the soil. These plantings would include vegetation such as trees, shrubs, vines, grasses or legumes.~~

~~12.72(2) *Strip-cropping (wind) Contour buffer strips.* A strip of tall growing perennial vegetation within or adjacent to a field to reduce sediment damage and soil depletion caused by wind.~~

~~12.72(3) *Field border.* A strip of perennial vegetation established at the edge of a field, to be used as a turn area in lieu of end rows up and down hill to control erosion and provide wildlife food and cover.~~

~~12.72(4) *Filter strips.* A strip or area of vegetation for removing sediment, organic matter and other pollutants from runoff.~~

~~12.72(5) *Strip-cropping, contour.* Growing crops in a systematic arrangement of strips or bands on the contour to reduce water and wind erosion. The crops are arranged so that a strip of grass or close growing crop is alternated with a strip of clean tilled crop or fallow or a strip of grass is alternated with a close growing crop.~~

~~12.72(6) *12.72(5) Pasture and hayland hay planting.* The establishment of long term stands of adapted species of perennial forage plants, to control excessive water erosion, by converting land from row crop production to permanent vegetative cover.~~

~~12.72(7) *12.72(6) Restored or constructed Constructed wetlands in buffer systems.* An area where hydric (wetland) vegetation and hydrology are established within or adjacent to a buffer system that filters pollutants from runoff or underground tile lines, or both. (Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.)~~

~~12.72(7) *Wetland restoration.* Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.~~

~~12.72(8) *Bioengineering for stabilization of banks along waterways Streambank and shoreline protection.* A system designed to emphasize the use of live vegetation, natural materials, and structural practices to produce living, functioning systems to stabilize stream banks, reduce sedimentation, provide habitat, and filter pollutants. Bioengineering uses The practice must be bioengineered using combinations of stream-side plantings or trees, other vegetation, structural practices such as modification of slopes, and installation of reinforcing materials and in-stream structures. (Land enrolled in the Conservation Reserve Program, or other similar programs, is eligible, if this practice is not an allowable practice under that program.)~~

ITEM 6. Amend rule 27—12.73(161C) as follows:

27—12.73(161C) Eligible practices for priority water resource protection. Practices listed in this rule are eligible for water protection practice fund reimbursement only in those areas or instances approved in rule 27—12.75(161C).

~~12.73(1) *Grassed waterway.* A natural or constructed waterway or outlet, shaped and graded, on which suitable vegetation is established to conduct excess surface runoff water from terraces, diversions or natural watershed basins.~~

~~12.73(2) *Grade stabilization structure.* An earthen dam or embankment with a mechanical outlet (pipe conduit, drop spillway or chute outlet, etc.) to stabilize the flowline grade or control head cutting in a natural or constructed channel.~~

~~12.73(3) *Terrace.* An earthen barrier or embankment constructed across the field slope using a combination of a ridge and channel to reduce field erosion and trap sediment. Types of terraces commonly referred to as broad based, narrow based, grassed backslope, basin, level, gradient and parallel are eligible for water protection practice fund reimbursement.~~

~~12.73(4) *Water and sediment control basin.* A short earthen embankment with an underground outlet, constructed across the slope in minor water courses to reduce erosion and trap sediment.~~

~~12.73(5) *Diversion.* A channel with a supporting ridge on the lower side constructed across the slope to conduct excess runoff water to a suitable outlet.~~

~~12.73(6) *Animal waste management system Waste storage facility.* A planned system to correct existing animal waste management problems in which all necessary components are installed for~~

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~~managing liquid and solid waste, including runoff from concentrated waste areas from an existing animal feeding operation, in a manner that does not degrade soil or water resources. Cost-sharing under this practice is not authorized for:~~

- ~~a. Portable pumps and pumping equipment.~~
- ~~b. Waste disposal equipment.~~
- ~~c. Building, modification of a building, that portion of the animal waste structure that serves as part of the building, or its foundation.~~
- ~~d. That portion of the cost of animal waste control structures attributed to expansion of an animal waste management system.~~

~~**12.73(7) Stormwater quality best management practices (BMPs).**~~ A technique, measure, or structural control that is used for a given set of conditions to manage the quantity and improve the quality of stormwater runoff in the most cost-effective manner. BMPs can be either:

- ~~a. Nonstructural BMPs, which include a range of pollution prevention, education, or institutional management and development practices designed to limit the conversion of rainfall to runoff and to prevent pollutants from entering runoff at the source of runoff generation; or~~
- ~~b. Structural BMPs, which are engineered and constructed systems that are used to treat the stormwater at either the point of generation or the point of discharge to either the storm sewer system or to receiving waters (e.g., detention ponds or constructed wetlands).~~

ITEM 7. Amend subrule 12.77(1) as follows:

~~**12.77(1) Cost-share rates.** Cost-share rates for practices designated in rule 27—12.72(161C) shall be 50 percent of the eligible or estimated cost of installation, whichever is less, except for strip-cropping contour contour buffer strips and field borders. Cost-share rates for 12.72(2), contour buffer strips, and 12.72(3), field borders, and 12.72(5), strip-cropping contour, shall be a one-time payment of 50 percent of the eligible or estimated cost of installation, whichever is less, up to \$25 per acre.~~

ITEM 8. Amend subrule 12.81(2) as follows:

~~**12.81(2) Forest management plan required.** A forest management plan approved by the forestry bureau of the department of natural resources is required for the practices of timber forest stand improvement, tree planting, site preparation for natural regeneration, and rescue treatments.~~

ITEM 9. Amend rule 27—12.82(161C) as follows:

~~**27—12.82(161C) Eligible practices.** Land enrolled in the Conservation Reserve Program is only eligible for woodland establishment, management and protection practices and is also eligible for native grass and forb establishment. All practices listed in this part are available to all other eligible landowners within Iowa soil and water conservation districts. All practices listed below are permanent.~~

~~**12.82(1) Windbreaks.** A belt of trees or shrubs established or restored next to an occupied structure. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.~~

~~**12.82(2) Field windbreak.** A belt of trees or shrubs established or restored, within or adjacent to a field. A windbreak must meet either NRCS Standard 380-Windbreak/shelterbelt establishment or NRCS Standard 650-Windbreak/shelterbelt renovation.~~

~~**12.82(3) Timber Forest stand improvement.** To increase the growth and quality of forest stands and improve wildlife habitat. Minimum eligible area is five acres.~~

~~**12.82(4) Tree planting.** To establish a stand of trees for timber production and environmental improvement. Minimum eligible area is three acres.~~

~~**12.82(5) Site preparation for natural regeneration.** To establish a stand of forest trees through natural regeneration for timber production and environmental improvement. Minimum eligible area is three acres.~~

~~**12.82(6) Riparian forest buffer.** To establish an area of trees or shrubs, or both, located adjacent to and up-gradient from water bodies.~~

~~**12.82(7) Rescue treatments.** To rescue plantations from conditions that would threaten the adequate survival or quality of the plantation if not controlled. Minimum eligible area is three acres.~~

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12.82(8) Prescribed grazing. ~~The controlled harvest of vegetation with grazing or browsing animals that is managed with the intent to achieve a specified objective. The practice must include a minimum of two paddocks of native species grasses.~~

12.82(9) Conservation cover. ~~Establishing and maintaining perennial vegetative cover on land.~~

ITEM 10. Amend rule 27—12.83(161C) as follows:

27—12.83(161C) Practice standards and specifications. Soil and water conservation practices shall meet Natural Resources Conservation Service conservation standards and specifications where applicable. These standards may be accessed through the electronic field office technical guide at http://efotg.nrcs.usda.gov/efotg_locator.aspx?map=IA.

Tree planting, ~~timber forest~~ stand improvement, site preparation for natural regeneration and rescue treatment standards may be accessed through the department of natural resource's forestry technical guide found at <http://www.iowadnr.com/forestry/pdf/techguide.pdf>.

Standards and specifications are also available in hard copy in the district office where the practice will be implemented. These specifications and the general conditions, rule 27—10.81(161A), shall be met in all cases. To the extent of any inconsistency between the general conditions and the specifications, the general conditions shall control.

ITEM 11. Amend rule 27—12.84(161C) as follows:

27—12.84(161C) Cost-share rates. The following cost-share rates shall apply for eligible practices designated in rule 27—12.82(161C). The use of state cost-share funds alone or in combination with other public funds shall not exceed the limits established by these rules.

12.84(1) Windbreaks. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$1500 for the total cost of the establishment or restoration of the windbreak.

12.84(2) Field windbreaks. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$450 per acre.

12.84(3) Timber Forest stand improvement. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$120 per acre for prescribed woodland burning, thinning, pruning crop trees, or releasing seedlings or young trees.

12.84(4) Tree planting.

a. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$450 per acre, for tree planting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree-planting operations,
- (3) Weed and pest control,
- (4) Mowing, disking, and spraying.

b. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$150 per acre for woody plant competition control.

12.84(5) Site preparation for natural regeneration. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$120 per acre of site preparation.

12.84(6) Riparian forest buffer. 75 percent of the ~~actual cost~~ eligible or estimated cost, whichever is less.

12.84(7) Rescue treatment.

a. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$60 per acre to establish alternate cover for competition control.

b. A one-time payment of 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$15 per acre to control damaging rodent populations.

c. 75 percent of the ~~actual~~ eligible or estimated cost, whichever is less, not to exceed \$450 per acre, for plantation replanting including the following:

- (1) Establishing ground cover,
- (2) Trees and tree planting,

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(3) Weed control.

12.84(8) *Planned Prescribed grazing systems.* 75 percent of the ~~actual cost~~ eligible or estimated cost, whichever is less. Systems must include at least two paddocks of native species grasses. Development of a water source is not eligible. ~~Does not include boundary~~ Boundary fences or road fences are not included.

12.84(9) *Conservation cover.* 75 percent of the ~~actual cost~~ eligible or estimated cost, whichever is less.

12.84(10) *Fencing systems.* Fencing systems used to implement or protect a conservation practice described in rule 27—12.82(161C) are eligible for the lesser of 75 percent of the ~~actual cost~~ eligible or the estimated cost. The fencing costs cannot exceed \$14 per rod for permanent fencing or \$5 per rod for temporary electric fencing. Fences along roads or land boundaries are not eligible.

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