



# IOWA ADMINISTRATIVE BULLETIN

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February 5, 2003

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## PREFACE

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

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

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

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

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KATHLEEN K. BATES, Administrative Code Editor	Telephone:	(515)281-3355
STEPHANIE A. HOFF, Assistant Editor	Fax:	(515)281-8157 (515)281-4424

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Telephone: (515)281-3568**

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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(249A)	(Rule)
441 IAC 79.1(1)	(Subrule)
441 IAC 79.1(1)“a”	(Paragraph)
441 IAC 79.1(1)“a”(1)	(Subparagraph)

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## Schedule for Rule Making 2003

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
Jan. 3 '03	Jan. 22 '03	Feb. 11 '03	Feb. 26 '03	Feb. 28 '03	Mar. 19 '03	Apr. 23 '03	July 21 '03
Jan. 17	Feb. 5	Feb. 25	Mar. 12	Mar. 14	Apr. 2	May 7	Aug. 4
Jan. 31	Feb. 19	Mar. 11	Mar. 26	Mar. 28	Apr. 16	May 21	Aug. 18
Feb. 14	Mar. 5	Mar. 25	Apr. 9	Apr. 11	Apr. 30	June 4	Sept. 1
Feb. 28	Mar. 19	Apr. 8	Apr. 23	Apr. 25	May 14	June 18	Sept. 15
Mar. 14	Apr. 2	Apr. 22	May 7	May 9	May 28	July 2	Sept. 29
Mar. 28	Apr. 16	May 6	May 21	May 23	June 11	July 16	Oct. 13
Apr. 11	Apr. 30	May 20	June 4	June 6	June 25	July 30	Oct. 27
Apr. 25	May 14	June 3	June 18	June 20	July 9	Aug. 13	Nov. 10
May 9	May 28	June 17	July 2	July 4	July 23	Aug. 27	Nov. 24
May 23	June 11	July 1	July 16	July 18	Aug. 6	Sept. 10	Dec. 8
June 6	June 25	July 15	July 30	Aug. 1	Aug. 20	Sept. 24	Dec. 22
June 20	July 9	July 29	Aug. 13	Aug. 15	Sept. 3	Oct. 8	Jan. 5 '04
July 4	July 23	Aug. 12	Aug. 27	Aug. 29	Sept. 17	Oct. 22	Jan. 19 '04
July 18	Aug. 6	Aug. 26	Sept. 10	Sept. 12	Oct. 1	Nov. 5	Feb. 2 '04
Aug. 1	Aug. 20	Sept. 9	Sept. 24	Sept. 26	Oct. 15	Nov. 19	Feb. 16 '04
Aug. 15	Sept. 3	Sept. 23	Oct. 8	Oct. 10	Oct. 29	Dec. 3	Mar. 1 '04
Aug. 29	Sept. 17	Oct. 7	Oct. 22	Oct. 24	Nov. 12	Dec. 17	Mar. 15 '04
Sept. 12	Oct. 1	Oct. 21	Nov. 5	Nov. 7	Nov. 26	Dec. 31	Mar. 29 '04
Sept. 26	Oct. 15	Nov. 4	Nov. 19	***Nov. 19***	Dec. 10	Jan. 14 '04	Apr. 12 '04
Oct. 10	Oct. 29	Nov. 18	Dec. 3	Dec. 5	Dec. 24	Jan. 28 '04	Apr. 26 '04
Oct. 24	Nov. 12	Dec. 2	Dec. 17	***Dec. 17***	Jan. 7 '04	Feb. 11 '04	May 10 '04
Nov. 7	Nov. 26	Dec. 16	Dec. 31	Jan. 2 '04	Jan. 21 '04	Feb. 25 '04	May 24 '04
***Nov. 19***	Dec. 10	Dec. 30	Jan. 14 '04	Jan. 16 '04	Feb. 4 '04	Mar. 10 '04	June 7 '04
Dec. 5	Dec. 24	Jan. 13 '04	Jan. 28 '04	Jan. 30 '04	Feb. 18 '04	Mar. 24 '04	June 21 '04
***Dec. 17***	Jan. 7 '04	Jan. 27 '04	Feb. 11 '04	Feb. 13 '04	Mar. 3 '04	Apr. 7 '04	July 5 '04
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### PRINTING SCHEDULE FOR IAB

<u>ISSUE NUMBER</u>	<u>SUBMISSION DEADLINE</u>	<u>ISSUE DATE</u>
<b>18</b>	<b>Friday, February 14, 2003</b>	<b>March 5, 2003</b>
<b>19</b>	<b>Friday, February 28, 2003</b>	<b>March 19, 2003</b>
<b>20</b>	<b>Friday, March 14, 2003</b>	<b>April 2, 2003</b>

**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\*\*\***

## PUBLICATION PROCEDURES

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

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

1. To facilitate the publication of rule-making documents, we request that you send your document(s) as an attachment(s) to an E-mail message, addressed to both of the following:

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2. Alternatively, you may send a PC-compatible diskette of the rule making. Please indicate on each diskette the following information: agency name, file name, format used for exporting, and chapter(s) amended. Diskettes may be delivered to the Administrative Code Division, First Floor South, Grimes State Office Building, or included with the documents submitted to the Governor's Administrative Rules Coordinator.

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

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

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To All Agencies:

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

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
<b>EDUCATION DEPARTMENT[281]</b>		
Eligibility standard for waiver of school fees, 18.3(1) IAB 2/5/03 <b>ARC 2275B</b>	State Board Room Grimes State Office Bldg. Des Moines, Iowa	February 27, 2003 9 a.m.
Approval of on-the-job training establishments for qualified veterans, 51.1 to 51.4 IAB 2/5/03 <b>ARC 2276B</b>	State Board Room Grimes State Office Bldg. Des Moines, Iowa	February 25, 2003 10 a.m.
Approval of programs for qualified veterans at educational institutions, 52.1 to 52.15 IAB 2/5/03 <b>ARC 2277B</b>	State Board Room Grimes State Office Bldg. Des Moines, Iowa	February 25, 2003 1 p.m.
Teacher quality program, 83.2 to 83.6 IAB 2/5/03 <b>ARC 2279B</b>	State Board Room Grimes State Office Bldg. Des Moines, Iowa	February 27, 2003 11 a.m.
<b>ENVIRONMENTAL PROTECTION COMMISSION[567]</b>		
Water quality standards, 61.2, 61.3, 62.8(2), 72.50(2) IAB 1/8/03 <b>ARC 2228B</b>	Community Center 530 W. Bluff St. Cherokee, Iowa	February 6, 2003 10 a.m.
	Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	February 6, 2003 6:30 p.m.
	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 7, 2003 1 p.m.
	Community Center 106 W. Niagara Garnavillo, Iowa	February 11, 2003 7 p.m.
Construction of confinement feeding operations in 100-year flood plains of major water sources, 65.1, 65.7 to 65.9, 65.15, 70.2, 70.4, 71.3, 71.13, 72.2, 72.3, 72.13 IAB 1/8/03 <b>ARC 2229B</b>	Community Center 530 W. Bluff St. Cherokee, Iowa	February 6, 2003 11:30 a.m.
	Community Meeting Room 15 N. Sixth St. Clear Lake, Iowa	February 6, 2003 8 p.m.
	Fifth Floor Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 7, 2003 2:30 p.m.

**INSURANCE DIVISION[191]**

Financial information— privacy notice requirements, 90.3(2), 90.4(4) IAB 1/22/03 <b>ARC 2245B</b>	330 Maple St. Des Moines, Iowa	February 11, 2003 10 a.m.
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**LABOR SERVICES DIVISION[875]**

Safety standards for exit routes and emergency action and fire prevention plans adopted by OSHA, 10.20 IAB 2/5/03 <b>ARC 2282B</b>	Stanley Room 1000 E. Grand Ave. Des Moines, Iowa	February 25, 2003 1:30 p.m.
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**PUBLIC HEALTH DEPARTMENT[641]**

Backflow prevention assembly tester registration, ch 26 IAB 2/5/03 <b>ARC 2269B</b>	Room 518 Lucas State Office Bldg. Des Moines, Iowa	February 25, 2003 1 p.m.
Radiation, amendments to chs 38 to 42 and 46 IAB 2/5/03 <b>ARC 2272B</b>	Conference Room, Suite D 401 SW Seventh St. Des Moines, Iowa	February 25, 2003 8:30 a.m.
Local substitute medical decision- making boards, 85.3(1) IAB 2/5/03 <b>ARC 2268B</b>	Room 415 Lucas State Office Bldg. Des Moines, Iowa	February 25, 2003 10 a.m.

**TRANSPORTATION DEPARTMENT[761]**

Regulations applicable to carriers, 520.1, 520.2 IAB 2/5/03 <b>ARC 2263B</b>	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 13, 2003 10 a.m. (If requested)
For-hire interstate motor carrier authority, 529.1 IAB 2/5/03 <b>ARC 2264B</b>	DOT Conference Room Park Fair Mall 100 Euclid Ave. Des Moines, Iowa	March 13, 2003 1 p.m. (If requested)

**UTILITIES DIVISION[199]**

Electric franchise and related rules, 11.1 to 11.3, 11.5, 11.6, 11.8, 25.1, 25.2, 25.5 IAB 12/11/02 <b>ARC 2173B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	February 14, 2003 10 a.m.
Customer rights and remedies to avoid disconnection, 19.4(15), 20.4(15) IAB 2/5/03 <b>ARC 2285B</b>	Hearing Room 350 Maple St. Des Moines, Iowa	April 8, 2003 10 a.m.

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

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

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

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

The following list will be updated as changes occur:

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## NOTICE—CIVIL REPARATIONS TRUST FUND

Pursuant to Iowa Administrative Code 361—subrule 12.2(1), the Executive Council gives Notice that the Civil Reparations Trust Fund balance as of December 31, 2002, is approximately \$24,250.00. Money in the Civil Reparations Trust Fund is available for use for indigent civil litigation programs or insurance assistance programs. Application forms are available in the office of the State Treasurer by contacting GeorgAnna Madsen, Executive Secretary, State Capitol Room 114, Des Moines, Iowa 50319; telephone (515)281-5368. Applications must be filed on the thirtieth day after the date of publication of this Notice in the Iowa Administrative Bulletin, or on the thirtieth day after the date affixed to the Notice sent by first-class mail, whichever is later. Any person/company that would like to receive future notices should make request in writing to the abovementioned contact. Rules regarding the Civil Reparations Trust Fund can be found at 361 IAC Chapter 12.

### ARC 2275B

## EDUCATION DEPARTMENT[281]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 18, “School Fees,” Iowa Administrative Code.

This chapter describes the procedures for applying, issuing or denying waivers from school fees. The proposed amendment makes corrections that were identified as a result of reviews conducted in accordance with Executive Order Number 11. It eliminates Supplemental Security Income (SSI) guidelines as an eligibility standard to meet the requirements for waivers of school fees. Not all students who are SSI recipients come from low-income families. Iowa Code section 256.20, however, limits the applicability of the rule to students from indigent families. SSI recipient students who are from low-income families will not be affected by this rule change. These students can continue to qualify for the waiver based upon the student’s or the student’s family’s satisfaction of one of the four criteria, which include income eligibility for free meals under the Child Nutrition Program or the Family Investment Program (FIP), eligibility for free transportation or placement in foster care. To the Department’s knowledge, very few students will be affected by this rule change. Given the timing of the rule-making action, this amendment will take effect starting with the 2003 summer school offerings.

Interested persons may submit written or oral comments by February 27, 2003, by contacting Ann McCarthy, Office of the Director, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515) 281-5296; or E-mail at [ann.mccarthy@ed.state.ia.us](mailto:ann.mccarthy@ed.state.ia.us).

A public hearing will be held on February 27, 2003, at 9 a.m. in the State Board Room, Grimes State Office Build-

ing, Des Moines, Iowa, at which time persons may submit comments either orally or in writing. Individuals who have special needs and require assistance may contact the Department of Education prior to the public hearing date to advise.

This amendment is intended to implement Executive Order Number 11.

The following amendment is proposed.

Amend subrule **18.3(1)**, paragraph “a,” as follows:

a. Waiver. A student shall be granted a waiver of all fees covered by this chapter if the student or the student’s family meets the financial eligibility criteria for free meals offered under the Child Nutrition Program, or the Family Investment Program (FIP), or ~~Supplemental Security Income (SSI) guidelines~~, or transportation assistance under open enrollment provided under 281—subrule 17.9(3), or if the student is in foster care.

### ARC 2276B

## EDUCATION DEPARTMENT[281]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 51, “Approval of On-the-Job Training Establishments Under the Veterans’ Readjustment Act of 1966 as Amended,” Iowa Administrative Code.

The proposed amendments update the rules governing approval of on-the-job training establishments by Department of Education staff and provide the statutory requirements for approving educational on-the-job training programs for qualified veterans who are asking to receive federal veteran financial support.

Any interested person may submit oral or written comments on or before Tuesday, February 25, 2003, by addressing them to Beverly Bunker, Administrative Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3615; E-mail [beverly.bunker@ed.state.ia.us](mailto:beverly.bunker@ed.state.ia.us).

A public hearing will be held at 10 a.m. on February 25, 2003, at the Department of Education, Grimes State Office Building, State Board Room, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time individuals may present their views either orally or in writing.

These amendments are intended to implement 38 U.S.C. Sections 3001-3036, 3201-3243, 3500-3566 and 3670-3699 and 10 U.S.C. Sections 16131-16137.

The following amendments are proposed.

Amend **281—Chapter 51** as follows:

APPROVAL OF ON-THE-JOB TRAINING  
ESTABLISHMENTS UNDER THE VETERANS’  
~~READJUSTMENT ACT OF 1966 AS AMENDED~~  
MONTGOMERY G.I. BILL

**281—51.1(256) Application.** In order to qualify as a training facility, the establishment must submit a written applica-

EDUCATION DEPARTMENT[281](cont'd)

tion on a form as prescribed by ~~this~~ the department of education. Prior to submission of an application, the department shall conduct a site visit to determine initial eligibility.

**281—51.2(256) Inspection Content and approval of application.** Upon receipt of the written application, it is checked by a staff member, and if there is any merit to the application, the establishment is visited and a detailed inspection is made to determine the correctness of the information given in the application. The application shall contain, at minimum, the following:

1. Clearly definable vocational objective or objectives;
2. An outline describing the length of the program that is appropriate to the training;
3. A description of the supervision that will be provided to individuals in the program;
4. The program's progressive wage schedule as outlined in rule 281—51.3(256).

The department shall review the application for accuracy and merit. Upon approval of an application, the department shall forward a copy of the approved application to the applicant and to the United States Department of Veterans Affairs.

**281—51.3(256) Report reviewed.** The inspector's recommendations are subject to the review of the director of education.

**281—51.4.3(256) Wage schedules.** The employer shall observe the following points in setting forth the wage schedule for the training period:

1. The schedule shall set up for the entire period of training with provision for increases at regular intervals.
2. The starting wage and the wage paid during training cannot be less than the wage normally paid a nonveteran learner in this trade.
3. The starting wage shall not be less than 50 percent of the stated objective wage.
4. The wage schedule shall increase during each period of training until the employer is paying approximately 90 percent 85 percent of the objective wage during the last period of training unless covered under the standards required by the Bureau of Apprentice Training, United States Department of Labor.

5. The wages shall be in conformity with state and federal laws and applicable bargaining agreements.

6. Wage schedules contained in applicable bargaining agreements, wages established by law, or other wage schedules established by large businesses which can be shown to be a matter of record will be recognized.

7. The after-training wage shall be the wage that is normally paid to a person who has had training equivalent to that contemplated by the proposed training program and who is beginning employment in the classification. Further raises which have been granted to other employees on the basis of length of service or loyalty to the firm should not be considered in determining the completion wage.

8. Since the employer is required to guarantee definite periodic wage increases, programs shall not be approved which contain a wage schedule set up on a commission basis.

These rules are intended to implement 38 U.S.C. Sections 3001-3036, 3201-3243, 3500-3566 and 3670-3699 and 10 U.S.C. Sections 16131-16137.

**ARC 2277B**

## EDUCATION DEPARTMENT[281]

### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby proposes to amend Chapter 52, "Approval of Educational Institutions for the Education and Training of Eligible Veterans Under the Veterans' Readjustment Act of 1966 as Amended," Iowa Administrative Code.

The proposed amendments update the rules governing approval of educational institutions by Department of Education staff and provide the statutory requirements for approving programs at educational institutions for qualified veterans who are asking to receive federal veteran financial support.

Any interested person may submit oral or written comments on or before Tuesday, February 25, 2003, by addressing them to Beverly Bunker, Administrative Consultant, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-3615; E-mail [beverly.bunker@ed.state.ia.us](mailto:beverly.bunker@ed.state.ia.us).

A public hearing will be held at 1 p.m. on February 25, 2003, at the Department of Education, Grimes State Office Building, State Board Room, East 14th Street and Grand Avenue, Des Moines, Iowa, at which time individuals may present their views either orally or in writing. Persons with special needs should contact the Department of Education prior to the hearing if accommodations need to be made.

These amendments are intended to implement 38 U.S.C. Sections 3001-3036, 3201-3243, 3500-3566 and 3670-3699 and 10 U.S.C. Sections 16131-16137.

The following amendments are proposed.

Amend **281—Chapter 52** as follows:

APPROVAL OF EDUCATIONAL INSTITUTIONS  
FOR THE EDUCATION AND TRAINING OF  
ELIGIBLE VETERANS UNDER THE VETERANS'  
READJUSTMENT ACT OF 1966 AS AMENDED  
*MONTGOMERY G.I. BILL*

**281—52.1(256) Colleges.** All colleges, universities and merged area schools community colleges accredited by the North Central Association of Colleges and Schools may be approved without further inspection may have their programs considered for approval.

**281—52.2(256) High schools.** All high schools approved by the department of education may be approved without further inspection.

**281—52.3** Rescinded IAB 9/7/88, effective 10/12/88.

**281—52.4(256) Schools of Bible or theology.** Must Schools of Bible or theology must be accredited by a recognized accrediting agency in the theological field. Subject Programs will be considered for approval subject to inspection following receipt of written application.

## EDUCATION DEPARTMENT[281](cont'd)

**281—52.5(256) Schools of nursing.** ~~Must~~ *Schools of nursing must be recommended approved* by the ~~Iowa~~ state board of ~~nurse-examiners nursing~~. ~~Subject Programs will be considered for approval subject to inspection following receipt of written examination application.~~

**281—52.6(256) Hospitals.** (Residencies, medical technologists, X-ray technicians and similar programs.) ~~Must~~ *Hospitals must be recommended accredited* by the council on medical education and hospitals, American Medical Association. ~~Subject Programs will be considered for approval subject to inspection following receipt of written application.~~

**281—52.7(256) Schools of cosmetology.** ~~Must~~ *Schools of cosmetology must be recommended in compliance with the board of cosmetology arts and sciences examiners, department of public health. Subject Programs will be considered for approval subject to inspection following receipt of written application.*

**281—52.8(256) Schools of barbering.** ~~Must~~ *Schools of barbering must be recommended in compliance with the board of barber examiners, department of public health. Subject Programs will be considered for approval subject to inspection following receipt of written application.*

**281—52.9(256) Flight schools.** ~~Must be recommended by the U.S. civil aeronautics authority and the Iowa department of aeronautics. Subject to inspection following receipt of written application. Reserved.~~

**281—52.10(256) Schools of business.** ~~Subject Programs will be considered for approval subject to inspection following receipt of written application.~~

**281—52.11(256) Trade schools.** ~~Same as 52.10 Programs will be considered for approval subject to inspection following receipt of written application.~~

**281—52.12(256) Correspondence courses schools.** ~~Must Correspondence schools must have operated successfully in Iowa for at least two years. Subject be accredited by a nationally recognized accrediting agency. Programs will be considered for approval subject to inspection following receipt of written application.~~

**281—52.13(256) Successful operation on a continuous basis.** All of the above institutions, except public or other tax-supported schools, must operate successfully *on a continuous basis* in Iowa for at least two years prior to approval.

The two-year requirement may be waived *by the U.S. Department of Veterans Affairs* when the institution submits positive evidence that the school is essential to meet the *educational* requirements of veterans in the state of Iowa.

**281—52.14(256) Nonaccredited schools.** *Nonaccredited schools may have their programs considered for approval by filling out a written application, and an on-site inspection visit will be necessary to verify accuracy of submitted applications.*

The written application referred to in ~~the above~~ *this rule* shall include the following information:

**52.12(1)** 1. Name, address and telephone number of the school.

**52.12(2)** 2. Names and qualifications of owners and managers of the school.

**52.12(3)** 3. Statement concerning the date the school was established, and the period of time *the* school has been under the present management.

**52.12(4)** 4. Statement as to the financial solvency of the school, and assurance that *the* school will continue operations for a considerable period of time.

**52.12(5)** 5. Statement concerning the school's accreditation by any recognized accrediting agencies, if any.

**52.12(6)** 6. Statement concerning present enrollment and maximum number of students proposed to be trained in the courses at one time.

**52.12(7)** 7. Description of the physical plant of the school, giving the number and size of classrooms; type of heating, lighting and ventilation, blackboard space; number of toilets and lavatories; number and kinds of desks, tables, chairs and other school furniture; total floor space; and a listing of all *available* laboratory and classroom equipment ~~available for instruction.~~

**52.12(8)** 8. Names and educational and experience qualifications of all instructors.

**52.12(9)** 9. Statement of the educational prerequisite for each course.

**52.12(10)** 10. Statement as to the exact title of the course and a specific description of the objective for which given.

**52.12(11)** 11. Statement as to the length of the course(s) in weeks; number of hours school is in session per week.

**52.12(12)** 12. A detailed curriculum ~~must be attached~~ showing subjects taught, type of work or skills to be learned, and approximate length of time to be spent on each.

**52.12(13)** 13. Samples of permanent records ~~showing students' conduct and progress are to be enclosed, as is a sample certificate or diploma issued students upon satisfactory completion of the course of study kept by schools. Samples should include transcripts, progress, grading, conduct and other records kept by the school.~~

**52.12(14)** 14. Statement as to tuition costs, and costs for required books, supplies and equipment.

**52.12(15)** ~~Statement concerning graduates' placement during the year preceding date of application.~~

**52.12(16)** 15. Statement that school buildings meet local and state regulations concerning fire, safety, and health.

~~Upon receipt of the written application, it is checked by a staff member, and if there is any merit to the application, the school is visited and a detailed inspection is made to determine the correctness of the information given in the application.~~

**281—52.13 15(256) Evaluation standards.** The following standards are used in evaluating a school *eligible under this chapter*:

**52.13 15(1)** The curriculum and instruction must be consistent in quality, content and length with similar courses in the public schools or other private schools with recognized and accepted standards.

**52.13 15(2)** Each school must have a system for keeping attendance, progress and placement records, ~~which that~~ is acceptable to this department. Records must be kept up to date, and reports must be prepared and submitted as requested. Furthermore, school records must be made available for inspection on request of department representatives.

**52.13 15(3)** ~~School~~ *The school* must have clearly stated and enforced standards of attendance, progress and conduct. Such standards must be acceptable to this department.

**52.13 15(4)** The school must give appropriate credit for previous training or experience, with *the* training period shortened proportionately. No course of training will be considered bona fide ~~as to if a veteran who~~ is already qualified by training and experience for ~~the that~~ course objective.

**52.13 15(5)** The school must provide the student with a copy of the approved curriculum.

## EDUCATION DEPARTMENT[281](cont'd)

~~52.13 15(6)~~ Upon completion of the training, the school must give the veteran a certificate indicating the approved course, title, and length and that the training was completed satisfactorily.

~~52.13 15(7)~~ The school must have a clear statement as to entrance qualifications and must abide by them.

~~52.13 15(8)~~ The school must have sufficient toilet facilities to adequately serve the enrollment.

~~52.13 15(9)~~ Each school must provide at least 25 square feet of floor space for each student in a classroom; and at least 40 square feet in laboratories or shop rooms for each student training therein *adequate classroom and lab space consistent with the needs of the curriculum.*

~~52.13 15(10)~~ Heat, light and ventilation shall be adequate for the type of instruction and enrollment in the school. ~~Thirty foot-candles of light shall be considered minimum where reading is done.~~

~~52.13 15(11)~~ School buildings must meet local and state regulations concerning fire, safety and health.

~~52.13 15(12)~~ Schools must be ethical in their advertising and solicitation. Both are subject to review and approval by this department.

~~52.13 15(13)~~ ~~Instructors for a trade school shall have at least 3 years of experience in the trade as a journeyman, above the learning level must be competent in the fields they are teaching and be able to document their background and training.~~ Instructors in other schools shall hold appropriate certificates, licenses or degrees.

~~52.13(14)~~ ~~The student-instructor ratio may not exceed 35 to 1 in any classroom activity, and may not exceed 20 to 1 in any laboratory or shop activity unless the school is licensed by another agency of the state. The ratio in flight schools must be based on requirements of the U.S. civil aeronautics authority.~~

~~52.13(15)~~ 15(14) While schools may not guarantee employment upon graduation, a school should exert every effort to assist its graduates in obtaining employment.

~~52.13(16)~~ 15(15) Tuition and other charges made by the school should be clearly set out in publications of the school.

~~52.13(17)~~ 15(16) Schools should make use of modern teaching aids and procedures.

*These rules are intended to implement 38 U.S.C. Sections 3001-3036, 3201-3243, 3500-3566 and 3670-3699 and 10 U.S.C. Sections 16131-16137.*

## ARC 2279B

### EDUCATION DEPARTMENT[281]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby gives Notice of Intended Action to amend Chapter 83, "Teacher Quality Program," Iowa Administrative Code.

These amendments are required due to statutory language changes made during the Seventy-ninth General Assembly in 2002 Iowa Acts, chapter 1152, section 7.

Interested persons may submit written or oral comments by February 27, 2003, by contacting Jeff Berger, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-6719; E-mail at [jeff.berger@ed.state.ia.us](mailto:jeff.berger@ed.state.ia.us).

A public hearing will be held on February 27, 2003, at 11 a.m. in the State Board Room, Grimes State Office Building, Second Floor, East 14th and Grand Avenue, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Individuals who have special needs and require assistance may contact the Department of Education prior to the public hearing date to advise the Department of special needs.

These amendments are intended to implement Iowa Code section 284.2 as amended by 2002 Iowa Acts, chapter 1152, section 7.

The following amendments are proposed.

ITEM 1. Amend rule 281—83.2(284) as follows:

**281—83.2(284) Definitions.** For the purpose of these rules, the following definitions shall apply:

"Beginning teacher" means an individual serving under an initial provisional license, issued by the board of educational examiners under Iowa Code chapter 272, who is assuming a position as a classroom teacher. *For purposes of the beginning teacher mentoring and induction program created pursuant to Iowa Code section 284.5, "beginning teacher" also includes preschool teachers who are licensed by the board of educational examiners under Iowa Code chapter 272 and are employed by a school district or area education agency.*

"Classroom teacher" means an individual who holds a valid practitioner's license under Iowa Code chapter 272 and who is employed under a teaching contract with a school district or area education agency in the state of Iowa and who is employed under a contract issued by a board of directors under Iowa Code section 279.13 to provide classroom instruction to students, or as a preschool teacher.

"Comprehensive evaluation" means a summative evaluation of a beginning teacher conducted by an evaluator for purposes of performance review, for recommendation for educational licensure determining a beginning teacher's level of competency relative to the Iowa teaching standards and for recommendation for licensure based upon models developed pursuant to Iowa Code section 256.9, subsection 50, and to determine whether the teacher's practice meets the school district expectations for a career teacher.

"Department" means the department of education.

"Director" means the director of the department of education.

"District facilitator" means an individual in Iowa who serves as a coordinator for a district mentoring and induction program.

"Evaluator" means an administrator or other practitioner who successfully completes an evaluator training program pursuant to Iowa Code section 284.10.

"Intensive assistance" means the provision of organizational support and technical assistance to teachers, other than beginning teachers, for the remediation of identified teaching and classroom management concerns for a period not to exceed 12 months.

"Mentor" means an individual, employed by a school district or area education agency as a classroom teacher or a retired teacher, who holds a valid license issued under Iowa Code chapter 272. The individual must have a record of four years of successful teaching practice, *must be employed with at least two of the four years* on a nonprobationary basis and

## EDUCATION DEPARTMENT[281](cont'd)

must demonstrate professional commitment to both the improvement of teaching and learning and the development of beginning teachers.

“Performance review” means a summative evaluation of a teacher other than a beginning teacher and used to determine whether the teacher’s practice meets school district expectations and the Iowa teaching standards, and to determine whether the teacher’s practice meets school district expectations for career advancement in accordance with Iowa Code section 284.7.

“School board” means the board of directors of a school district or a collaboration of boards of directors of school districts.

“School district” means a public school district.

“State board” means the state board of education.

“Teacher” means an individual holding a practitioner’s license issued under Iowa Code chapter 272, who is employed in a nonadministrative position as a teacher, librarian, media specialist, preschool teacher, or counselor in a nonadministrative position by a school district pursuant to a contract issued by a board of directors under Iowa Code section 279.13. A teacher may be employed in both an administrative and a nonadministrative position by a board of directors and shall be considered a part-time teacher for the portion of time that the teacher is employed in a nonadministrative position. “Teacher” includes a licensed individual employed on a less than full-time basis by a school district through a contract between the school district and an institution of higher education with a practitioner preparation program in which the licensed teacher is enrolled.

ITEM 2. Amend subrule 83.3(2) as follows:

**83.3(2)** District participation. A school district is eligible to receive moneys appropriated for purposes specified in this chapter if the school board applies to the department to implement a beginning teacher mentoring and induction program in the manner prescribed by the department and approved by the department. A school district, with the coordination of a district facilitator, may shall provide a beginning teacher mentoring and induction program for all beginning teachers in the school years year beginning July 1, 2001, July 1, 2002, and July 1, 2003. A beginning teacher shall be informed by the school district, prior to the beginning teacher’s participation in a mentoring and induction program, of the Iowa teaching standards and criteria upon which the beginning teacher shall be evaluated and of the evaluation process utilized by the school district. The beginning teacher shall be comprehensively evaluated by the end of the beginning teacher’s second year of teaching to determine successful completion of the program and whether the teacher meets expectations to move to the career level. The school district shall recommend for an educational a standard license a beginning teacher who has successfully completed the program met the Iowa teaching standards as determined by a comprehensive evaluation.

If a beginning teacher who is participating in a mentoring and induction program leaves the employ of a participating school district or area education agency prior to completion of the program, the participating school district or area education agency subsequently hiring the beginning teacher shall credit the beginning teacher with the time earned in a program prior to the subsequent hiring. If the general assembly appropriates moneys for purposes of Iowa Code section 284.5, a school district or area education agency is eligible to receive state assistance for up to two years for each beginning teacher the school district or area education agency employs who was formerly employed in an accredited non-

public school or in another state as a first-year teacher. The school district or area education agency employing the teacher shall determine the conditions and requirements of a teacher participating in a mentoring and induction program.

A school district or area education agency may offer a teacher a third year of participation in the program if, after conducting a comprehensive evaluation, the school district or area education agency determines that the teacher is likely to successfully complete the mentoring and induction program by meeting the Iowa teaching standards by the end of the third year of eligibility. The third year of eligibility is offered at the employing district’s expense. A teacher who is granted a third year of eligibility shall, in cooperation with the teacher’s evaluator, develop a plan to meet the Iowa teaching standards and district career expectations. This plan will be implemented by the teacher and supported through the district’s mentoring and induction program be provided with support for the district expectations for a career teacher through the district beginning teacher mentoring and induction program. The school district or area education agency shall notify the board of educational examiners that the teacher will participate in a third year of the school district’s program. The teacher shall undergo a comprehensive evaluation at the end of the third year.

For purposes of comprehensive evaluations for beginning teachers, including the comprehensive evaluation required for the beginning teacher to progress to career teacher, the Iowa teaching standards and criteria shall be as described in rule 281—83.4(284) based upon the models developed pursuant to 2001 Iowa Acts, Senate File 476, section 14, and established pursuant to Iowa Code chapter 20. A participating school district or area education agency shall participate in state program evaluations.

ITEM 3. Amend subrule 83.3(3), introductory paragraph, as follows:

**83.3(3)** District plan. Each participating school district or area education agency shall develop a sequential two-year beginning teacher mentoring and induction plan based on the Iowa teaching standards. The plan shall be included in the school district’s comprehensive school improvement plan submitted pursuant to Iowa Code section 256.7, subsection (21). A school district that wishes to participate in the program or area education agency shall have the board adopt a beginning teacher mentoring and induction program plan and written procedures for the program. At the board’s discretion, the district or area education agency may choose to use or revise the model plan provided by the area education agency or develop a plan locally. The components of a district district’s or area education agency’s beginning teacher mentoring and induction program shall include, but are not limited to, the following:

ITEM 4. Amend rule 281—83.4(284), introductory paragraph, as follows:

**281—83.4(284) Iowa teaching standards and model criteria.** The Iowa teaching standards and supporting model criteria represent a set of knowledge and skills that reflects the best evidence available regarding effective teaching. The purpose of the standards and supporting model criteria is to provide Iowa school districts with a consistent representation of the complexity and the possibilities of quality teaching. The standards shall serve as the basis for comprehensive evaluations of teachers and as a basis for professional development plans. Each standard with suggested model supporting criteria is outlined as follows:

## EDUCATION DEPARTMENT[281](cont'd)

ITEM 5. Amend rule 281—83.4(284) by adding the following **new** subrule:

**83.4(9)** The school board shall provide comprehensive evaluations for beginning teachers using the Iowa teaching standards and criteria listed in rule 281—83.4(284). The school board, for the purposes of performance reviews for teachers other than beginning teachers, shall provide evaluations that contain, at a minimum, the Iowa teaching standards and criteria listed in rule 281—83.4(284). A local school board and its certified bargaining representative may negotiate, pursuant to Iowa Code chapter 20, additional teaching standards and criteria for use in a performance review.

ITEM 6. Amend 281—Chapter 83 by adding the following **new** rules:

**281—83.5(284) Evaluator approval training.** The department shall approve eligible providers and their programs to conduct evaluator training. Only individuals certified through programs approved by the department shall qualify for evaluator certification by the board of educational examiners. Approved evaluator training programs shall be designed to align with the Iowa teaching standards and criteria, provide evaluators with the skills to conduct comprehensive evaluations and performance reviews as required by Iowa Code chapter 284, and provide for the evaluation of the progress made on individual career development plans. This training for evaluators shall incorporate components of theory, demonstration, practice, and application of evaluation knowledge and skills.

**83.5(1)** Application requirements for providers of evaluator approval training. Approved applications for the provision of evaluator approval training shall include, but are not limited to, the following components:

a. A curriculum that addresses participant skill development in the areas of:

(1) The identification of quality instruction and practices based on the Iowa teaching standards and criteria;

(2) The use of multiple forms of data collection for identifying and supporting performance and development;

(3) The understanding and development of conferencing and feedback skills; and

(4) The development of skills in data-based decision making.

b. Demonstration that the evaluator approval training process design provides training as specified in this rule.

c. A description of the process used to deliver the training to participants.

d. A description of the procedures developed to certify the skill attainment of the evaluator being trained.

e. A budget.

f. Staff qualifications.

g. Evidence of the provider's expertise in evaluation design and training processes.

h. Provisions for leadership to support and implement ongoing professional development focused on student learning.

i. A process that evaluates the effectiveness of the implementation of the training and demonstrates that the trainees have attained the knowledge and skills as described in paragraph "a." This evaluation shall be conducted on an annual basis and submitted to the department.

**83.5(2)** Process for the approval of evaluator approval training program applications. Eligible providers shall submit applications on forms prescribed by the department. Applications for new providers will be accepted and reviewed by the department by July 1 of each year. A review panel

shall be convened to review applications for evaluator approval training programs based on the requirements listed in subrule 83.5(1). The panel shall recommend for approval and the department shall approve the evaluator training programs that meet the requirements listed in subrule 83.5(1). Applicants shall be notified of their status, as determined by the department, within 30 days of the application deadline. An approved list of private providers shall be maintained on the department Web site with an annual notification to school districts and area education agencies of the department Web site address that contains provider information.

Eligible providers may be public or private entities, including, but not limited to, school districts, consortia, and other public or private entities including professional organizations. Applicants shall meet all applicable federal, state, and local health, safety and civil rights laws. Higher education administrative practitioner preparation institutions shall meet the review process through the state board approval and accreditation process for these institutions.

**83.5(3)** Local teacher evaluation plans. By July 1, 2004, local districts shall develop and implement a teacher evaluation plan that contains the following components:

a. The use of the Iowa teaching standards and criteria;

b. Provisions for the comprehensive evaluation of beginning teachers that include a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and the use of the comprehensive evaluation instrument developed by the department.

c. Provisions for the performance reviews of teachers other than beginning teachers once every three years that include, at a minimum, classroom observation of the teacher, a review of the teacher's progress on the Iowa teaching standards as set forth in rule 281—83.4(284) and additional standards and criteria determined by the district, a review of the implementation of the teacher's individual career development plan, and supporting documentation from other evaluators, teachers, parents, and students;

d. Provisions for individual career development plans for teachers other than beginning teachers;

e. Provisions for an intensive assistance program as provided in Iowa Code section 284.8 that addresses the remediation defined under subrules 83.4(1) through 83.4(7) or any other standards or criteria established by a collective bargaining agreement.

A local school board and its certified bargaining representative may negotiate, pursuant to Iowa Code chapter 20, evaluation and grievance procedures for beginning teachers and for teachers other than beginning teachers that are not in conflict with Iowa Code chapter 284. If a supervisor or an evaluator determines, at any time, as a result of a teacher's performance that the teacher is not meeting district expectations under subrules 83.4(1) through 83.4(7) or any other standards or criteria established in the collective bargaining agreement, the evaluator shall, at the direction of the teacher's supervisor, recommend to the district that the teacher participate in an intensive assistance program. The intensive assistance program and its implementation are not subject to negotiation or grievance procedures established pursuant to Iowa Code chapter 20.

**281—83.6(284) Professional development.**

**83.6(1)** Individual teacher career development plan. Each school or district shall support the development and implementation of the individual teacher career development plan for teachers other than beginning teachers. The purpose of the individual plan is to promote individual and collective

## EDUCATION DEPARTMENT[281](cont'd)

professional development. At a minimum, the goals for an individual teacher career development plan must be based on the relevant Iowa teaching standards that support the student achievement goals of the attendance center and school district as outlined in the comprehensive school improvement plan, and the needs of the teacher. The learning opportunities provided to meet the goals of the individual teacher plan include individual study and collaborative study of district-determined content to the extent possible. The individual plan shall be developed by the teacher in collaboration with the teacher's evaluator. An annual meeting shall be held between the teacher's evaluator and the teacher to review the goals and refine the plan.

**83.6(2)** Reserved.

**ARC 2286B****HUMAN SERVICES  
DEPARTMENT[441]****Notice of Intended Action**

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

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

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 61, "Refugee Services Program," Iowa Administrative Code.

These amendments expand the scope of eligibility for refugee services to include victims of trafficking, as required by the Trafficking Victims Protection Act of 2000. Under this law, an alien who is a victim of a severe form of trafficking, as certified by the U.S. Department of Health and Human Services, shall be eligible for benefits and services under any federal or state program to the same extent as an alien who is admitted to the United States as a refugee. Severe forms of trafficking include sex trafficking and trafficking for forced labor.

These amendments also update and clarify the definition of "refugee" and the categories of people eligible for services as refugees. These are technical changes to conform to federal statutory and regulatory language and do not change the scope of eligibility for services under this chapter.

These amendments do not provide for waivers in specified situations because they provide a benefit to the people affected.

Any interested person may make written comments on the proposed amendments on or before February 26, 2003. Comments should be directed to the Office of Policy Analysis, Department of Human Services, Hoover State Office Building, 1305 East Walnut Street, Des Moines, Iowa 50319-0114. Comments may be sent by fax to (515)281-4980 or by E-mail to [policyanalysis@dhs.state.ia.us](mailto:policyanalysis@dhs.state.ia.us).

These amendments are intended to implement Iowa Code section 217.6.

The following amendments are proposed.

ITEM 1. Amend rule **441—61.1(217)** by rescinding the definition of "refugee" and adopting the following **new** definition in lieu thereof:

"Refugee" means any person who:

1. Is outside any country of the person's nationality or, in the case of a person having no nationality, is outside any country in which the person last habitually resided; and

2. Is unable or unwilling to return to that country and unable or unwilling to avail himself or herself of the protection of that country because of persecution or a well-founded fear of persecution on account of race, religion, nationality, membership in a particular social group, or political opinion, as defined under the Immigration and Nationality Act, Title I, Section 101.

ITEM 2. Adopt **new** rule 441—61.3(217) as follows:

**441—61.3(217) Eligibility for refugee services.** Refugees eligible for services under this chapter include people who have one of the following statuses, as issued by the United States Immigration and Naturalization Service:

**61.3(1)** A person granted asylum under the Immigration and Nationality Act, Title II, Chapter 1, Section 208. Asylees are people who travel to the United States on their own and apply for and receive a grant of asylum.

**61.3(2)** A person admitted to the United States as a refugee under the Immigration and Nationality Act, Title II, Chapter 1, Section 207.

**61.3(3)** A person granted humanitarian parole as a refugee or asylee under the Immigration and Nationality Act, Title II, Chapter 2, Section 212. The United States Attorney General may, in the Attorney General's discretion, parole into the United States temporarily, under such conditions as the Attorney General may prescribe on a case-by-case basis, for urgent humanitarian reasons or significant public benefit, any alien applying for admission to the United States.

**61.3(4)** A Cuban or Haitian entrant in accordance with requirements in 45 CFR Part 401, as amended to March 22, 2000. Cuban and Haitian entrants include:

a. Any person granted parole status as a "Cuban/Haitian Entrant (Status Pending)" or granted any other special status subsequently established under the immigration laws for nationals of Cuba or Haiti, regardless of the person's status at the time assistance or services are provided; and

b. Any other national of Cuba or Haiti who meets both of the following conditions:

(1) The person either:

1. Was paroled into the United States and has not acquired any other status under the Immigration and Nationality Act; or

2. Is the subject of exclusion or deportation proceedings under the Immigration and Nationality Act; or

3. Has an application for asylum pending with the Immigration and Naturalization Service.

(2) A final, nonappealable, and legally enforceable order of deportation or exclusion has not been entered with respect to the person.

**61.3(5)** A child born in Vietnam between January 1, 1962, and January 1, 1976, of an American citizen father and a Vietnamese mother, together with the child's immediate relatives, who are admitted to the United States as immigrants pursuant to Section 584 of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1988, as contained in Section 101(e) of Public Law 100-202 and amended by the ninth proviso under Migration and Refugee Assistance in Title II of the Foreign Operations, Export Financing, and Related Programs Appropriations Acts, 1989 (Public Law 100-461).

**61.3(6)** A person admitted to the United States for permanent residence, provided the person previously held one of the statuses identified in subrules 61.3(1) through 61.3(5).



HUMAN SERVICES DEPARTMENT[441](cont'd)

**61.3(7)** An alien immigrant who is a victim of a severe form of trafficking in persons, as certified by the United States Department of Health and Human Services pursuant to Section 107(b) of the Trafficking Victims Protection Act of 2000, as contained in Public Law 106-386, Division A, 114 Stat. 1464 (2000). "Severe forms of trafficking in persons" means:

- a. Sex trafficking in which a commercial sex act is induced by force, fraud, or coercion or in which the person induced to perform the act has not attained 18 years of age; or
- b. The recruitment, harboring, transportation, provision, or obtaining of a person for labor or services, through the use of force, fraud, or coercion for the purpose of subjection to involuntary servitude, peonage, debt bondage, or slavery.

## ARC 2282B

### LABOR SERVICES DIVISION[875]

#### Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner hereby gives Notice of Intended Action to amend Chapter 10, "General Industry Safety and Health Rules," Iowa Administrative Code.

The proposed amendment adopts the new safety standards for exit routes, emergency action plans, and fire prevention plans adopted by the United States Occupational Safety and Health Administration on November 7, 2002. The revisions reorganize the text, remove inconsistencies among sections, use clearer language, and eliminate duplicative requirements. The only change intended to be substantive is allowing compliance with the exit route provisions of the National Fire Protection Association's Standard 101, Life Safety Code, 2000 Edition, as an alternative for some of the requirements.

The principal reasons for adoption of these amendments are to implement Iowa Code chapter 88 and to protect the safety and health of Iowa's workers. Adoption of this amendment is required by 29 Code of Federal Regulations Subsection 1953.23(a)(2) and Iowa Code subsection 88.5(1)"a."

A public hearing will be held on February 25, 2003, at 1:30 p.m. in the Stanley Room of the Iowa Workforce Development Building, 1000 East Grand Avenue, Des Moines, Iowa. Any interested person will be given the opportunity to make an oral statement and submit documents.

The facility for the oral presentations is accessible to and functional for persons with physical disabilities. Persons who have special requirements should telephone (515)242-5869 in advance to arrange access or other needed services.

Written data or arguments to be considered in adoption may be submitted by interested persons no later than February 25, 2003, to the Deputy Labor Commissioner, Division of Labor Services, 1000 East Grand Avenue, Des Moines, Iowa 50319-0209 or faxed to (515)281-7995. E-mail may be sent to [kathleen.uehling@iwd.state.ia.us](mailto:kathleen.uehling@iwd.state.ia.us).

This amendment will not necessitate additional annual expenditures exceeding \$100,000 by any one political subdivi-

sion or agency or any contractor providing services to political subdivisions or agencies.

This amendment is intended to implement Iowa Code section 88.5.

The following amendment is proposed.

Amend rule **875—10.20(88)** by inserting at the end thereof:

67 Fed. Reg. 67961 (November 7, 2002)

## ARC 2269B

### 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 rescind Chapter 26, "Backflow Prevention Assembly Tester Registration," Iowa Administrative Code, and to adopt a new Chapter 26 with the same title.

These rules describe the standards for the training of backflow prevention assembly testers and the procedures for registration. The rules also establish a standard of conduct for testers and procedures for disciplinary action against testers, trainers, and certification agencies.

These proposed rules have been reviewed by select individuals within the industry and have been posted on the Department's Web site. In November, all registered testers were notified about the proposed changes and asked to comment.

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

The registration fee is increased from \$50 to \$60 for a biennial registration. The registration renewal period is changed from April-May to August-September. Fees are prorated. The training course review fee is raised from \$50 to \$100. A notification fee for courses to be held is reduced from \$50 to \$25. A new fee and standards for review of continuing education courses are established.

Third-party certification standards are established, and third-party certification is made a sufficient qualification for initial and renewal registration.

Any interested person may make written suggestions or comments on these rules on or before February 25, 2003. 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](mailto:mmagnant@idph.state.ia.us).

There will be a public hearing on February 25, 2003, at 1 p.m. in Room 518, 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 hearing or mobility impairments should contact the Department of Public Health and advise staff of specific needs.

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

PUBLIC HEALTH DEPARTMENT[641](cont'd)

The following amendment is proposed.

Rescind 641—Chapter 26 and adopt in lieu thereof the following **new** chapter:

CHAPTER 26  
BACKFLOW PREVENTION ASSEMBLY  
TESTER REGISTRATION

**641—26.1(135K) Applicability.** This chapter applies to all persons who test or repair backflow prevention assemblies in Iowa.

**641—26.2(135K) Definitions.**

“ABPA” means the American Backflow Prevention Association, P.O. Box 3051, Bryan, Texas 77805-3051.

“Administrative authority” means an individual, board, department, or agency employed by a city, county or other political subdivision of the state and authorized by local ordinance to administer and enforce the provisions of the plumbing code.

“Approved continuing education course” means a department-approved course that is designed to supplement or refresh the knowledge of a registered tester and to meet the requirements of paragraph 26.5(2)“a”(2).

“Approved training course” means a department-approved course that is designed to train individuals to test and repair backflow prevention assemblies.

“ASSE” means the American Society of Sanitary Engineering, 28901 Clemens Road, Suite 100, Westlake, Ohio 44145.

“AWWA” means the American Water Works Association, 6666 West Quincy Avenue, Denver, Colorado 80235.

“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 the effective date of these rules, 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, AWWA C510-97
Double Check Detector Assembly	ASSE 1048-99
Pressure Vacuum Breaker	ASSE 1020-98
Reduced Pressure Principle Backflow Preventer	ASSE 1013-99, AWWA 511-97
Reduced Pressure Detector Assembly	ASSE 1047-99
Spill Resistant Pressure Vacuum Breaker	ASSE 1056-2001

“Certified” as used in these rules means certified as a backflow prevention assembly tester under the requirements of ABPA or another third-party certification agency.

“Department” means the Iowa department of public health.

“Proctor” means an individual designated by a third-party certification agency to conduct certification examinations of backflow prevention assembly testers.

“Registered backflow prevention assembly tester” or “registered tester” means a person who has successfully

completed an approved training course, or who is certified, and who has registered with the department in accordance with 641—26.5(135K).

“Third-party certification agency” means the ABPA or another agency approved by the department to certify the knowledge and skills of backflow prevention assembly testers.

**641—26.3(135K) Registration required.** No person shall test or repair a backflow prevention assembly unless the person is a registered backflow prevention assembly tester.

**641—26.4(135K) Backflow prevention assembly tester training.**

**26.4(1) Tester training.**

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 the effective date of these rules, the sponsor is not required to reapply for approval. The application shall include:

- (1) Sponsoring organization name, contact person, address, and telephone number.
- (2) Course dates and times, if a course has been scheduled.
- (3) Course location, including street address, if a course has been scheduled.
- (4) Course outline, including the approximate time allotted to each training segment.
- (5) A list of reference materials, texts and audio-visual materials used in the course.
- (6) A copy of the written examination for the course and a written description of the elements and standards of proficiency for the practical examination.
- (7) The name(s) and qualifications of the instructor(s).
- (8) A list of the backflow prevention assemblies available for classwork and the number of test stations available for the students.
- (9) The maximum class size.
- (10) A \$100 nonrefundable fee.

b. The department shall review the application and respond to the applicant within 10 business days after the department receives the application.

c. The course sponsor shall notify the department at least 15 days before an approved training course is started. The notification shall include:

- (1) Sponsoring organization name, contact person, address, and telephone number.
- (2) Course dates and times.
- (3) Course location, including street address.
- (4) A \$25 nonrefundable fee.

d. A training course shall be at least 32 instructional hours and shall cover at least the following subjects:

- (1) Backflow definitions, causes and examples.
- (2) Description of backflow prevention assemblies, their proper application and installation, and their operational characteristics.
- (3) Description and operational characteristics of test equipment.
- (4) Techniques for testing backflow prevention assemblies.
- (5) Troubleshooting of backflow prevention assemblies.
- (6) Record keeping and the responsibilities of regulatory agencies and the registered tester.

The course shall conclude with a written examination of at least 100 questions and a practical examination of testing

PUBLIC HEALTH DEPARTMENT[641](cont'd)

techniques on all types of testable backflow prevention assemblies. The time for testing shall be in addition to the required instructional hours. To have successfully completed the course, the student must achieve a passing mark of at least 70 percent on the written examination and demonstrate proficiency in testing and troubleshooting procedures.

ABPA or other approved third-party certification agency testing may be substituted for the course test.

e. The lead course instructor shall:

(1) Have successfully completed an approved training course, document the successful completion of a course that meets the requirements of an approved training course, or be certified.

(2) Have at least three years of experience in cross connection control.

f. Backflow prevention assembly testing instruction laboratory.

(1) The testing laboratory for a training course shall be equipped with examples of each of the backflow prevention assemblies from at least three different manufacturers. If fewer than three manufacturers make a type of backflow prevention assembly, at least one example of that type of backflow prevention assembly shall be provided. At least one double check valve assembly and one reduced pressure principle assembly larger than two inches shall be provided.

(2) The testing laboratory shall provide at least one test station per three students.

**26.4(2) Continuing education training.**

a. A person or organization that plans to conduct or sponsor a continuing education course for registered testers in Iowa shall apply to the department for approval of the course at least 15 days before the course is scheduled to begin. The application shall include:

(1) Sponsoring organization name, contact person, address, and telephone number.

(2) Course date and time.

(3) Course location, including street address.

(4) Course outline, including the approximate time allotted to each training segment.

(5) A list of reference materials, texts and audio-visual materials used in the course.

(6) A list of backflow prevention assemblies that will be used for the course (if applicable).

(7) The name(s) and qualifications of the instructor(s).

(8) A \$25 nonrefundable fee.

b. The department shall review the application and respond to the applicant within ten business days after the department receives the application.

c. A continuing education course shall be on cross connection control theory and practice; backflow prevention devices and methods; backflow prevention assembly installation, testing, troubleshooting and repair; codes and rules affecting cross connection control; safety issues related to installation and testing of backflow prevention assemblies; or related subjects approved by the department.

**26.4(3) Third-party certification agencies.**

a. An agency that wishes to be a third-party certification agency in Iowa shall submit to the department a request for approval in writing on agency letterhead, signed by an authorized representative of the agency. The request shall include at least the following information:

(1) A copy of the written examination and whether it is open- or closed-book.

(2) A copy of the testing procedures that are the basis for the practical examination.

(3) A description of the procedures for the practical examination and the criteria for evaluating the performance on the practical examination.

(4) Proctor qualifications and training.

(5) Procedures and criteria for renewing the certification. The renewal of certification shall be done at least every five years and shall include knowledge and skills testing.

(6) A history of the development and implementation of the program, as applicable.

(7) A list of other jurisdictions where the certification is allowed and regulatory contacts in those jurisdictions.

(8) A nonrefundable fee of \$100.

b. A third-party certification agency shall not certify an individual who was trained by the agency. An individual proctor shall not certify individuals who have taken a course at which the proctor was an instructor.

**641—26.5(135K) Registration.**

**26.5(1) Initial registration.**

a. A person who has successfully completed an approved training course may register with the department within the 12 months after the date of course completion. A person who is certified may register with the department. The applicant must submit:

(1) A completed application form (form provided by the department).

(2) Documentation of successful completion of an approved training course or documentation that the person is certified.

(3) A nonrefundable fee in accordance with Table 1.

The registration shall expire as shown in Table 1.

Table 1  
Registration Fees

Registration Month	Even Year		Odd Year	
	Fee	Registration Expiration	Fee	Registration Expiration
January - February	\$55	October 31 + one year	\$25	October 31
March - April	\$50	October 31 + one year	\$20	October 31
May - June	\$45	October 31 + one year	\$15	October 31
July - August	\$40	October 31 + one year	\$70	October 31 + two years
September - October	\$35	October 31 + one year	\$65	October 31 + two years
November - December	\$30	October 31	\$60	October 31 + one year

b. A person who has completed a course of training in another state may be registered in Iowa. The person shall submit:

(1) A completed Iowa application form (form provided by the department).

(2) Documentation that:

1. The person has successfully completed a training course that meets the hour and subject requirements for an approved training course (if the person completed the training course more than 12 months before the date of the application, the person shall document that the person has attended an average of at least 2.5 hours of continuing educa-

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

tion training per year since completing the course), or

2. The person is certified, or

3. The person is registered as a backflow prevention assembly tester in a jurisdiction that has similar or greater requirements for training and continuing education than does the state of Iowa.

(3) A nonrefundable fee in accordance with Table 1.

The registration shall expire as shown in Table 1.

**26.5(2) Renewal registration.**

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

(1) A completed registration renewal application form (form provided by the department).

(2) Documentation that the registered tester has completed at least five hours of training in approved continuing education courses after October 31 of the previous odd-numbered year (after June 30, 2003, for 2005) or documentation that the registered tester is certified. Registered testers with an initial registration date of January 1 or later in an odd-numbered year are not required to obtain continuing education prior to renewal in that year.

(3) A nonrefundable fee of \$60.

(4) Registration renewal applications received after October 1 shall include a \$10 penalty per month or fraction thereof that the application is received after October 1 to a maximum of a \$50 penalty.

b. Before a renewal may be issued for a registration that has lapsed for more than 24 months, the person applying for renewal of the registration shall document that one of the following conditions is true:

(1) The person has successfully completed an approved training course within the 12 months before applying for registration renewal, or

(2) The person is certified, or

(3) The person is registered as a backflow prevention assembly tester in a jurisdiction that has similar or greater requirements for training and continuing education than does the state of Iowa.

**641—26.6(135K) Standards of conduct.**

**26.6(1)** A registered tester shall comply with these rules and with the ordinances, rules and policies of the administrative authority in each jurisdiction in which the registered tester tests or repairs a backflow prevention assembly.

**26.6(2)** A registered tester shall maintain a record for each backflow prevention assembly tested for at least five years after the date on which the assembly was tested. Where required by ordinance, the registered tester shall submit to the administrative authority a completed test report on a form approved by the administrative authority. The record may be reviewed during normal business hours by an authorized representative of the department or by an authorized representative of the administrative authority of the jurisdiction in which the assembly is located. The assembly record shall include at least:

a. The name, address and telephone number of the assembly owner.

b. The location of the facility in which the assembly is located.

c. The location of the assembly within the facility.

d. The type, brand, model, size, and serial number of the assembly.

e. The date and time of the test.

f. Results of the test.

g. Any assembly repairs or maintenance.

**641—26.7(135K) Penalty.** A person who violates a provision of this chapter shall be guilty of a simple misdemeanor pursuant to the authority of Iowa Code section 135K.5.

**641—26.8(135K) Denial, suspension or revocation.** This rule pertains to denial, suspension or revocation of registration; denial or revocation of training course approval; and denial or revocation of approval as a third-party certification agency.

**26.8(1)** The department may deny an application for registration or renewal, or may suspend or revoke a registration, when it finds that the registrant has committed any of the following acts:

a. Negligence or incompetence in the testing of a backflow prevention assembly.

b. Fraud in obtaining registration or renewal.

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

d. 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.

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

a. The lead instructor is not qualified in accordance with paragraph 26.4(1)“e.”

b. The training course did not comply with paragraph 26.4(1)“d.”

c. The course testing laboratory did not comply with paragraph 26.4(1)“f.”

**26.8(3)** The department may deny or revoke the approval for a third-party certification agency when it finds:

a. The application for approval contains material misinformation regarding the conduct and standards of the certification program or its acceptance in other jurisdictions.

b. Failure to adhere to the standards and procedures stated in the application for approval in the process of certifying or renewing the certification of testers.

c. Violations of paragraph 26.4(3)“b.”

**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. The name of the registered tester, the person or organization sponsoring an approved course, or the third-party certification agency, as applicable; and

b. The specific details of the action(s) by the registered tester that did not comply with the rules; or

c. The specific way(s) that an approved course did not comply with the rules, including the date(s) and location(s) of the alleged violation(s); or

d. The specific way(s) that a third-party certification agency or its representative failed to comply with the rules, including date(s) and location(s) of the alleged failure to comply.

**26.8(5) Appeals.**

a. Notice of denial, suspension or revocation of registration; denial or revocation of course approval; or denial or revocation of third-party certification agency approval shall be sent to the affected individual or organization by restricted certified mail, return receipt requested, or by personal service. The affected individual or organization shall have a right to appeal the denial, suspension or revocation.

b. An appeal of a denial, suspension or revocation shall be submitted by certified mail, return receipt requested, with-

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

in 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 E. 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.

c. Upon receipt of an appeal that meets contested case status, the appeal shall be transmitted to the department of inspections and appeals within five working days of receipt pursuant to the rules adopted by that agency regarding the transmission of contested cases. The information upon which the denial, suspension or revocation is based shall be provided to the department of inspections and appeals.

d. The hearing shall be conducted in accordance with 481—Chapter 10.

e. When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. The proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in paragraph 26.7(5)"f."

f. Any appeal to the director of the department for review of the proposed decision and order of the administrative law judge shall be filed in writing and mailed to the director by certified mail, return receipt requested, or delivered by personal service within ten days after the receipt of the administrative law judge's proposed decision and order by the aggrieved party. A copy of the appeal shall also be mailed to the administrative law judge. Any request for appeal shall state the reason for appeal.

g. Upon receipt of an appeal request, the administrative law judge shall prepare the record of the hearing for submission to the director. The record shall include the following:

- (1) All pleadings, motions and rules.
- (2) All evidence received or considered and all other submissions by recording or transcript.
- (3) A statement of all matters officially noticed.
- (4) All questions and offers of proof, objections, and rulings thereon.
- (5) All proposed findings and exceptions.
- (6) The proposed findings and order of the administrative law judge.

h. The decision and order of the director becomes the department's final agency action upon receipt by the aggrieved party and shall be delivered by restricted certified mail, return receipt requested.

i. It is not necessary to file an application for a rehearing to exhaust administrative remedies when appealing to the director or the district court as provided in Iowa Code section 17A.19. The aggrieved party to the final agency action of the department who has exhausted all administrative remedies may petition for judicial review of that action pursuant to Iowa Code chapter 17A.

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.

k. The party who appeals a final agency action to the district court shall pay the cost of the preparation of a transcript of the contested case hearing for the district court.

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

**ARC 2272B****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"; Chapter 42, "Minimum Certification Standards for Diagnostic Radiographers, Nuclear Medicine Technologists, and Radiation Therapists"; and Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," Iowa Administrative Code.

The following itemize the proposed changes.

Items 1, 6, 18, 25, 51, and 81 amend the rules to reflect current federal regulations.

Item 2 amends certain definitions to meet NRC compatibility requirements and federal X-ray standards. The definition of "healing arts screening," currently found in Chapter 38, is being rescinded and adopted in Chapter 41. The definition of "recordable event" is rescinded because it is no longer used.

Item 3 corrects terminology.

Items 4 and 49 delete wording regarding effective dates since the effective dates have passed.

Item 5 adds wording to clarify who is a shipper of radioactive waste.

Item 7 adds wording to allow the agency to revoke a registration for facilities providing X-ray services.

Items 8, 52, 53, 57, 58, 83, and 92 amend or add wording to reflect NRC compatibility requirements.

Item 9 adds language for general licensees who install generally licensed devices in order to reflect NRC compatibility requirements.

Items 10, 11, 12, 13, 14, 15, and 16 add and correct language regarding the manufacture of radiopharmaceuticals

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and radiation sources. This is an NRC compatibility requirement.

Item 17 adds language for an industrial radiography license applicant in order to reflect NRC compatibility requirements.

Items 19, 21, and 50 correct references.

Item 20 adds requirements for posting or labeling because of enforcement problems.

Items 22, 23, and 24 add and correct language regarding radiation protection. This is an NRC compatibility requirement.

Items 26, 30, 32, and 71 add a definition rescinded from Chapter 38 and change and add wording to reflect concerns of the Board of Medical Examiners and the agency legal staff regarding healing arts screening.

Item 27 clarifies the responsibilities in the use of X-ray equipment.

Items 28, 29, 31, 33, 34, 35, 37, 38, 39, 40, 41, 42, 43, 44, 45, 46, and 47 amend wording to reflect federal or national standards in the operation of X-ray equipment.

Item 36 adds new language for retention of X-ray films to give guidance to the facilities.

Item 48 corrects formulas.

Items 54 and 56 move posting and training requirements for operators to one subrule.

Item 56 adds new reporting requirements for an embryo/fetus or a nursing child. This is an NRC compatibility requirement.

Items 59, 60, 61, 62, 63, 64, 65, 66, 67, 68, 69, and 70 add or correct wording to reflect FDA compatibility for mammography.

Items 72, 73, 74, 75, 76, 77, 78, 79, and 80 reflect changes in testing for all individuals certified under Chapter 42 and training for limited diagnostic radiographers. These changes were in response to concerns raised by educators and agency staff and to resolve enforcement issues.

Items 82, 84, 85, 86, 87, 88, 89, 90, 91, and 93 change the term "radiographer trainee" to "radiographer's assistant" to meet NRC compatibility requirements.

These rules are subject to waiver pursuant to the Department's exemption provision at 641—38.3(136C). For this reason, the Department has not provided a specific provision for waiver of these particular rules.

Any interested person may make written suggestions or comments on these proposed amendments prior to the close of business on February 25, 2003. Such written materials should be directed to Donald A. Flater, Chief, Bureau of Radiological Health, Department of Public Health, 401 SW 7th Street, Suite D, Des Moines, Iowa 50309-4611; fax (515) 725-0318; or E-mail: [dflater@idph.state.ia.us](mailto:dflater@idph.state.ia.us).

A public hearing will be held on February 25, 2003, at 8:30 a.m. in the Conference Room, Department of Public Health, 401 SW 7th Street, Suite D, 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 person who plans to attend the public hearing and has special requirements such as those related to hearing or mobility impairments should contact the Department to advise of specific needs.

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 ~~January~~ *May* 1, 2003.

ITEM 2. Amend rule ~~641—38.2(136C)~~ as follows:

Rescind the definitions of "healing arts screening" and "recordable event."

Amend the following definitions:

"Beam axis" means ~~the axis of rotation of the beam-limiting device~~ *a line from the source through the centers of the X-ray fields.*

"Diagnostic X-ray imaging system" means an assemblage of components for the generation, emission and reception of X-rays and the transformation, storage and visual display of the resultant X-ray image which are designed and used for irradiation of any part of the human *or animal* body for the purpose of diagnosis or visualization.

"Extremity" means hand, elbow, arm below the elbow, foot, knee, and leg below the knee. *See 641—subrule 42.1(2) for definitions of "lower extremities" and "upper extremities" for purposes of certification standards.*

"Half-value layer (HVL)" means the thickness of a specified material which attenuates X-radiation or gamma radiation to an extent such that the air kerma rate, exposure rate or absorbed dose rate is reduced to one-half of the value measured without the material at the same point. *The contribution of all scattered radiation, other than any which might be present initially in the beam concerned, is deemed to be excluded.*

"High radiation area" means an area, accessible to individuals, in which radiation levels from radiation sources external to the body could result in an individual's receiving a dose equivalent in excess of ~~1 mSv (0.1 rem)~~ *0.1 rem (1 mSv)* in 1 hour at 30 centimeters from any source of radiation or 30 centimeters from any surface that the radiation penetrates.

"Licensed practitioner" means a person licensed or otherwise authorized by law to practice medicine, osteopathy, chiropractic, podiatry, *or dentistry in Iowa, or certification certified* as a physician assistant as defined in Iowa Code section 148C.1, subsection 6, and is authorized to prescribe X-ray tests for the purpose of diagnosis or treatment.

"Occupational dose" means the dose received by an individual in the course of employment in which the individual's assigned duties involve exposure to radiation *or to radioactive material* from licensed or unlicensed and registered or unregistered sources of radiation, whether in the possession of the licensee, registrant, or other person. Occupational dose does not include dose received from background radiation, from any medical administration the individual has received, from exposure to individuals administered sources of radiation *or radioactive material* and released in accordance with ~~641—subrule 41.2(27)~~, from voluntary participation in medical research programs, or as a member of the public.

"Person" means:

(1) ~~any~~ Any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, *government agency other than the NRC or the Department of Energy (except that the agency shall be considered a person within the meaning of the regulations in 10 CFR Part 1 to the extent that its facilities and activities are subject to the licensing and related regulatory authority of the NRC under Section 202 of the Energy Reorganization Act of 1974 (88 Stat. 1244), the Uranium Mill Tailings Radiation Control Act of 1978 (92 Stat. 3021), the Nuclear Waste Policy Act of 1982 (96 Stat. 2201), and Section 3(b)(2) of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (99 Stat.*

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1842)), any state or political subdivision of this state, any other state or political subdivision or agency thereof, or any political entity within a state, any foreign government or nation or any political subdivision of any such government or nation, or other entity; and

(2) ~~any~~ Any legal successor, representative, agent, or agency of the foregoing, ~~but shall not include federal government agencies.~~

“Prescribed dosage” means the specified activity or range of activity of unsealed radioactive material as documented:

1. In a written directive; or
2. ~~Either in the diagnostic clinical procedures manual or in any appropriate record in accordance with the directions of the authorized user for diagnostic procedures~~ *In accordance with the directions of the authorized user for procedures performed in 641—subrules 41.2(31) and 41.2(33).*

“Reportable medical event” means the medical event, except for an event that results from patient intervention, in which the administration of by-product material or radiation from by-product material results in:

- a. and b. No change.
- c. A dose to the skin or an organ or tissue other than the treatment site that exceeds by 50 rem (0.5 Sv) to an organ or tissue and 50 percent or more of the dose expected from the administration defined in the written directive (excluding, for permanent implants, seeds that were implanted in the correct site but migrated outside the treatment site).
- d. No change.

ITEM 3. Amend subrule **38.8(1)**, paragraph “e,” as follows:

e. All mammography facilities providing services in Iowa must submit a \$50 annual ~~accreditation authorization~~ certification fee.

ITEM 4. Amend subrule **38.8(6)**, paragraph “b,” as follows:

b. Examination fee.

(1) Each individual making application to take an examination given by the agency as a general diagnostic radiographer, or general radiation therapist as defined in 641—Chapter 42, must pay a nonrefundable fee of ~~\$25~~ *\$80* each time the individual takes the examination required by 641—Chapter 42. ~~Effective January 1, 2000, each individual must pay a nonrefundable fee of \$80 each time the individual takes the examination.~~

(2) Each individual making application to take an examination given by the agency as a limited diagnostic radiographer, limited nuclear medicine technologist, or limited radiation therapist as defined in 641—Chapter 42 must pay a nonrefundable fee of ~~\$35~~ *\$85* each time the individual takes the examination required by 641—Chapter 42. ~~Effective January 1, 2001, each individual must pay a nonrefundable fee of \$85 each time the individual takes the examination.~~

(3) Each individual making application to take an examination given by the agency as a general nuclear medicine technologist as defined in 641—Chapter 42 must pay a nonrefundable fee of either \$80 or ~~\$145~~ *\$160*, depending upon the testing facility chosen, ~~effective January 1, 2000.~~

ITEM 5. Amend subrule **38.8(11)**, paragraph “a,” subparagraph (3), as follows:

(3) \$50 for each shipment by truck or by rail paid by the shipper for low-level radioactive waste shipped in or across Iowa. The department may accept an annual shipment fee as negotiated with a shipper or accept payment per shipment. *This fee applies to waste shipped to a site authorized by a*

*government agency to receive low-level radioactive waste or shipped to a storage site to be held for future disposal.*

ITEM 6. 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 ~~January~~ *May* 1, 2003.

ITEM 7. Amend subrule **39.3(3)** by adopting **new** paragraph “f” as follows:

f. A registration may be revoked for violating or causing a facility to violate any of the rules in 641—Chapters 38 through 45.

ITEM 8. Amend subrule **39.4(22)**, paragraph “d,” subparagraph (3), numbered paragraph “13,” first bulleted paragraph, as follows:

- Shall register devices containing at least 10 mCi (370 MBq) of cesium-137, 0.1 mCi (3.7 MBq) of strontium-90, 1 mCi (37 MBq) of cobalt-60, 1 mCi (37 MBq) of americium-241, .01 mCi (.37 MBq) of radium-226, or *1 mCi (37 MBq)* of any other transuranic (i.e., element with atomic number greater than uranium (92)), or 1000 times the activity indicated in Appendix B of 641—Chapter 39 (excluding hydrogen-3), based on the activity indicated on the label. Each address for a location of use, as described in 39.4(22)“d”(3)“13,” represents a separate general licensee and requires a separate registration and fee;

ITEM 9. Amend subrule **39.4(22)**, paragraph “d,” by adopting **new** subparagraph (5) as follows:

(5) A general license to install devices generally licensed in 39.4(22)“d.” Any person who holds a specific license issued by an agreement state authorizing the holder to manufacture, install, or service a device described in 39.4(22)“d” within such agreement state is hereby granted a general license to install and service such device in any non-agreement state and a general license to install and service such device in offshore waters, as defined in 641—45.1(136C), provided that:

1. The device has been manufactured, labeled, installed, and serviced in accordance with the applicable provision of the specific license issued to such person by the agreement state, and
2. Such person ensures that any labels required to be affixed to the device under regulations of the agreement state which licensed manufacture of the device bear a statement that removal of the label is prohibited.

ITEM 10. Amend subrule **39.4(29)**, paragraph “j,” subparagraph (1), numbered paragraph “2,” by adopting the following **new** bulleted paragraph:

- Operating as a nuclear pharmacy within a federal medical institution.

ITEM 11. Amend subrule **39.4(29)**, paragraph “j,” subparagraph (1), numbered paragraph “3,” as follows:

3. The applicant submits ~~the following information on the radionuclide:~~ the chemical and physical form ~~of the radionuclide;~~ the maximum activity per vial, syringe, generator, or other container of the radioactive drug; the shielding provided by the packaging to show it is appropriate for the safe handling and storage of the radioactive drugs by medical use licensees; and

ITEM 12. Amend subrule **39.4(29)**, paragraph “j,” subparagraph (2), numbered paragraph “2,” as follows:

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

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- ~~the~~ 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)“4.”

ITEM 13. Amend subrule **39.4(29)**, paragraph “j,” subparagraph (2), by adopting **new** numbered paragraphs “4” and “5” as follows:

4. Shall permit the actions authorized in 39.4(29)“j”(2)“1” and “2” that are permitted in spite of more restrictive language in license conditions.

5. Shall provide to the agency a copy of each individual’s certification by the Board of Pharmaceutical Specialties, the NRC, or agreement state license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to 39.4(20)“j”(2)“2,” first and third bulleted paragraphs, the individual to work as an authorized nuclear pharmacist.

ITEM 14. Amend subrule **39.4(29)**, paragraph “j,” subparagraph (3), introductory paragraph, as follows:

(3) A licensee shall possess and use instrumentation to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation ~~to measure the radioactivity of radioactive drugs. The licensee shall have procedures for use of the instrumentation.~~ The licensee shall measure, by direct measurement or by combination of measurements and calculations, the amount of radioactivity in dosages of alpha-, beta-, or photon-emitting radioactive drugs prior to transfer for commercial distribution. In addition, the licensee shall:

ITEM 15. Amend subrule **39.4(29)**, paragraph “l,” as follows:

Amend the introductory paragraph as follows:

1. Manufacture and distribution of sources or devices containing ~~radioactive material by-product material~~ for medical use. An application for a specific license to manufacture and distribute sources and devices containing ~~radioactive material by-product material~~ to persons licensed pursuant to 641—41.2(136C) for use as a calibration or reference source or for the uses listed in 641—subrules 41.2(41) and 41.2(43) will be approved if:

Amend subparagraph (2), numbered paragraphs “1” and “4,” as follows:

1. The ~~radioactive material by-product material~~ contained, its chemical and physical form, and amount,

4. For devices containing ~~radioactive material by-product material~~, the radiation profile of a prototype device,

ITEM 16. Amend subrule **39.4(29)**, paragraph “l,” subparagraph (3), as follows:

(3) The label affixed to the source or device, or to the permanent storage container for the source or device, contains information on the radionuclide, quantity, and date of assay, and a statement that the *NRC, agreement state, or this agency has approved distribution of the source or device is licensed by the agency for distribution to persons licensed pursuant to use by-product material identified in 641—41.2(136C) and 641—subrules 41.2(41) and 41.2(43), as appropriate, or under and to persons who hold an equivalent license licenses of the U.S. Nuclear Regulatory Commission, issued by an agreement state, or a licensing state, provided that such label-*

*ing for sources which do not require long-term storage may be on a leaflet or brochure which accompanies the source;*

ITEM 17. Amend subrule **39.4(31)** by adopting **new** paragraph “c” as follows:

c. Specific license for industrial radiography. An application for a specific license for the use of licensed material in industrial radiography will be approved if the applicant meets the following requirements:

(1) The applicant satisfies the general requirements specified in 39.4(25).

(2) The applicant submits an adequate program for training radiographers and radiographers’ assistants that meets the requirements of 641—subrule 45.1(10).

(3) The applicant submits procedures for verifying and documenting the certification status of radiographers and for ensuring that the certification of individuals acting as radiographers remains valid.

(4) The applicant submits written operating and emergency procedures as described in 641—subrule 45.2(4).

(5) The applicant submits a description of a program for inspections of the job performance of each radiographer and radiographer’s assistant at intervals not to exceed six months as described in 641—subrule 45.1(11).

(6) The applicant submits a description of the applicant’s overall organizational structure as it applies to the radiation responsibilities in industrial radiography, including specified delegation of authority and responsibility.

(7) The applicant identifies and lists the qualifications of the individual(s) designated as the RSO (641—paragraph 45.1(10)“d”) and potential designees responsible for ensuring that the licensee’s radiation safety program is implemented in accordance with approved procedures.

(8) If an applicant intends to perform leak testing of sealed sources or exposure devices containing depleted uranium (DU) shielding, the applicant must describe the procedures for performing and the qualifications of the person(s) authorized to do the leak testing. If the applicant intends to analyze its own wipe samples, the application must include a description of the procedures to be followed. The description must include the instruments to be used, methods of performing the analysis, and pertinent experience of the person who will analyze the wipe samples.

(9) If the applicant intends to perform “in-house” calibrations of survey instruments, the applicant must describe the methods to be used and the relevant experience of the person(s) who will perform the calibrations. All calibrations must be performed according to the procedures described and at the intervals prescribed in 641—subrule 45.1(5).

(10) The applicant identifies and describes the location(s) of all field stations and permanent radiographic installations.

(11) The applicant identifies the locations where all records required by 641—Chapters 38, 39, 40, and 45 will be located.

ITEM 18. 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 ~~January~~ **January** May 1, 2003.

ITEM 19. Amend subrule **40.32(1)**, paragraph “a,” as follows:

a. Each sealed source, except as specified in ~~40.34(2)~~ **40.32(2)**, is tested for leakage or contamination and the test results are received before the sealed source is put into use unless the licensee has a certificate from the transferor indi-



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cating that the sealed source was tested within six months before transfer to the licensee.

ITEM 20. Amend rule 641—40.60(136C) by adopting the following **new** subrule:

**40.60(4)** Deceptive posting or labeling. The licensee or registrant shall ensure that adequate measures are taken to prevent deceptive posting or labeling.

ITEM 21. Amend subrule **40.65(4)**, paragraph “a,” as follows:

a. Removable radioactive surface contamination exceeds the limits of ~~641—paragraph 39.5(15)“h”~~ *49 CFR 173.443*; or

ITEM 22. Amend rule 641—40.80(136C) by adopting the following **new** subrule:

**40.80(5)** Notwithstanding the requirements of 40.80(1), records of removable radioactive surface contamination on packages shall be recorded in disintegrations per minute (dpm).

ITEM 23. Amend subrule **40.97(1)**, paragraph “b,” by rescinding subparagraph (3) and renumbering subparagraphs (4) to (6) as (3) to (5).

ITEM 24. Rescind rule **641—Chapter 40, Appendix A**, and adopt the following **new** Appendix A in lieu thereof:

APPENDIX A  
PROTECTION FACTORS FOR RESPIRATORS<sup>a</sup>

	Operating Mode	Assigned Protection Factor
<b>I. Air-Purifying Respirators (particulate 1A<sup>b</sup> only) 1A<sup>c</sup>:</b>		
Filtering facepiece disposable <sup>d</sup>	Negative Pressure	( <sup>d</sup> )
Facepiece, half <sup>e</sup>	Negative Pressure	10
Facepiece, full	Negative Pressure	100
Facepiece, half	Powered air-purifying respirators	50
Facepiece, full	Powered air-purifying respirators	1000
Helmet/hood	Powered air-purifying respirators	1000
Facepiece, loose-fitting	Powered air-purifying respirators	25
<b>II. Atmosphere-Supplying Respirators (particulate, gases and vapors 1A<sup>f</sup>):</b>		
<b>1. Air-line respirator:</b>		
Facepiece, half	Demand	10
Facepiece, half	Continuous Flow	50
Facepiece, half	Pressure Demand	50
Facepiece, full	Demand	100
Facepiece, full	Continuous Flow	1000
Facepiece, full	Pressure Demand	1000
Helmet/hood	Continuous Flow	1000
Facepiece, loose-fitting	Continuous Flow	25
Suit	Continuous Flow	( <sup>g</sup> )
<b>2. Self-contained breathing apparatus (SCBA):</b>		

	Operating Mode	Assigned Protection Factor
Facepiece, full	Demand	<sup>h</sup> 100
Facepiece, full	Pressure Demand	<sup>i</sup> 10,000
Facepiece, full	Demand, Recirculating	<sup>h</sup> 100
Facepiece, full	Positive Pressure Recirculating	<sup>i</sup> 10,000
<b>III. Combination Respirators:</b>		
Any combination of air-purifying and atmosphere-supplying respirators	(1) Assigned protection factor for type and mode of operation as listed above	

<sup>a</sup>These assigned protection factors apply only in a respiratory protection program that meets the requirement of 641—Chapter 40. They are applicable only to airborne radiological hazards and may not be appropriate to circumstances when chemical or other respiratory hazards exist instead of, or in addition to, radioactive hazards. Selection and use of respirators for such circumstances must also comply with Department of Labor regulations.

Radioactive contaminants for which the concentration values in Table I, Column 3, of Appendix B to 641—Chapter 40 are based on internal dose due to inhalation may, in addition, present external exposure hazards at higher concentrations. Under these circumstances, limitations on occupancy may have to be governed by external dose limits.

<sup>b</sup>Air-purifying respirators with APF<100 must be equipped with particulate filters that are at least 95 percent efficient. Air-purifying respirators with APF=100 must be equipped with particulate filters that are at least 99 percent efficient. Air-purifying respirators with APFs>100 must be equipped with particulate filters that are at least 99.97 percent efficient.

<sup>c</sup>The licensee may apply to the agency for the use of an APF greater than 1 for sorbent cartridges as protection against airborne radioactive gases and vapors (e.g., radiiodine).

<sup>d</sup>Licensees may permit individuals to use this type of respirator who have not been medically screened or fit tested on the device provided that no credit be taken for their use in estimating intake or dose. It is also recognized that it is difficult to perform an effective positive or negative pressure pre-use user seal check on this type of device. All other respiratory protection program requirements listed in 641—40.50(136C) apply. An assigned protection factor has not been assigned for these devices. However, an APF equal to 10 may be used if the licensee can demonstrate a fit factor of at least 100 by use of a validated or evaluated, qualitative or quantitative fit test.

<sup>e</sup>Under-chin type only. No distinction is made in this Appendix between elastomeric half-masks with replaceable cartridges and those designed with the filter medium as an integral part of the facepiece (e.g., disposable or reusable disposable). Both types are acceptable so long as the seal area of the latter contains some substantial type of seal-enhancing material such as rubber or plastic, the two or more suspension straps are adjustable, the filter medium is at least 95 percent efficient, and all other requirements of 641—Chapter 40 are met.

<sup>f</sup>The assigned protection factors for gases and vapors are not applicable to radioactive contaminants that present an absorption or submersion hazard. For tritium oxide vapor, approximately one-third of the intake occurs by absorption through the skin so that an overall protection factor of 3 is appropriate when atmosphere-supplying respirators are used to protect against tritium oxide. Exposure to radioactive noble gases is not considered a significant res-

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piratory hazard, and protective actions for these contaminants should be based on external (submersion) dose considerations.

<sup>g</sup>No NIOSH approval schedule is currently available for atmosphere-supplying suits. This equipment may be used in an acceptable respiratory protection program as long as all the other minimum program requirements, with the exception of fit testing, are met.

<sup>h</sup>The licensee should implement institutional controls to ensure that these devices are not used in areas immediately dangerous to life or health.

<sup>i</sup>This type of respirator may be used as an emergency device in unknown concentrations for protection against inhalation hazards. External radiation hazards and other limitations to permitted exposure such as skin absorption shall be taken into account in these circumstances. This device may not be used by any individual who experiences perceptible outward leakage of breathing gas while wearing the device.

ITEM 25. Amend subrule 41.1(1) as follows:

**41.1(1) Scope.** This rule establishes requirements, for which a registrant is responsible, for use of X-ray equipment by or under the supervision of an individual authorized by and licensed in accordance with state statutes to engage in the healing arts or veterinary medicine.

a. The provisions of Chapter 41 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 38 to 42.

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of July 1, 2002 May 1, 2003.

ITEM 26. Amend subrule **41.1(2)** by adopting the following **new** definition in alphabetical order:

“Healing arts screening” means the use of radiation on human beings for the detection or evaluation of health indicators for which the individual is considered at high risk when such tests are not specifically and individually ordered by:

1. An individual authorized under 41.1(3)“a”(7), or
2. An individual licensed as a physician in Iowa and listed as an authorized user on an NRC or agreement state radioactive materials license.

ITEM 27. Amend subrule **41.1(3)**, paragraph “a,” introductory paragraph, as follows:

a. Registrant. The registrant shall be responsible for maintaining and directing the operation of the X-ray system(s) under the registrant’s administrative control, *for ensuring that the requirements of these rules are met in the operation of the X-ray system(s)*, and for having the following minimum test performed by a registered service facility according to the following schedule:

ITEM 28. Amend subrule **41.1(3)**, paragraph “a,” subparagraph (3), numbered paragraph “1,” as follows:

1. Patient’s *body part and anatomical size, or body part thickness, or age (for pediatrics)*, versus technique factors to be utilized;

ITEM 29. Amend subrule **41.1(3)**, paragraph “a,” subparagraph (5), numbered paragraph “2,” as follows:

2. *The X-ray operator, other Staff staff, and ancillary personnel, and other persons required for the medical procedure* shall be protected from the direct scatter radiation by protective aprons or whole body protective barriers of not less than 0.25 millimeter lead equivalent.

ITEM 30. Amend subrule **41.1(3)**, paragraph “a,” subparagraph (7), introductory paragraph, as follows:

(7) Individuals shall not be exposed to the useful beam ~~except for healing arts purposes and unless such exposure has been authorized by~~ (1) *the individual has been physically examined* by a licensed practitioner of the healing arts or a licensed registered nurse who is registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152; and (2) *the individual has received a written order for the radiation exposure authorized by such practitioner.* This provision specifically prohibits deliberate exposure for the following purposes:

ITEM 31. Amend subrule **41.1(3)**, paragraph “a,” subparagraph (8), numbered paragraph “3,” as follows:

3. The human holder shall be *instructed in personal radiation safety and* protected as required by 41.1(3)“a”(5)“2”;

ITEM 32. Amend subrule **41.1(3)**, paragraph “a,” subparagraph (11), as follows:

(11) Healing arts screening. Any person proposing to conduct a healing arts screening program shall not initiate such a program *in the state of Iowa* without prior written approval of the agency. When requesting such approval, that person shall submit the information outlined in Appendix C of this chapter. *The agency shall not approve a healing arts screening program unless the applicant submits data supporting the efficacy of the screening test in diagnosing the disease or condition being screened.* If any information submitted to the agency becomes invalid or outdated, the ~~agency shall be immediately notified~~ *applicant shall notify the agency in writing within five calendar days.*

ITEM 33. Amend subrule **41.1(3)**, paragraph “a,” subparagraph (12), as follows:

(12) Fluoroscopic equipment shall be used only under the direct supervision of a licensed practitioner. *Fluoroscopy shall not be used as a substitute for radiography or in lieu of proper anatomical positioning/centering procedures prior to radiographic studies.*

ITEM 34. Amend subrule **41.1(3)**, paragraph “f,” subparagraph (1), numbered paragraph “2,” as follows:

2. *The temperature of solutions in the tanks shall be maintained within the range of 60° F to 80° F (16° C to 27° C).* Film shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer.

ITEM 35. Amend subrule **41.1(3)**, paragraph “f,” subparagraph (2), numbered paragraph “1,” as follows:

1. Films shall be developed in accordance with the time-temperature relationships recommended by the film manufacturer. *The specified developer temperature and immersion time shall be posted in the darkroom or on the automatic processor.*

ITEM 36. Amend subrule **41.1(3)** by adopting **new** paragraph “g” as follows:

g. Retention of films. Record retention of films shall be seven years for patients 18 years of age or older and seven years plus the difference between the patient’s age and 18 for minors.

(1) If the facility is currently utilizing hard-copy film to store images, it may continue to use this method throughout the recommended retention period.

(2) If the facility is currently utilizing computer media and also storing images in a hard-copy format, it may continue to use this method of retention throughout the retention period. If the images are also on computer media, the data

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should be backed up, or refreshed, at appropriate intervals as defined by the facility.

(3) If the facility is solely utilizing computer media to store study information for which a report is generated, the recording media is to be stored in conditions that will ensure that deterioration will not occur for the period required by this policy. The facility must maintain either retrieval or access or both to the stored images.

(4) If a patient's medical images are identified as being involved in a legal case, the records should immediately be coded appropriately, and maintained for the required time frame defined in this paragraph. At the time the records have reached the end of the appropriate time frame for retention, the previously identified responsible individuals involved in the legal action should be contacted for further instruction.

(5) If records are temporarily transferred to any party, appropriate information relating to location, date of release, and individual having custody of the records should be maintained.

(6) A facility that is ceasing operations must either transfer its medical records to another facility or provide the medical records to its patients. A certified letter as to the location, or disposition, of the records must be sent to notify the patients of the transferal.

ITEM 37. Amend subrule **41.1(5)**, paragraph "**c**," subparagraph (1), numbered paragraph "**1**," second bulleted paragraph, as follows:

- When an optional high level control is provided. When so provided, the equipment shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of ~~1.3 mC/kg (5 roentgens)~~ 5 roentgens (1.3 mC/kg) per minute at the point where the center of the useful beam enters the patient unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

ITEM 38. Amend subrule **41.1(5)**, paragraph "**c**," subparagraph (1), numbered paragraph "**2**," introductory paragraph and second bulleted paragraph, as follows:

2. Fluoroscopic equipment which is not provided with automatic exposure rate control shall not be operable at any combination of tube potential and current which will result in an exposure rate in excess of ~~1.3 mC/kg (5 roentgens)~~ 5 roentgens (1.3 mC/kg) per minute at the point where the center of the useful beam enters the patient, except:

- ~~When an optional high level control is activated~~ When the mode or modes have an optional high level control, in which case the mode or modes shall not be operable at any combination of tube potential and current which shall result in an exposure rate in excess of 5 roentgens (1.3 mC/kg) per minute at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

ITEM 39. Amend subrule **41.1(5)**, paragraph "**c**," subparagraph (1), by rescinding numbered paragraph "**4**" and adopting **new** numbered paragraphs "**4**" to "**6**" as follows:

4. Fluoroscopic equipment which is provided with both automatic exposure rate control mode and a manual mode

shall not be operable at any combination of tube potential and current which shall result in an exposure rate in excess of 10 roentgens (2.6 mC/kg) per minute in either mode at the point where the center of the useful beam enters the patient, except:

- During recording of fluoroscopic images; or
- When the mode or modes have an optional high level control, in which case the mode or modes shall not be operable at any combination of tube potential and current which shall result in an exposure rate in excess of 5 roentgens (1.3 mC/kg) per minute at the point where the center of the useful beam enters the patient, unless the high level control is activated. Special means of activation of high level controls shall be required. The high level control shall only be operable when continuous manual activation is provided by the operator. A continuous signal audible to the fluoroscopist shall indicate that the high level control is being employed.

5. Any fluoroscopic equipment manufactured after May 19, 1995, which can exceed 5 roentgens (1.3 mC/kg) per minute shall be equipped with an automatic exposure rate control. All entrance exposure rate limits shall be 10 roentgens (2.6 mC/kg) per minute with an upper limit of 20 roentgens (5.2 mC/kg) per minute when the high level control is activated.

6. Conditions of periodic measurement of maximum entrance exposure rate are as follows:

- The measurement shall be made under the conditions that satisfy the requirements of 41.1(5)"c"(1)"3";
- The kVp, mA, or other selectable parameters shall be adjusted to those settings which give the maximum entrance exposure rate;
- The X-ray system(s) that incorporates automatic exposure rate control shall have sufficient attenuative material placed in the useful beam to produce either a milliamperage or kilovoltage or both to satisfy the conditions of 41.1(5)"c"(1)"3."

ITEM 40. Amend subrule **41.1(5)**, paragraph "**f**," subparagraph (4), as follows:

(4) 20 centimeters for ~~image intensified~~ mobile fluoroscopes used for specific surgical application.

ITEM 41. Amend subrule **41.1(6)**, paragraph "**a**," subparagraph (5), introductory paragraph, as follows:

(5) X-ray systems other than those described in 41.1(6)"a"(1), (2), and (3), and veterinary systems installed prior to July 1, 1998, *and all portable veterinary X-ray systems*.

ITEM 42. Amend subrule **41.1(6)**, paragraph "**b**," subparagraph (1), as follows:

(1) Timers.

1. Means shall be provided to initiate the radiation exposure by a deliberate action on the part of the operator, such as the depression of a switch. Radiation exposure shall not be initiated without such an action.

2. Means shall be provided to terminate the exposure at a preset time interval, preset product of current and time, a preset number of pulses, or a preset radiation exposure to the image receptor. In addition, it shall not be possible to make an exposure when the timer is set to a "zero" or "off" position if either position is provided. Except for dental panoramic systems, termination of an exposure shall cause automatic re-setting of the timer to its initial setting or to "zero."

ITEM 43. Amend subrule **41.1(6)**, paragraph "**b**," subparagraph (2), numbered paragraph "**2**," introductory paragraph, as follows:

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2. Each X-ray control shall be located in such a way as to meet the following requirements: Stationary X-ray systems (except podiatry and veterinary units) shall be required to have the X-ray exposure switch permanently mounted in a protected area so that the operator is required to remain in that protected area during the entire exposure *and so that the operator can view the patient while making any exposures*; and mobile and portable X-ray systems which are:

ITEM 44. Rescind subrule **41.1(6)**, paragraph “**d**,” and adopt the following **new** paragraph in lieu thereof:

d. **Exposure** reproducibility. When all technique factors are held constant, including control panel selections associated with automatic exposure control systems, the coefficient of variation of exposure for both manual and automatic exposure control systems shall not exceed 0.05. This requirement applies to clinically used techniques.

ITEM 45. Amend subrule **41.1(6)**, paragraph “**e**,” as follows:

e. Radiation from capacitor energy storage equipment in standby status. Radiation emitted from the X-ray tube when the *system is fully charged and the exposure switch or timer is not activated* shall not exceed the rate of 2 milliroentgens (0.516  $\mu\text{C}/\text{kg}$ ) per hour at 5 centimeters from any accessible surface of the diagnostic source assembly, with the beam-limiting device fully open.

ITEM 46. Amend subrule **41.1(6)**, paragraph “**g**,” subparagraph (2), as follows:

(2) Equipment having a combined X-ray tube current-exposure time product (mAs) selector, but not a separate tube current (mA) selector. The average ratios ( $X_i$ ) of exposure to the indicated milliamperere-seconds product, in units of  $\text{C kg}^{-1}\text{mAs}^{-1}$  (or mR/mAs), obtained at any two consecutive mAs selector settings shall not differ by more than 0.10 times their sum:

$$X_1 - X_x \leq 0.10 (X_1 + X_2)$$

where  $X_1$  and  $X_2$  are the average values obtained at any two *consecutive* mAs selector settings, or at two settings differing by no more than a factor of 2 where the mAs selector provides continuous selection.

ITEM 47. Amend subrule **41.1(6)**, paragraph “**h**,” subparagraph (1), by adopting **new** numbered paragraph “**3**” as follows:

3. The edge of the light field at 100 centimeters or at the maximum SID, whichever is less, shall have a contrast ratio, corrected for ambient lighting, of not less than 4 in the case of beam-limiting devices designed for use on stationary equipment, and a contrast ratio of not less than 3 in the case of beam-limiting devices designed for use on mobile equipment. The contrast ratio is defined as  $I_1/I_2$  where  $I_1$  is the illumination 3 millimeters from the edge of the light field toward the center of the field; and  $I_2$  is the illumination 3 millimeters from the edge of the light field away from the center of the field. Compliance shall be determined with a measuring instrument aperture of 1 millimeter in diameter.

ITEM 48. Amend subrule **41.1(11)**, paragraph “**a**,” by rescinding the definitions of “computed tomography dose index,” “contrast scale,” “CT number” and “noise” and adopting the following **new** definitions in lieu thereof:

“Computed tomography dose index” means the integral from  $-7T$  to  $+7T$  of the dose profile along a line perpendicular to the tomographic plane divided by the product of the

nominal tomographic section thickness and the number of tomograms produced in a single scan, that is:

$$\overline{\text{CTDI}} = \frac{1}{nT} \int_{-7T}^{+7T} D(z) dz$$

where:

$z$  = Position along a line perpendicular to the tomographic plane.

$D(z)$  = Dose at position  $z$ .

$T$  = Nominal tomographic section thickness.

$n$  = Number of tomograms produced in a single scan.

This definition assumes that the dose profile is centered around  $z = 0$  and that, for a multiple tomogram system, the scan increment between adjacent scans is  $nT$ .

“Contrast scale” means the change in the linear attenuation coefficient per CTN relative to water, that is:

$$\overline{\text{CS}} = \frac{\mu_x - \mu_w}{\text{CTN}_x - \text{CTN}_w}$$

where:

$\mu_x$  = Linear attenuation coefficient of the material of interest.

$\mu_w$  = Linear attenuation coefficient of water.

$\frac{\mu_w}{\text{CTN}_x}$  = of the material of interest.

$\frac{\mu_w}{\text{CTN}_w}$  = of water.

“CT number” means the number used to represent the X-ray attenuation associated with each elemental area of the CT image.

$$\text{CTN} = \frac{k(\mu_x - \mu_w)}{\mu_w}$$

where:

$k$  = A constant. (The constant has a normal value of 1,000 when the Hounsfield scale of CTN is used.)

$\mu_x$  = Linear attenuation coefficient of the material of interest.

$\mu_w$  = Linear attenuation coefficient of water.

“Noise” means the standard deviation of the fluctuation in CTN expressed as a percentage of the attenuation coefficient of water. Its estimate ( $S_n$ ) is calculated using the following expression:

$$S_n = \frac{100 \sqrt{\overline{\text{CS}}} s}{\mu_w}$$

where:

$\overline{\text{CS}}$  = Linear attenuation coefficient of the material of interest.

$\mu_w$  = Linear attenuation coefficient of water.

$s$  = Estimated standard deviation of the CTN of picture elements in a specified area of the CT image.

ITEM 49. Amend subrule **41.1(11)**, paragraph “**d**,” subparagraph (1), numbered paragraph “**1**,” as follows:

1. All CT X-ray systems ~~installed after the effective date of these rules and those systems not previously surveyed~~ shall have a survey made by, or under the direction of, a qualified expert. In addition, such surveys shall be done after any change in the facility or equipment which might cause a significant increase in radiation hazard.

ITEM 50. Amend subrule **41.1(11)**, paragraph “**d**,” subparagraph (2), numbered paragraph “**6**,” as follows:

6. Calibration shall meet the following requirements: The dose profile along the center axis of the CT dosimetry phantom for the minimum, maximum, and midrange values of the nominal tomographic section thickness used by the

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registrant shall be measurable. Where less than three nominal tomographic thicknesses can be selected, the dose profile determination shall be performed for each available nominal tomographic section thickness; the ~~CTDI~~ *CTDI<sub>3'</sub>* along the two axes specified in 41.1(11)"d"(2)"4" shall be measured. (For the purpose of determining the CTDI, the manufacturer's statement as to the nominal tomographic section thickness for that particular system may be utilized.) The CT dosimetry phantom shall be oriented so that the measurement point 1.0 centimeter from the outer surface and within the phantom is in the same angular position within the gantry as the point of maximum surface CTDI identified. The CT conditions of operation shall correspond to typical values used by the registrant; and the spot checks specified in 41.1(11)"d"(3) shall be made.

ITEM 51. Amend subrule **41.2(1)**, paragraph "**b**," as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~January~~ *May* 1, 2003.

ITEM 52. Amend subrule **41.2(4)**, paragraph "**e**," as follows:

e. Before adding to or changing the ~~areas of use~~ or address or addresses of use identified in the application or on the license; and

ITEM 53. Amend subrule **41.2(10)**, paragraph "**b**," as follows:

b. A licensee's management shall appoint a radiation safety officer, who agrees, in writing, to be responsible for implementing the radiation protection program. The licensee, through the radiation safety ~~office officer~~, shall ensure that the radiation safety activities are being performed in accordance with licensee-approved procedures and regulatory requirements.

ITEM 54. Amend subrule **41.2(11)**, paragraph "**a**," subparagraph **(5)**, as follows:

(5) Require that only those individuals specifically trained *in accordance with 641—Chapter 42 as applicable*, and designated by the authorized user, shall be permitted to administer radionuclides or radiation to patients or human research subjects. *The individual's permit to practice shall be posted in the immediate vicinity of the general work area and be visible to the public.*

ITEM 55. Amend subrule **41.2(14)** by adopting **new** paragraph "**f**" as follows:

f. Report and notification of a dose to an embryo/fetus or a nursing child.

(1) A licensee shall report any dose to an embryo/fetus that is greater than 5 rem (50 mSv) dose equivalent that is a result of an administration of by-product material or radiation from by-product material to a pregnant individual unless the embryo/fetus was specifically approved, in advance, by the authorized user.

(2) A licensee shall report any dose to a nursing child that is a result of an administration of by-product material to a feeding individual that:

1. Is greater than 5 rem (50 mSv) total effective dose equivalent; or
2. Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(3) The licensee shall notify this agency by telephone no later than the next calendar day after a dose to the embryo/

fetus or nursing child that requires a report in 41.2(14)"f"(1) or (2).

(4) The licensee shall submit a written report to the agency 15 days after discovery of a dose to the embryo/fetus or nursing child that requires a report in 41.2(14)"f"(1) or (2).

1. The written report must include:

- The licensee's name;
- The name of the prescribing physician;
- A brief description of the event;
- Why the event occurred;
- The effect, if any, on the embryo/fetus or the nursing child;
- What actions, if any, have been taken or are planned to prevent recurrence; and

• Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

2. The report must not contain the individual's or child's name or any other information that could lead to identification of the individual or child.

(5) The licensee shall provide notification of the event to the referring physician and also notify the pregnant individual or mother, both hereafter referred to as the mother, no later than 24 hours after discovery of an event that would require reporting under 41.2(14)"f"(1) or (2), unless the referring physician personally informs the licensee either that the physician will inform the mother or that, based on medical judgment, telling the mother would be harmful. The licensee is not required to notify the mother without first consulting with the referring physician. If the referring physician or mother cannot be reached within 24 hours, the licensee shall make the appropriate notifications as soon as possible thereafter. The licensee may not delay any appropriate medical care for the embryo/fetus or for the nursing child, including any necessary remedial care as a result of the event, because of any delay in notification. To meet the requirements of this paragraph, the notification may be made to the mother's or child's responsible relative or guardian instead of the mother. If a verbal notification is made, the licensee shall inform the mother, or the mother's or child's responsible relative or guardian, that a written description of the event can be obtained from the licensee upon request. The licensee shall provide such a written description if requested.

(6) A licensee shall:

1. Annotate a copy of the report provided to the agency with the:
  - Name of the pregnant individual or the nursing child who is the subject of the event; and
  - Social security number or other identification number, if one has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and
2. Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

ITEM 56. Rescind and reserve subrule **41.2(80)**.

ITEM 57. Amend subrule **41.2(87)** by adopting **new** paragraph "**h**" as follows:

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 58. Adopt **new** subrule 41.2(88) as follows:

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**41.2(88)** Other medical uses of by-product material or radiation from by-product material. A licensee may use by-product material or a radiation source approved for medical use which is not specifically addressed in 641—41.2(136C) (e.g., Y-90 microspheres, liquid brachytherapy, intravascular brachytherapy) if:

- a. The applicant or licensee has submitted the information required by the agency; and
- b. The applicant or licensee has received written approval from the agency in a license or license amendment and uses the material in accordance with the regulations and specific conditions the agency considers necessary for the medical use of the material.

ITEM 59. Amend subrule **41.6(1)** as follows:

Amend the following definition:

“Multi-reading” means two or more physicians, at least one of whom is an interpreting physician, interpreting the same mammogram. *A radiologist may count the current mammographic examination and one prior mammographic examination, provided the radiologist was not the interpreter of the prior mammographic examination. A separate tally shall be kept for the prior examinations.*

Adopt the following **new** definition in alphabetical order:

“Radiologist continuing experience” means the number of mammograms interpreted by a radiologist in the past 24-month period. For the purpose of counting, a radiologist may count the current mammographic examination and one prior mammographic examination, provided the radiologist was not the interpreter of the prior mammographic examination. A separate tally shall be kept for the prior examinations.

ITEM 60. Amend subrule **41.6(2)**, paragraph “e,” as follows:

e. Inspections. The agency shall conduct an inspection of each radiation machine no later than ~~60 days~~ *14 months* after initial mammography authorization and at least annually thereafter.

ITEM 61. Amend subrule **41.6(3)**, paragraph “a,” subparagraph (2), numbered paragraph “1,” as follows:

1. Following the second anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)“a”(1) were completed, the interpreting physician shall have ~~interpreted read~~ or multi-read at least 960 mammographic examinations during the 24 months immediately preceding the date of the facility’s annual ~~MQSA~~ inspection or the last day of the calendar quarter immediately preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 24-month period;

ITEM 62. Amend subrule **41.6(5)**, paragraph “k,” subparagraph (5), numbered paragraph “1,” as follows:

Rescind the first bulleted paragraph.

Amend the second bulleted paragraph as follows:

- ~~After October 28, 2002, the~~ *The* AEC shall be capable of maintaining film optical density (OD) within plus or minus 0.15 of the mean optical density when thickness of a homogenous material is varied over a range of 2 to 6 centimeters and the kVp is varied appropriately for such thickness over the kVp range used clinically in the facility.

ITEM 63. Amend subrule **41.6(5)**, paragraph “k,” subparagraph (5), numbered paragraph “3,” as follows:

3. Focal spot condition. ~~Until October 28, 2002, focal spot condition shall be evaluated either by determining system resolution or by measuring focal spot dimensions. On and after October 28, 2002, facilities~~ *Facilities* shall evaluate

focal spot condition only by determining the system resolution.

ITEM 64. Amend subrule **41.6(5)**, paragraph “k,” subparagraph (5), numbered paragraph “10,” first bulleted paragraph, as follows:

- The system shall be capable of producing a minimum output of ~~513 800~~ milliRoentgen (mR) per second (~~4.5 7.0~~ mGy air kerma per second) when operating at 28 kVp in the standard (moly/moly) mammography mode at any SID where the system is designed to operate and when measured by a detector with its center located 4.5 centimeters above the breast support surface with the compression paddle in place between the source and the detector. ~~After October 28, 2002, the system, under the same measuring conditions, shall be capable of producing a minimum output of 800 mR per second (7.0 mGy air kerma per second) when operating at 28 kVp in the standard (moly/moly) mammography mode at any SID where the system is designed to operate.~~

ITEM 65. Amend subrule **41.6(7)**, paragraph “b,” as follows:

b. Equipment operators shall ~~wear personnel monitors to measure their radiation exposure~~ *be monitored in accordance with 641—40.37(136C).*

ITEM 66. Amend subrule **41.7(2)**, paragraph “e,” as follows:

e. Inspections. The agency shall conduct an inspection of each radiation machine no later than ~~60 days~~ *14 months* after initial authorization and at least annually thereafter.

ITEM 67. Amend subrule **41.7(4)**, paragraph “b,” subparagraph (2), as follows:

(2) On or after July 1, 1998, ~~have performed~~ *one* hands-on stereotactically guided breast biopsy system physics survey under the guidance of a medical physicist qualified to perform stereotactically guided breast biopsy system physics surveys. Have at least one stereotactically guided breast biopsy system physics survey per year after the initial qualifications are met; and three hours of continuing education in stereotactically guided breast biopsy system physics every three years after the initial qualifications are met.

ITEM 68. Amend subrule **41.7(4)** by adopting **new** paragraph “c” as follows:

c. Maintenance of proficiency and continuing education requirements.

(1) Have performed at least one stereotactically guided breast biopsy system physics survey per year after the initial qualifications are met or requalify by performing one survey supervised by a qualified medical physicist; and

(2) Have obtained at least three hours of continuing education in stereotactically guided breast biopsy system physics in the previous 36 months after the initial qualifications are met.

ITEM 69. Amend subrule **41.7(5)**, paragraph “c,” as follows:

c. *Maintenance of proficiency and continuing education requirements.*

(1) ~~Thereafter, Have performed~~ *an average of at least 12* stereotactically guided breast biopsies per year after initial qualifications are met *or requalify by performing 3 stereotactically guided breast biopsies under the supervision of a qualified physician or radiologic technologist.*

(2) *Have at least three hours of continuing education in stereotactically guided breast biopsy in the previous 36 months after initial qualifications are met.*

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(3) *If a stereotactic radiologic technologist only performs stereotactic procedures, the radiologic technologist will perform at least 100 stereotactic procedures during the 24 months immediately preceding the date of the facility's annual inspection or the last day of the calendar quarter preceding the inspection or any date between the two. The requirements of 41.6(3) "b" do not apply in this case.*

ITEM 70. Amend subrule **41.7(7)** as follows:

Amend paragraph "**d**," subparagraph (2), as follows:

(2) Visual checklist (~~weekly~~ *monthly*).

Adopt **new** paragraph "**f**" as follows:

f. Additional evaluations of stereotactic units shall be conducted whenever a new unit is installed, a unit is disassembled and reassembled at the same or a new location, or major components of a stereotactic unit are changed or repaired. These evaluations shall be used to determine whether the new or changed equipment meets the requirements of applicable standards in 41.7(7). All problems shall be corrected before the new or changed equipment is put into service for examinations. The stereotactic equipment evaluation shall be performed by a medical physicist or by an individual under the direct supervision of an Iowa-approved medical physicist.

ITEM 71. Amend **641—Chapter 41, Appendix C**, by adopting **new** numbered paragraphs "**15**" to "**17**" as follows:

15. Documentation justifying the reason for the screening. The applicant must submit data which supports the efficacy of the screening test in diagnosing the disease or condition being screened. Data which will be acceptable to the department includes, but is not limited to, the following: (1) the recommendation of a nationally recognized certifying medical or government body; (2) the recommendation of one of the following national organizations: American Cancer Association, American Lung Association, American Heart Association; or (3) medical literature from peer-reviewed journals supporting the screening.

16. The procedures for preventing pregnant individuals from participating in the screening or justification for allowing pregnant individuals to participate.

17. The dates of the screening to include beginning and ending dates.

ITEM 72. Amend subrule **42.1(2)**, definitions of "diagnostic radiographer," "lower extremities," and "upper extremities," as follows:

"Diagnostic radiographer" means an individual, other than a licensed practitioner or dental radiographer, who applies X-radiation to the human body for diagnostic purposes while under the supervision of a licensed practitioner or registered nurse registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 512. The types are as follows:

1. "General diagnostic radiographer" applies X-radiation to any part of the human body.

2. "Limited diagnostic radiographer" applies X-radiation to not more than three of the following body parts: chest, extremities (upper and lower), spine, or sinus. *This individual is restricted to that area of the facility specifically designed for X-ray. This individual may not perform pediatric radiography (children under three years of age) without additional training in pediatric radiography taken as a part of the basic limited training or a specifically approved training program (see 42.2(6)).*

3. "Limited in-hospital radiographer" applies X-radiation as permitted in 42.3(1)"c."

"Lower extremities" refers to those body parts from the distal phalanges of the foot to the head of the femur and its articulation with the pelvic girdle as taught in the approved limited radiographer curriculum. True hip radiographs are prohibited under this category for limited diagnostic radiographers. *This definition applies to 641—Chapter 42 only.*

"Upper extremities" refers to those body parts from the distal phalanges of the hand to the head of the humerus. These projections may include the acromioclavicular or glenoid-humeral areas as taught in the approved limited radiographer curriculum. True shoulder radiography that includes both distal and proximal ends of the clavicle is prohibited under this category for limited diagnostic radiographers. *This definition applies to 641—Chapter 42 only.*

ITEM 73. Amend subrule 42.2(2), introductory paragraph, as follows:

**42.2(2)** Disciplinary grounds and actions. *The procedures for administrative enforcement actions are found in 641—38.9(136C).* The following shall be grounds for disciplinary action involving possible suspension or revocation of certification or levying of fines:

ITEM 74. Amend subrule **42.2(2)**, paragraph "**e**," as follows:

e. Any action that the department determines may jeopardize the public, other staff, or certificate holder's health and safety. *These actions shall include but not be limited to:*

(1) *Any medical condition which may impair or limit the individual's ability to perform radiography;*

(2) *Activity related to illegal or improper use of drugs or other chemical substances;*

(3) *A misdemeanor or felony which may impair or limit the individual's ability to perform radiography;*

(4) *Any disciplinary action brought against the individual in connection with a certificate or license issued from a certifying or licensing entity.*

ITEM 75. Amend subrule **42.2(3)**, paragraph "**e**," as follows:

e. ~~It is required that proof of receiving continuing education be retained at each individual's place of employment for review by representatives of the department.~~ Proof of continuing education must be maintained for at least three years. *Individuals authorized for mammography must meet the records requirements in 641—41.6(136C) and 641—41.7(136C).*

ITEM 76. Amend subrule 42.2(7) as follows:

**42.2(7)** Requirements for operators of dual imaging devices. When a unit is operated as a nuclear medicine imaging device, the operator must have a permit to practice as a nuclear technologist and meet the requirements of 641—42.4(136C). When the unit is operated as a radiologic technology imaging device, the operator must have a permit to practice as a general diagnostic radiographer and meet the requirements of 641—42.3(136C). *When a unit is operated in dual mode, the operator must have a permit to practice as a nuclear technologist.*

ITEM 77. Adopt **new** subrule 42.2(8) as follows:

**42.2(8)** Examinations. All individuals seeking certification under 641—Chapter 42 must pass a written examination. A temporary permit will be issued for six months until the examination is passed. The temporary permit will allow the individual to practice under direct supervision of a licensed practitioner, an authorized user listed on a radioactive materials license, or a permitted individual with the permit in the same category. The individual will be issued an annual

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permit upon passing the examination. Any individual failing to pass the examination within six months will be suspended from performing the procedures allowed on the temporary permit until the examination is passed.

ITEM 78. Amend subrule **42.3(3)**, paragraph “a,” introductory paragraph, as follows:

a. All individuals seeking to perform diagnostic radiography must, in addition to subrule 42.3(1), take and satisfactorily pass a written examination within six months of the ~~date of the initial certification~~ *issuance date of the temporary certification*. Examination must include the following subject matter for each category of radiographer:

ITEM 79. Amend subrule **42.4(3)**, paragraph “d,” as follows:

d. Any individual holding a temporary certification must successfully complete an approved examination within ~~one year~~ *six months* of the issuance date of the *temporary* certification.

ITEM 80. Amend subrule **42.5(3)**, paragraph “d,” as follows:

d. Any individual holding a temporary certification must successfully complete an approved examination within ~~one year~~ *six months* of the ~~date of completion of the training~~ *issuance date of the temporary certification*.

ITEM 81. Amend subrule **45.1(1)**, paragraph “b,” as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~January~~ *May* 1, 2003.

ITEM 82. Amend subrule **45.1(2)**, definitions of “radiographer trainee,” “radiographer trainer (instructor),” and “radiographic personnel,” as follows:

~~“Radiographer trainee~~ *Radiographer’s assistant*” means any individual who has successfully completed the training, testing, and documentation requirements of 45.1(10)“a” and who uses sources of radiation and related handling tools or radiation survey instruments under the direct supervision of a radiographer trainer.

“Radiographer trainer (instructor)” means any individual who instructs and supervises ~~radiographer trainees~~ *radiographer’s assistants* during on-the-job training and who meets the requirements of 45.1(10)“c.”

“Radiographic personnel” means any radiographer or ~~radiographer trainee~~ *radiographer’s assistant*.

ITEM 83. Amend subrule 45.1(6) as follows:

**45.1(6)** Quarterly inventory. Each licensee shall conduct a physical inventory at intervals not to exceed three months to account for all sealed sources and radiography exposure devices received and possessed ~~by the licensee~~. Sources of radiation include radiographic exposure devices containing depleted uranium. The records of the inventories shall be maintained for two years from the date of the inventory for inspection by the agency and shall include: the manufacturer, model number, serial number, radionuclide, number of curies, and location of each source of radiation; number of kilograms of depleted uranium shielding; date of the inventory; and name of the individual making the inventory.

ITEM 84. Amend subrule **45.1(10)**, paragraph “a,” introductory paragraph, as follows:

a. ~~Radiographer trainee~~ *Radiographer’s assistant* requirements. No licensee or registrant shall permit any indi-

vidual to act as a ~~radiographer trainee~~ *radiographer’s assistant*, as defined in this chapter, until:

ITEM 85. Amend subrule 45.1(11) as follows:

**45.1(11)** Internal audits. Except as provided in 45.1(11)“c,” the RSO or designee shall conduct an inspection program of the job performance of each radiographer and ~~radiographer trainee~~ *radiographer’s assistant* to ensure that these rules, license requirements, and the licensee’s or registrant’s operating and emergency procedures are followed. The inspection program must:

a. Include observation of the performance of each radiographer and ~~radiographer trainee~~ *radiographer’s assistant* during an actual industrial radiographic operation, at intervals not to exceed six months; and

b. Provide that, if a radiographer or ~~radiographer trainee~~ *radiographer’s assistant* has not participated in an industrial radiographic operation for more than six months since the last audit, the radiographer or ~~radiographer trainee~~ *radiographer’s assistant* must demonstrate understanding of the subjects contained in Appendix A of this chapter by a practical examination before the individual can next participate in a radiographic operation.

c. and d. No change.

ITEM 86. Amend subrule **45.1(12)**, paragraph “b,” subparagraph (1), as follows:

(1) No licensee or registrant shall permit an individual to act as a radiographer, ~~radiographer trainee~~ *radiographer’s assistant*, or radiographer trainer unless at all times during radiographic operations each individual wears, on the trunk of the body, a combination of direct-reading pocket dosimeter, an operating alarm ratemeter, and a film badge, an optically stimulated luminescent device (OSL device) or a thermoluminescent dosimeter (TLD) that is processed and evaluated by an accredited National Voluntary Laboratory Accreditation Program (NVLAP). For permanent radiographic installations where other appropriate alarming or warning devices are in routine use, the wearing of an alarm ratemeter is not required.

ITEM 87. Amend subrule 45.1(13), introductory paragraph, as follows:

**45.1(13)** Supervision of ~~radiographer trainee~~ *radiographer’s assistant*. Whenever a ~~radiographer trainee~~ *radiographer’s assistant* uses radiographic exposure devices, sealed sources or related source handling tools or conducts radiation surveys required by 45.2(5) or 45.3(7) to determine that the sealed source has returned to the shielded position after an exposure, the ~~radiographer trainee~~ *radiographer’s assistant* shall be under the direct supervision of a radiographer instructor. The direct supervision must include:

ITEM 88. Amend subrule **45.1(17)**, paragraphs “c” and “e,” as follows:

c. Each ~~radiographer trainee~~ *radiographer’s assistant* at a job site shall possess a valid trainee status card issued by the agency.

e. No individual other than a radiographer or a ~~radiographer trainee~~ *radiographer’s assistant* who is under the direct supervision of a radiographer trainer shall manipulate controls or operate equipment used in industrial radiographic operations.

ITEM 89. Amend subrule **45.2(4)**, paragraphs “b” and “c,” as follows:

b. Each registrant shall provide, as a minimum, two radiographic personnel when radiation machines are used for any industrial radiography conducted other than at a perma-



PUBLIC HEALTH DEPARTMENT[641](cont'd)

ment radiographic installation (shielded room, bay, or bunker). If one of the personnel is a ~~radiographer trainee radiographer's assistant~~, the other shall be a radiographer trainer authorized by the certificate of registration.

c. No individual other than a radiographer or a ~~radiographer trainee radiographer's assistant~~ who is under the direct supervision of a radiographer trainer shall manipulate controls or operate equipment used in industrial radiographic operations.

ITEM 90. Amend subrule **45.3(2)**, paragraph "a," as follows:

a. Each source of radiation shall be provided with a lock or lockable outer container designed to prevent unauthorized or accidental removal or exposure of a sealed source and shall be kept locked and, if applicable, the key removed, at all times except when under the direct surveillance of a radiographer or ~~radiographer trainee radiographer's assistant~~, or as may be otherwise authorized pursuant to 45.3(6). Each storage container and source changer likewise shall be provided with a lock and shall be kept locked when containing sealed sources except when the container is under the direct surveillance of a radiographer or ~~radiographer trainee radiographer's assistant~~.

ITEM 91. Amend subrule **45.3(6)**, paragraphs "c" and "e," as follows:

c. Whenever radiography is performed at a location other than a permanent radiographic installation, the radiographer must be accompanied by at least one other qualified radiographer or a ~~radiographer trainee radiographer's assistant~~. If one of the personnel is a ~~radiographer trainee radiographer's assistant~~, the other shall be a radiographer trainer authorized by the license. The additional qualified individual shall observe the operations and be capable of providing immediate assistance to prevent unauthorized entry. Except for the situation of a radiographer trainer with a trainee, radiography shall not be performed if only one qualified individual is present.

e. No individual other than a radiographer or a ~~radiographer trainee radiographer's assistant~~ who is under the direct supervision of a radiographer trainer shall manipulate controls or operate equipment used in industrial radiographic operations.

ITEM 92. Amend subrule **45.6(17)** by relettering paragraph "b" as "c" and adopting **new** paragraph "b" as follows:

b. *The licensee shall provide bioassay services to individuals using licensed materials in subsurface tracer studies if required by the license.*

b c. Personnel monitoring records and bioassay results shall be maintained for inspection until the agency authorizes disposition.

ITEM 93. Amend **641—Chapter 45, Appendix A**, title and the first sentence of the introductory paragraph, as follows:

CHAPTER 45—APPENDIX A  
SUBJECTS FOR INSTRUCTION OF  
RADIOGRAPHER TRAINEES  
RADIOGRAPHER'S ASSISTANTS

Training provided to qualify individuals as ~~radiographer trainees radiographer's assistants~~ in compliance with 45.1(10) shall be presented on a formal basis.

## ARC 2268B

### 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 135.28, the Department of Public Health hereby gives Notice of Intended Action to amend Chapter 85, "Local Substitute Medical Decision-Making Boards," Iowa Administrative Code.

The rules in Chapter 85 establish the requirements and procedures for local substitute medical decision-making boards. Substitute medical decision-making boards exist to act on behalf of patients who are incapable of making their own medical care decisions when no other decision maker is available. This proposed amendment empowers hospital ethics committees to act as local decision-making boards.

Any interested person may make written suggestions prior to February 25, 2003. Such written suggestions should be directed to the Bureau of Health Promotion and Disability, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319; fax (515)281-4535. Persons who wish to convey their views orally should contact the Bureau of Health Promotion and Disability at (515)281-6646 or at the Bureau office on the fourth floor of the Lucas State Office Building, 321 East 12th Street, Des Moines, Iowa.

A public hearing is scheduled for February 25, 2003, at 10 a.m. in Room 415 of the Lucas State Office Building, Des Moines, Iowa. Persons may present their views either orally or in writing at this hearing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the rules.

Any person who intends to attend the public hearing and has special requirements due to a disability (i.e., hearing or mobility impairments) should contact the Department of Public Health to request specific accommodations.

This amendment is intended to implement Iowa Code section 135.28.

The following amendment is proposed.

Amend subrule 85.3(1) as follows:

**85.3(1)** The county board of supervisors may establish and fund a local substitute medical decision-making board. The boards shall include one or more representatives from each of the *following* three categories:

a. Physicians, nurses, or psychologists licensed by the state of Iowa.

b. Attorneys admitted to the practice of law in Iowa or social workers.

c. Other individuals with recognized expertise or interest in persons unable to make their own medical care decisions not included in "a" and "b" above.

*A hospital ethics committee may serve as the local decision-making board provided that the composition of the committee fulfills the above requirements.*

**ARC 2267B****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 135.118, the Department of Public Health hereby gives Notice of Intended Action to adopt new Chapter 94, “Child Protection Center Grant Program,” Iowa Administrative Code.

The rules in proposed Chapter 94 adopt existing national standards for the level of quality and practice in order for a child protection center in Iowa to qualify for a grant. The rules provide definitions, goals, eligibility, and grant criteria.

Any interested person may make written suggestions or comments on the proposed rules on or before February 25, 2003. Such written materials should be directed to the Division of Community Health, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; fax (515)242-6384; E-mail to [jmcmahon@idph.state.ia.us](mailto:jmcmahon@idph.state.ia.us).

These rules are intended to implement Iowa Code section 135.118.

The following **new** chapter is proposed.

CHAPTER 94  
CHILD PROTECTION CENTER GRANT  
PROGRAM

**641—94.1(135) Scope and purpose.** A child protection center grant program is established to provide grants to eligible applicants for the purpose of establishing new child protection centers and to support existing child protection centers. Grants may be available to eligible organizations that meet, or that are in the process of implementing, child protection center standards established by the National Children’s Alliance. If sufficient funding is available, the program shall, at a minimum, award a grant to a child protection center in or available to each department of human services region in Iowa. Implementation of the grant program is subject to the availability of funding.

**641—94.2(135) Definitions.** For the purposes of these rules, the following definitions shall apply:

“Child abuse” means abuse as defined by Iowa Code section 232.68(2).

“Child protection center” or “child advocacy center” means a comprehensive, child-focused program, designed by communities to meet their needs, based in a facility that allows law enforcement, child protection professionals, prosecutors, and the mental health and medical communities to work together to handle child abuse cases. Child advocacy center is synonymous with child protection center.

“Child protection worker” means a worker as defined by Iowa Code section 232.68(2A).

“Culturally competent” means the capacity to function in more than one culture, requiring the ability to appreciate, understand and interact with members of diverse populations within the community.

“Department” means the Iowa department of public health.

“Developmentally appropriate” means that services are based on human development and learning, individual characteristics and experiences, social and cultural contexts.

“Director” means the director of the Iowa department of public health.

“Family advocate” means an individual who supports a child provided service through a child protection center and ensures access to formal or informal community services as needed by the child or the child’s family.

“Forensic interview” means a face-to-face meeting between individuals to elicit information and that follows a process suitable for a law court or public debate.

“Multidisciplinary team” means individuals with many education levels that encompass the individuals’ beliefs and training in fields of health, education, human service, justice, faith, and others.

**641—94.3(135) Goals.** A child protection center’s goals for victims of child abuse allegations shall be:

1. To provide consistent and expedient response and follow-up to abuse reports.
2. Coordination of activities to investigate, prosecute, and treat child abuse.
3. To advocate for medical and mental health resources to effectively help the child and child’s family.
4. To reduce the number of interviews and interactions with a victim.
5. To provide consistent and compassionate support for the child and child’s family.
6. To ensure that the child is not further victimized by the system designed to protect the child.
7. To increase successful prosecutions.

**641—94.4(135) Review process.**

**94.4(1)** The department shall establish a request for proposal and application process for organizations eligible to receive funding. The department shall establish a process to review applications, which includes receiving input from a review committee. The review process and review criteria shall be described in the request for proposals.

**94.4(2)** The director shall create a committee to review proposals and make recommendations to the director. At a minimum, committee membership shall include representation from:

- a. State departments of human services, justice and public health;
- b. Iowa Medical Society;
- c. Iowa Hospital Association;
- d. Iowa Nurses Association; and
- e. Iowa chapter of the National Association of Social Workers.

**641—94.5(135) Eligibility and criteria.** To be eligible for a child protection center grant, an organization shall:

**94.5(1)** Have acquired partial membership rank as a child advocacy center from the National Children’s Alliance and shall identify a plan to acquire full membership rank within one year of receiving a state grant.

**94.5(2)** Have in place an interagency memorandum of understanding which meets the requirements of Iowa Code section 135.118. The applicant shall provide in the application written information in the following areas:

- a. Data, statistics and facts from an assessment of need and assets in the community to support a child protection center for children.

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

b. Identification of barriers to the child protection center to reach the purpose and goals for children as may exist in federal, state or local rules, regulations, codes, policies or procedures.

c. A plan to request and advocate waivers of federal, state, or local rules, regulations, codes, policies, or procedures to remove or reduce barriers.

d. The child protection center's access for all suspected or confirmed child abuse/neglect victims in the identified service area.

e. The child protection center's provision of 24-hour access to center staff for support, questions and referrals regarding child abuse.

f. Identification of matching local funds to support and sustain the child protection center in the community.

g. Plan for community education on prevention of child abuse and neglect.

h. Collaboration agreements with providers of human services, child health services, early education services, and all other potential community partners to support the purpose and goals of a child protection center.

i. The child protection center's ability to access and utilize alternate funds for activities provided.

**641—94.6(135) Appeals.** An applicant may appeal the denial of a properly submitted grant application. Appeals shall be governed by rule 641—176.8(135,17A).

These rules are intended to implement Iowa Code section 135.118.

**ARC 2263B****TRANSPORTATION  
DEPARTMENT[761]****Notice of Intended Action**

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

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation hereby gives Notice of Intended Action to amend Chapter 520, "Regulations Applicable to Carriers," Iowa Administrative Code.

Iowa Code section 321.449 requires the Department to adopt rules consistent with the Federal Motor Carrier Safety Regulations promulgated under United States Code, Title 49, and found in 49 Code of Federal Regulations (CFR), Parts 390 to 399. Iowa Code section 321.450 requires the Department to adopt rules consistent with the Federal Hazardous Materials Regulations promulgated under United States Code, Title 49, and found in 49 CFR Parts 107, 171 to 173, 177, 178 and 180. To ensure the consistency required by statute, the Department annually adopts the specified parts of 49 CFR as adopted by the United States Department of Transportation.

Commercial vehicles transporting goods in interstate commerce are subject to the Federal Motor Carrier Safety Regulations on the effective dates specified in the Federal Register. Commercial vehicles transporting hazardous materials in interstate commerce or transporting certain hazardous materials intrastate are subject to the Federal Hazardous Materials Regulations on the effective dates specified in the Federal Register. The adoption of the federal regulations by the Department will extend the enforcement of the regulations to

commercial vehicles operated intrastate unless exempted by statute.

Proposed federal regulations are published in the Federal Register to allow a period for public comment, and, after adoption, the final regulations are again published in the Federal Register. Each year a revised edition of 49 CFR is published, incorporating all of the final regulations adopted during the year. Although revised editions of 49 CFR are usually dated October or November, the publication is not actually available in Iowa for several months after that date.

The amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations that have become final and effective since the 2001 edition of the CFR are listed in the information below. The parts affected are followed by Federal Register (FR) citations.

Amendments to the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations Parts 390, 391, 392, 393, 395, 396, 397, 398, 399 (FR Volume 66, No. 190, Page 49867, 10-01-01)

This final rule makes technical corrections throughout 49 CFR to various rules containing outdated references to organization, structure, contacts and addresses.

Part 393 (FR Volume 66, No. 250, Page 67690, 12-31-01)

This final rule amends the tire regulations to reflect the expiration of a provision allowing the overloading of tires used for the transportation of manufactured homes. Currently, tires used in the transportation of manufactured homes may be loaded up to 18 percent over the load rating marked on the sidewall of the tires or, in the absence of such a marking, 18 percent above the load rating specified in publications of certain organizations specializing in tires. Effective December 31, 2001, motor carriers are prohibited from transporting manufactured homes built on or after January 1, 2002, in interstate commerce on overloaded tires.

Part 390 (FR Volume 67, No. 41, Page 9410, 03-01-02)

This rule requires each motor carrier to file an update of the Motor Carrier Identification Report (Form MCS-150) every 24 months.

Part 172 (FR Volume 67, No. 43, Page 9926, 03-05-02)

This final rule amends the hazardous materials regulations by revising the list of hazardous substances and reportable quantities. This final rule will enable shippers and carriers to identify the affected Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) hazardous substances, comply with all applicable hazardous materials requirements and make the required notifications if a discharge occurs.

Part 172 (FR Volume 67, No. 57, Page 13680, 03-25-02)

This final rule makes an editorial correction to the March 5, 2002, final rule.

Parts 171, 172, 173, 178, and 180 (FR Volume 67, No. 64, Page 15736, 04-03-02)

This final rule amends the hazardous materials regulations by making editorial corrections.

Parts 107 and 171 (FR Volume 67, No. 122, Page 42948, 06-25-02)

This final rule amends the hazardous materials regulations by revising and clarifying the hazardous materials safety rule-making and program procedures. In addition, it creates a new part that contains defined terms used in Research and Special Program Administration's procedural regulations.

Parts 172 and 177 (FR Volume 67, No. 134, Page 46123, 07-12-02)

This final rule amends the hazardous materials regulations by requiring shippers and carriers to retain for a period of 375

## TRANSPORTATION DEPARTMENT[761](cont'd)

days after the date the hazardous material is accepted by the carrier a copy of each hazardous material shipping paper or an electronic image.

Part 390 (FR Volume 67, No. 147, Page 49742, 07-31-02)

This final rule revises the Commercial Driver's License Program. The Motor Carrier Safety Improvement Act of 1999 mandates these revisions. They are designed to enhance the safety of commercial motor vehicle (CMV) operations on the nation's highways by ensuring that only safe drivers operate CMVs.

Parts 107, 171, 172, 173, 177, 178, and 180 (FR Volume 67, No. 153, Page 51626, 08-08-02)

This final rule amends the requirements of the hazardous materials regulations applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. In addition, the Research and Special Programs Administration (RSPA) is adopting changes to revise the requirements for approval of cylinder requalifiers, independent inspection agencies, and nondomestic chemical analysis and tests.

Further, RSPA is removing authorization for the manufacture of DOT specification cylinders made with aluminum alloy 6351-T6. This action is being taken to simplify the regulations, respond to petitions for rule making, address recommendations of the National Transportation Safety Board, and enhance the safe transportation of hazardous materials in cylinders.

Part 393 (FR Volume 67, No. 154, Page 51770, 08-09-02)

This final rule establishes pass/fail criteria for use with performance-based brake testers which measure the braking performance of commercial motor vehicles.

Part 393 (FR Volume 67, No. 157, Page 53048, 08-14-02)

This final rule makes a technical correction to the August 9, 2002, rule.

Parts 171, 172, 173, 177 and 178 (FR Volume 67, No. 157, Page 53118, 08-14-02)

This final rule revises the transportation requirements for infectious substances, including regulated medical waste to: adopt defining criteria and packaging requirements consistent with international standards; revise the current broad exceptions for diagnostic specimens and biological products; and authorize bulk packaging options for regulated medical waste consistent with requirements in international standards and DOT exemptions. These revisions will ensure an acceptable level of safety for the transportation of infectious substances and facilitate domestic and international transportation.

Parts 171, 172, 173, 177 and 178 (FR Volume 67, No. 166, Page 54967, 08-27-02)

This final rule corrects the effective dates for a final rule revising transportation requirements for infectious substances published in the Federal Register on August 14, 2002.

Part 392 (FR Volume 67, No. 167, Page 55162, 08-28-02)

This interim final rule amends the regulations to require that a motor carrier subject to the registration requirements under 49 U.S.C. 13902 may not operate a commercial motor vehicle in interstate commerce unless it has been registered with the Federal Motor Carrier Safety Administration. These motor carriers are further prohibited from operating beyond the scope of their registration. If an unregistered carrier's motor vehicle is discovered in operation or is being operated beyond the scope of the carrier's registration, such motor vehicle will be placed out of service and the carrier may be subject to additional penalties.

Part 172 (FR Volume 67, No. 176, Page 57635, 09-11-02)

This final rule makes a technical change to the hazardous materials table.

Part 107 (FR Volume 67, No. 179, Page 58343, 09-16-02)

This final rule amends the regulation concerning registration of persons who transport or offer for transportation in commerce certain categories and quantities of hazardous materials. Research and Special Programs Administration (RSPA) is adopting the North American Industry Classification System to determine whether an entity is a small business, consistent with actions taken by the Small Business Administration. The RSPA is also revising the requirements to permit registration over the Internet and to authorize the use of additional credit cards to pay the registration fee.

Parts 392 and 393 (FR Volume 67, No. 188, Page 61212, 09-27-02)

This final rule revises the regulations concerning protection against shifting and falling cargo for commercial motor vehicles engaged in interstate commerce. The new cargo securement standards are based on the North American Cargo Securement Standard Model Regulations.

Parts 105, 107, 171, 172, 173, 177, 178, and 180 (FR Volume 67, No. 188, Page 61006, 09-27-02)

This final rule corrects editorial errors, makes minor regulatory changes and, in response to requests for clarification, improves the clarity of certain provisions in the hazardous materials regulations. The intended effect of this rule is to enhance the accuracy and reduce the misunderstandings of the regulations. The amendments contained in this rule do not impose new requirements.

Parts 173 and 177 (FR Volume 67, No. 189, Page 61287, 09-30-02)

This final rule extends the compliance dates and makes minor corrections for certain requirements adopted in the final rule published on August 8, 2002, which amended requirements applicable to the maintenance, requalification, repair, and use of DOT specification cylinders. Research and Special Programs Administration (RSPA) is taking action in response to appeals stating that the October 1, 2002, effective date is unreasonable. This action provides additional time, until May 30, 2003, for RSPA to fully evaluate and determine the merits of issues raised by appellants concerning these requirements and their requests for clarification of certain other requirements.

The other amendment to this chapter updates a definition. This change is necessary to reflect renumbering of the federal regulations.

Various portions of the federal regulations and Iowa statutes allow some exceptions when the exceptions will not adversely impact the safe transportation of commodities on the nation's highways. Granting additional exceptions for drivers and the motor carrier industry in Iowa would adversely impact the safety of the traveling public in Iowa.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.
2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.
3. Indicate the general content of a requested oral presentation.
4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa

## TRANSPORTATION DEPARTMENT[761](cont'd)

50010; fax (515)239-1639; Internet E-mail address: [tracy.george@dot.state.ia.us](mailto:tracy.george@dot.state.ia.us).

5. Be received by the Director's Staff Division no later than March 11, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, March 13, 2003, at 10 a.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

The proposed amendments may have an impact on small business. A request for a regulatory analysis pursuant to Iowa Code section 17A.4A must be received by the Director's Staff Division at the address listed in this Notice no later than March 24, 2003.

These amendments are intended to implement Iowa Code chapter 321.

Proposed rule-making actions:

ITEM 1. Amend paragraph **520.1(1)“a”** as follows:

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 390-399 (October 1, ~~2001~~ 2002).

ITEM 2. Amend paragraph **520.1(1)“b”** as follows:

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, ~~2001~~ 2002).

ITEM 3. Amend rule **761—520.2(321)**, definition of “rules adopted under this section concerning physical and medical qualifications,” as follows:

“Rules adopted under this section concerning physical and medical qualifications” as used in Iowa Code section 321.449(5) and Iowa Code section 321.450, unnumbered paragraph 2, means the regulations in 49 CFR ~~391.11(b)(6)~~ 391.11(b)(4) and 49 CFR Part 391, Subpart E.

**ARC 2264B****TRANSPORTATION  
DEPARTMENT[761]****Notice of Intended Action**

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

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

The Code of Federal Regulations was updated in October 2002, and the Department needs to cite the current version in these rules. No changes to the federal regulations have occurred.

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

1. Include the name, address, and telephone number of the person or agency authoring the comments or request.

2. Reference the number and title of the proposed rule, as given in this Notice, that is the subject of the comments or request.

3. Indicate the general content of a requested oral presentation.

4. Be addressed to the Department of Transportation, Director's Staff Division, 800 Lincoln Way, Ames, Iowa 50010; fax (515)239-1639; Internet E-mail address: [tracy.george@dot.state.ia.us](mailto:tracy.george@dot.state.ia.us).

5. Be received by the Director's Staff Division no later than March 11, 2003.

A meeting to hear requested oral presentations is scheduled for Thursday, March 13, 2003, at 1 p.m. in the DOT conference room at Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa.

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

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

Proposed rule-making action:

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

**761—529.1(327B) Motor carrier regulations.** The Iowa department of transportation adopts the Code of Federal Regulations, 49 CFR Parts 365-368 and 370-379, dated October 1, ~~2001~~ 2002, for regulating interstate for-hire carriers.

Copies of this publication are available from the state law library or through the Internet at <http://www.fmcsa.dot.gov>.

**ARC 2284B****UTILITIES DIVISION[199]****Notice of Intended Action**

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

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

Pursuant to Iowa Code sections 476.1, 476.1A, 476.1B, 476.1C, 476.2, 476.4, 476.6, and 17A.4, the Utilities Board (Board) gives notice that on January 17, 2003, the Board issued an order in Docket No. RMU-03-1, In re: Executive Orders No. 8 and 9 Required Revisions to Chapters 19, 20, 21, 35, and 36, “Order Commencing Rule Making.” The rule making results from the Board's review of its rules in response to Executive Orders Numbers 8 and 9 issued by Governor Vilsack on September 14, 1999. The Board, on February 23, 2000, issued an order, directing Board staff to conduct a review of the Board's administrative rules. Staff reviewed 199 IAC Chapters 19, 20, and 21 and sent proposed revisions to interested parties.

Responses were received from Alliant Energy Corporation (Alliant), the Iowa Association of Electrical Cooperatives (IAEC), the Iowa Association of Municipal Utilities (IAMU), MidAmerican Energy Company (MidAmerican), the Consumer Advocate Division of the Department of Justice (Consumer Advocate), and Peoples Natural Gas Company, Division of UtiliCorp United Inc., n/k/a Aquila, Inc., d/b/a Aquila Networks (Aquila).

Revisions were made based upon the comments and were submitted to the Governor's office. The Governor has completed his review and the Board is commencing this rule

## UTILITIES DIVISION[199](cont'd)

making for public comment. The revisions proposed by the Board in this rule making should not be considered a final or complete updating of Board rules. Subsequent revisions may be required as further review occurs.

The order commencing the rule making contains a discussion of the background and reasons for this proposed rule making. The order is available on the Board's Web site at [www.state.ia.us/iub](http://www.state.ia.us/iub).

Pursuant to Iowa Code sections 17A.4(1)"a" and "b," any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before February 25, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author's name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

No oral presentation is scheduled at this time. Pursuant to Iowa Code section 17A.4(1)"b," an oral presentation may be requested or the Board on its own motion after reviewing the comments may determine that an oral presentation should be scheduled.

These amendments are intended to implement Iowa Code sections 476.1, 476.1A, 476.1B, 476.1C, 476.2, 476.6, and 17A.4.

The following amendments are proposed.

ITEM 1. Amend rule 199—19.1(476) as follows:

Amend subrules 19.1(1) and 19.1(2) as follows:

**19.1(1)** Authorization of rules. Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, contents and filing of reports, documents and other papers necessary to carry out the provisions of this law.

~~Chapter~~ *Iowa Code chapter 479* provides that the Iowa utilities board shall have full authority and power to promulgate rules, as it deems proper and expedient in the supervision of the transportation or transmission and underground storage of gas within the state of Iowa.

*The application of the rules in this chapter to municipally owned utilities furnishing gas is limited by Iowa Code section 476.1B.*

**19.1(2)** Application of rules. The rules shall apply to any gas utility operating within the state of Iowa as defined in *Iowa code* chapter 476 and shall supersede ~~all rules any tariff on file with this board which are~~ *is* in conflict with these rules. These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities. ~~If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the board for the modification of the rule or for temporary or permanent exemption from its requirements. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with rule 199—1.3(17A,474,476,78GA,HF2206).~~ The adoption of these rules shall in no way preclude the board from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions. These regulations shall in no way relieve any utility from any of its duties under the laws of this state.

Amend subrule **19.1(3)**, definitions of "delinquent account or delinquency" and "interruption of service," as follows:

"Delinquent" ~~account~~ or "delinquency" means ~~the customer has not paid an account for which a service bill or service payment agreement amount has not been paid~~ in full on or before the last day for timely payment.

"Interruption of service" means any disturbance of the gas supply whereby ~~the pilot flame on the appliances of at least gas service to 50 customers or more in one segment or in a portion of a distribution system shall have been extinguished cannot be maintained.~~

ITEM 2. Amend rule 199—19.2(476) as follows:

**199—19.2(476) Records, reports, and tariffs.**

**19.2(1)** No change.

~~19.2(2) Tariffs to be filed with the board. The utility shall file its tariff with the board, and shall maintain such tariff filing in a current status.~~

The schedules of rates *and rules* of rate-regulated gas utilities ~~and rules of all utilities~~ shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Utilities which are not subject to the rate regulation provided for by Iowa Code chapter 476 shall not be required to file schedules of rates, or contracts primarily concerned with a rate schedule, with the board, but nothing contained in these rules shall be deemed to relieve any utility of the requirement of furnishing any of these same schedules or contracts which are needed by the board in the performance of the board's duties upon request to do so by the board.

**19.2(3)** Form and identification. All tariffs shall conform to the following rules:

a. and b. No change.

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following ~~further~~ information:

(1) Name of utility under which shall be set forth the words "Filed with Board." If the utility is not a corporation, and a trade name is used, the name of the individual or partners must precede the trade name.

(2) Issuing official and issue date.

(3) Effective date (to be left blank by rate-regulated utilities).

d. No change.

**19.2(4)** Content of tariffs. A tariff filed with the board shall contain:

a. No change.

b. All rates of utilities subject to rate regulation for service with indication of each rate for the type of gas and the class of customers to which each rate applies. There shall also be shown the prices per unit of service, the number of units per billing period to which the prices apply, the period of billing, the minimum bill, the method of measuring demands and consumptions, including the method of calculating or estimating loads or minimums, delivery pressure, and any special terms or conditions applicable. All rates should be separated into "gas" and "nongas" components, and books and records shall be maintained on this basis. Books and records shall be available to the board for audits upon request. The gas components will be the result of the utility's ~~ARC~~ *periodic review of gas procurement practices* (rule

## UTILITIES DIVISION[199](cont'd)

19.11(476)) and PGA (rule 19.10(476)) proceeding. The nongas components will be established through rate case proceedings under Iowa Code section 476.3 or 476.6. The period during which the net amount may be paid before the account becomes delinquent shall be specified. In any case where net and gross amounts are billed, the difference between net and gross is a late payment charge and shall be so specified.

Customer charges for all special services relating to providing the basic utility service including, but not limited to, reconnect charge and different categories of service calls shall be specified.

c. A copy of the utility's rules, or terms and conditions, describing the utility's policies and practices in rendering service shall include:

(1) and (2) No change.

(3) General statement indicating the extent to which the utility will provide service in the adjustment of customer appliances at no additional customer charge ~~over the filed commodity rates of rate-regulated utilities or commodity rates charged by non-rate-regulated utilities.~~

(4) to (7) No change.

(8) ~~A copy of each standard and special contract for the purchase, sale or interchange of gas.~~ All tariffs must provide that, notwithstanding any other provision of this tariff or contract with reference thereto, all rates and charges contained in this tariff or contract with reference thereto may be modified at any time by a subsequent filing made pursuant to the provisions of Iowa Code chapter 476.

(9) to (17) No change.

(18) Rate-regulated utilities shall include a list of service areas and the applicable rates in such form as to facilitate ready determination of the rates available in each municipality and in such unincorporated communities as have service at ~~urban rates. If the utility has various rural rates, the areas where the same are available shall be indicated.~~

(19) to (22) No change.

**19.2(5)** Annual, periodic and other reports to be filed with the board.

a. System map verification. A utility shall file annually with the board verification that it has a ~~currently~~ correct set of utility system maps for each operating or distribution area. The maps shall show:

(1) ~~Gas production plant.~~

(2) ~~Principal storage holder.~~

(3) ~~1) Peak shaving facilities location.~~

(4) ~~2) Feeder and distribution mains indicating size and pressure.~~

(5) ~~3) System metering (town border stations and other supply points).~~

(6) ~~4) Regulator stations in system indicating inlet and outlet pressures.~~

(7) ~~5) Calorimeter location.~~

(8) ~~6) State boundary crossing.~~

(9) ~~7) Franchise area.~~

(10) ~~8) Names of all communities (post offices) served.~~

b. to f. No change.

g. Reports to federal agencies. Copies of reports submitted pursuant to 49 CFR Part 191 as amended through ~~April 30, 1999~~ December 31, 2002, "Transportation of Natural and Other Gas by Pipeline: Annual Reports, Incident Reports, and Safety-Related Condition Reports," shall be filed with the board. Utilities operating in states besides Iowa shall provide to the board data for Iowa only.

h. to k. No change.

This rule is intended to implement Iowa Code section 476.2.

ITEM 3. Amend rule 199—19.3(476) as follows:

**199—19.3(476) General service requirements.**

**19.3(1)** No change.

**19.3(2)** Condition of meter. ~~No meter shall be installed or continued in service which is known to be mechanically defective, has an incorrect correction factor or has not been tested, and adjusted, if necessary, in accordance with 19.6(2) "b," "c," and "e." The capacity of the meter and the index mechanism should be consistent with the gas requirements of the customer. See 199 IAC 19.6(7).~~

**19.3(3)** Meter reading ~~sheets or cards~~ records. The meter reading ~~sheets, cards or ledger sheets~~ records shall show:

a. to e. No change.

**19.3(4) to 19.3(6)** No change.

**19.3(7)** Meter reading and billing interval. Readings of all meters used for determining charges and billings to customers shall be scheduled at least monthly and for the beginning and termination of service. Bills to larger customers may, for good cause, be rendered weekly or daily for a period not to exceed one month. Intervals other than monthly shall not be applied to smaller customers, or to larger customers after the initial month provided above, without an exemption from the board. ~~A petition for exemption waiver request must include sufficient information to establish good cause for the exemption the information required by 199—1.3(17A, 474, 476, 78GA, HF2206).~~ If the board denies ~~an exemption a waiver, or if no exemption a waiver is not~~ sought with respect to a large volume customer after the initial month, that customer's bill shall be rendered monthly for the next 12 months, unless prior approval is received from the board for a shorter interval. The group of larger customers to which shorter billing intervals may be applied shall be specified in the utility's tariff sheets, but shall not include residential customers.

An effort shall be made to obtain readings of the meters on corresponding days of each meter-reading period. The utility rules may permit the customer to supply the meter readings by telephone or on a form supplied by the utility. *The utility may arrange for customer meter reading forms to be delivered to the utility by United States mail, electronically, or by hand delivery.* Unless the utility has a plan to test check meter readings, a utility representative ~~will~~ shall physically read the meter at least once each 12 months and when the utility is notified there is a change of customer.

*The utility may arrange for the meter to be read by electronic means. Unless the utility has a plan to test check electronic meter readings, a utility representative shall physically read the meter at least once each 12 months.*

**19.3(8) and 19.3(9)** No change.

**19.3(10)** Extensions to customers.

a. No change.

b. ~~Terms and conditions. The utility shall extend service to new customers under the following terms and conditions:~~  
*Distribution main extensions.*

(1) Plant additions. The utility will provide all gas plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to ad-

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vance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer, which requires an advance by the customer to make plant additions, shall be available for board inspection. *The utility shall allow the customer or developer, at the customer's or developer's option, to provide a contribution in aid of construction instead of an advance for construction, under subparagraphs 19.3(10) "b" (2) and (3) below.*

(2) and (3) No change.

(4) ~~Contributions in aid of construction for service line extension. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension to the riser is up to 50 feet on private property or 100 feet on private property if polyethylene plastic pipe is used.~~

*Where the length of the service extension exceeds 50 feet on private property or 100 feet if polyethylene plastic pipe is used, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the riser, in excess of 50 feet or in excess of 100 feet in the case of polyethylene plastic pipe within 30 days after completion. The contribution in aid of construction for that portion of the extension shall be computed as follows:*

~~(Estimated Cost of Construction) ×~~

$$\left[ \frac{\text{(Total Length in Excess of 50 Feet) or (Total Length in Excess of 100 Feet)}}{\text{(Total Length of Service Extension)}} \right]$$

~~c. (4) Refunds. The utility shall refund to the depositor for a period of ten years, from the date of the original advance, a pro-rata share for each service attachment to the distribution main extension. The pro-rata refund shall be computed in the following manner:~~

~~(1) 1. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the distribution main extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.~~

~~(2) 2. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the distribution main extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.~~

~~(3) 3. In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.~~

*c. Service line extensions. The utility shall finance and construct a service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the service extension to the riser is up to 50 feet on private property or 100 feet on private property if polyethylene plastic pipe is used.*

*Where the length of the service extension exceeds 50 feet on private property or 100 feet if polyethylene plastic pipe is used, the applicant shall be required to provide a contribution in aid of construction, within 30 days after completion,*

*for that portion of the service extension on the private property, exclusive of the riser, in excess of 50 feet or in excess of 100 feet if polyethylene plastic pipe is used. The contribution in aid of construction for that portion of the extension shall be computed as follows:*

~~(Estimated Construction Costs) ×~~

$$\frac{\text{(Total Length in Excess of 50 Feet) or (Total Length in Excess of 100 Feet)}}{\text{(Total Length of Service Extension)}}$$

d. and e. No change.

**19.3(11)** No change.

This rule is intended to implement 42 U.S.C.A. §8372, 10 CFR, 516.30, and Iowa Code section 476.8.

ITEM 4. Amend subrule 19.5(2) as follows:

**19.5(2)** Standards incorporated by reference.

a. The design, construction, operation, and maintenance of gas systems and liquefied natural gas facilities shall be in accordance with the following standards where applicable:

(1) 49 CFR Part 191, "Transportation of Natural and Other Gas by Pipeline; Annual Reports, Incident Reports, and Safety-Related Condition Reports," as amended through ~~March 13, 2002~~ *February 1, 2003*.

(2) 49 CFR Part 192, "Transportation of Natural and Other Gas by Pipeline: Minimum Federal Safety Standards," as amended through ~~March 13, 2002~~ *February 1, 2003*.

(3) 49 CFR Part 193, "Liquefied Natural Gas Facilities: Federal Safety Standards," as amended through ~~March 13, 2002~~ *February 1, 2003*.

(4) 49 CFR Part 199, "Drug and Alcohol Testing," as amended through ~~March 13, 2002~~ *February 1, 2003*.

(5) ASME B31.8 1999, "Gas Transmission and Distribution Piping Systems."

(6) ANSI/NFPA No. 59-2001, "Standards for the Storage and Handling of Liquefied Petroleum Gases at Utility Gas Plants."

b. No change.

ITEM 5. Amend subrule 19.5(3) as follows:

**19.5(3)** Adequacy of gas supply. ~~The natural gas supply regularly available from pipeline supply sources supplemented by production or storage capacity must be sufficiently large to meet all reasonable demands for firm gas service.~~

ITEM 6. Amend rule 199—19.6(476) as follows:

Amend subrule 19.6(5), introductory paragraph, and subrule 19.6(6) as follows:

**19.6(5)** Request tests. Upon request by a customer, a utility shall test the meter servicing that customer, ~~except that such tests~~ *A test* need not be made more frequently than once in 18 months.

**19.6(6)** Referee tests. Upon written request by a customer or utility, the ~~utilities~~ board will conduct a referee test of a meter. ~~except that such tests~~ *A test* need not be made more frequently than once in 18 months. The *customer* request shall be accompanied by a \$30 check or money order made payable to the utility.

Within five days of receipt of the written request and payment, the ~~utilities~~ board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test. ~~and the~~ *The* utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow, the deposit will be returned to the party requesting the test and bill-



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ing adjustments shall be made as required in 19.4(13). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

Adopt **new** subrule 19.6(7) as follows:

**19.6(7)** Condition of meter. No meter that is known to be mechanically defective, has an incorrect correction factor, or has not been tested and adjusted, if necessary, in accordance with 19.6(2)“b,” “c,” and “e,” shall be installed or continued in service. The capacity of the meter and the index mechanism shall be consistent with the gas requirements of the customer.

ITEM 7. Amend subrule 19.7(4) as follows:

**19.7(4)** Standards for pressure measurements.

a. No change.  
b. Working standards. Each utility must have *or have access to* water manometers, ~~mercury manometers~~, laboratory quality indicating pressure gauges, and field-type dead weight pressure gauges as necessary for the proper testing of the indicating and recording pressure gauges used in determining the pressure on the utility's system. Working standards must be checked periodically by comparison with a secondary standard.

ITEM 8. Amend subrule 19.7(7) as follows:

**19.7(7)** Interruptions of service.

a. No change.  
b. Planned interruptions shall be made at a time that will not cause unreasonable inconvenience to customers. ~~and Interruptions~~ shall be preceded by adequate notice to those who will be affected.

ITEM 9. Rescind and reserve rule ~~199—19.9(476)~~.

ITEM 10. Amend paragraph **19.10(1)“d”** as follows:

d. ~~The calculation of the rate factors Rc, Rd, Rn and Rz, to be in effect September 1, shall be exclusive of past take or pay charges, which may be recovered pursuant to subrule 19.10(5).~~

The purchased gas adjustments shall be adjusted prospectively to reflect the final decision issued by the board in ~~an annual~~ a periodic review proceeding.

ITEM 11. Rescind and reserve subrule **19.10(5)**.

ITEM 12. Amend rule 199—19.11(476) by adding the following **new** subrule:

**19.11(6)** Executive summary. On or before August 1, 2003, each natural gas utility shall file an executive summary and index of all standard and special contracts in effect for the purchase, sale or interchange of gas. On or before August 1 each year thereafter, each natural gas utility shall file an update of the executive summary and index showing the standard and special contracts in effect on that date for the purchase, sale or interchange of gas. The executive summary shall include the following information:

a. The contract number;  
b. The start and end date;  
c. The parties to the contract;  
d. The total estimated dollar value of the contract;  
e. A description of the type of service offered (including volumes and price).

ITEM 13. Amend subrule 19.12(4) as follows:

**19.12(4)** Reporting requirements. Each natural gas utility electing to offer flexible rates shall file ~~semiannual~~ annual reports with the board within 30 days of the end of each ~~six~~ 12 months. Reports shall include the following information:

a. Section 1 of the report ~~will concern~~ concerns discounts initiated in the last ~~six~~ 12 months. For all discounts initiated in the last ~~six~~ 12 months, the report shall include:

(1) The identity of the new customers (by account number, if necessary);  
(2) The value of the discount offered;  
(3) The cost-benefit analysis results;  
(4) The cost of alternate fuels available to the customer, if relevant;  
(5) The volume of gas sold to or transported for the customer in the preceding ~~six~~ 12 months; and  
(6) A copy of all new or revised flexible rate contracts executed between the utility and its customers.

b. Section 2 of the report relates to overall program evaluation. For all discounts currently being offered, the report shall include:

(1) The identity of each customer (by account number, if necessary);  
(2) The total volume of gas sold or transported in the last ~~six~~ 12 months to each customer at discounted rates, by month;  
(3) The volume of gas sold or transported to each customer in the same ~~six~~ 12 months of the preceding year, by month;  
(4) The dollar value of the discount in the last ~~six~~ 12 months to each customer, by month;  
(5) The dollar value of volumes sold or transported to each customer for each of the previous 12 months; and  
(6) If customer charges are discounted, the dollar value of the discount shall be separately reported.

c. Section 3 of the report concerns discounts denied or discounts terminated. For all customers specifically evaluated and denied or having a discount terminated in the last ~~six~~ 12 months, the report shall include:

(1) Customer identification (by account number, if necessary);  
(2) The volume of gas sold or transported in the last ~~six~~ 12 months to each customer, by month;  
(3) The volume of gas sold or transported to each customer in the same ~~six~~ 12 months of the preceding year, by month; and  
(4) The dollar value of volumes sold or transported to each customer for each of the past 12 months.

d. No report is required if the utility had no customers receiving a discount during the relevant period and had no customers which were evaluated for the discount and rejected during the relevant period.

ITEM 14. Amend paragraph **19.13(4)“c”** as follows:

c. The utility ~~shall~~ may require a reconnection charge when an end-user receiving transportation service without system supply reserve service requests to return to the system supply. The end-user shall return to the system and receive service under the appropriate classification as determined by the utility.

ITEM 15. Amend rule 199—19.15(476) as follows:

**199—19.15(476) Customer contribution fund.**

**19.15(1)** Applicability and purpose. This rule applies to each gas public utility, as defined in Iowa Code sections 476.1 and 476.1B. Each utility shall ~~develop~~ maintain a program plan to assist the utility's low-income customers with weatherization and to supplement assistance received under the federal low-income ~~heating~~ home energy assistance program for the payment of winter heating bills. ~~The program shall be implemented on or before March 1, 1989.~~

**19.15(2)** Program plan. ~~On or before February 1, 1988,~~ ~~each~~ Each utility shall have on file with the ~~utilities~~ board a

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detailed description of its program plan. At a minimum, the plan shall include the following information:

- a. A list of the members of the *governing* board or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;
- b. A sample of the customer notification with a description of the method and frequency of its distribution;
- c. A sample of the authorization form provided to customers; and
- d. The ~~anticipated~~ date of implementation.

Program plans for new customer contribution funds shall be rejected if not in compliance with this rule. ~~Program plans for existing customer contribution funds existing prior to July 1, 1988, and determined by the board not to be in compliance with this rule shall be allowed until July 1, 1989, to comply, during which time such programs shall continue to operate.~~

**19.15(3) to 19.15(6)** No change.

ITEM 16. Amend subrule 19.16(5) as follows:

**19.16(5)** Rebuttable presumption. All gas available to meet demand in excess of an amount needed to meet the base period demand plus the reserve is presumed to be unjust and unreasonable unless a factual showing to the contrary is made during the ~~annual~~ *periodic* review of gas proceeding. All gas available to meet demand less than an amount of base period demand plus the reserve is presumed to be just and reasonable unless a factual showing to the contrary can be made during the ~~annual~~ *periodic* review of gas proceeding.

ITEM 17. Amend rule 199—20.1(476) as follows:

**199—20.1(476) General information.**

**20.1(1)** Authorization of rules. Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content and filing of reports, documents and other papers necessary to carry out the provisions of this law.

~~Chapter~~ *Iowa Code chapter 478* provides that the Iowa utilities board shall have power to make and enforce rules relating to the location, construction, operation and maintenance of certain electrical transmission lines.

*The application of the rules in this chapter to municipally owned utilities furnishing electricity is limited by Iowa Code section 476.1B.*

**20.1(2)** Application of rules. The rules shall apply to any electric utility operating within the state of Iowa subject to *Iowa Code* chapter 476, and to the construction, operation and maintenance of electric transmission lines to the extent provided in *Iowa Code* chapter 478, and shall supersede all conflicting ~~rules~~ *tariff provisions* of any ~~such~~ electric utility which were in force and effect prior to the adoption of ~~their~~ *these superseding* rules.

These rules are intended to promote safe and adequate service to the public, to provide standards for uniform and reasonable practices by utilities, and to establish a basis for determining the reasonableness of such demands as may be made by the public upon the utilities.

~~If unreasonable hardship to a utility or to a customer results from the application of any rule herein prescribed, application may be made to the board for the modification of the rule or for temporary or permanent exemption from its requirements. A request to waive the application of any rule on a permanent or temporary basis may be made in accordance with 199—1.3(17A,474,476,78GA,HF2206).~~

The adoption of these rules shall in no way preclude the board from altering or amending them, pursuant to statute, or from making such modifications with respect to their application as may be found necessary to meet exceptional conditions.

These rules shall in no way relieve any utility from any of its duties under the laws of this state.

**20.1(3) and 20.1(4)** No change.

ITEM 18. Amend rule 199—20.2(476) as follows:

Amend the catchwords as follows:

**199—20.2(476) Records, and reports, and tariffs.**

Amend subrule 20.2(2), introductory paragraph and first unnumbered paragraph, as follows:

**20.2(2)** Tariffs to be filed with the board. ~~The utility shall file its tariff with the board, and shall maintain such tariff filing in a current status.~~

The schedules of rates of rate-regulated utilities and rules *relating to the provision of electric service* of all utilities shall be filed with the board and shall be classified, designated, arranged and submitted so as to conform to the requirements of this chapter. Provisions of the schedules shall be definite and so stated as to minimize ambiguity or the possibility of misinterpretation. The form, identification and content of tariffs shall be in accordance with these rules.

Amend subrules 20.2(3) to 20.2(5) as follows:

**20.2(3)** Form and identification. All tariffs shall conform to the following rules:

a. and b. No change.

c. All sheets except the title page shall have, in addition to the above-stated requirements, the following ~~further~~ information:

(1) to (3) No change.

d. No change.

**20.2(4)** Content of tariffs.

a. to g. No change.

~~h. List of towns, cities, and unincorporated communities where urban rates are applicable, and a A list of all communities in which service is furnished at other rates.~~

i. The list of service areas and the rates shall be filed in ~~such a form as to facilitate ready determination of the rates available in each municipality and in such unincorporated communities as that have service at urban rates.~~ If the utility has various rural rates, the areas where the same are available shall be indicated.

j. to q. No change.

r. Notice ~~by required from a customer required~~ for having service discontinued.

s. to z. No change.

**20.2(5)** Annual, periodic and other reports to be filed with the board.

a. to c. No change.

d. *Electric service record.* Each utility shall compile a monthly record of electric service showing the production, acquisition and disposition of electric energy, the number of customer terminal voltage investigations made, the number of customer meters tested and such other information as may be required by the board. The monthly “Electric Service” record shall be compiled not later than 30 days after the end of the month covered and such record shall, upon and after compilation, be kept available for inspection by the board or its staff at the utility’s principal office within the state of Iowa. A summary of the 12 monthly “Electric Service” records for each calendar year shall be attached to and submitted with the utility’s annual report to the board.

e. to i. No change.

## UTILITIES DIVISION[199](cont'd)

j. *Residential customer statistics.* Each rate-regulated electric utility shall file with the board on or before the fifteenth day of each month one copy of the following residential customer statistics for the preceding month:

(1) to (12) No change.

k. No change.

ITEM 19. Rescind and reserve subrule **20.3(2)**.

ITEM 20. Amend subrule 20.3(6) as follows:

**20.3(6)** Meter reading and billing interval. Readings of all meters used for determining charges and billings to customers shall be scheduled at least monthly and for the beginning and termination of service. Bills to larger customers may, for good cause, be rendered weekly or daily for a period not to exceed one month. Intervals other than monthly shall not be applied to smaller customers, or to larger customers after the initial month provided above, without an exemption a waiver from the board. A petition for exemption a waiver request must include sufficient information to establish good cause for the exemption comply with 199—1.3(17A, 474, 476, 78GA, HF2206). If the board denies an exemption a waiver, or if no exemption a waiver is not sought with respect to a high demand customer after the initial month, that customer's meter shall be read monthly for the next 12 months, unless prior approval is received from the board for a shorter interval. The group of larger customers to which shorter billing intervals may be applied shall be specified in the utility's tariff sheets, but shall not include residential customers.

An effort shall be made to obtain readings of the meters on corresponding days of each meter-reading period. When the meter reading date causes a given billing period to deviate by more than 10 percent (counting only business days) from the normal meter reading period, such bills shall be prorated on a daily basis.

The utility may permit the customer to supply the meter readings by telephone or on a form supplied by the utility. *The utility may arrange for customer meter reading forms to be delivered to the utility by United States mail, electronically, or by hand delivery.* Unless the utility has a plan to test check meter readings, a utility representative will shall physically read the meter at least once each 12 months.

In the event that the utility leaves a meter reading form with the customer when access to meters cannot be gained and the form is not returned in time for the billing operation, an estimated bill may be rendered.

If an actual meter reading cannot be obtained, the utility may render an estimated bill without reading the meter or supplying a meter reading form to the customer. Only in unusual cases or when approval is obtained from the customer shall more than three consecutive estimated bills be rendered.

ITEM 21. Amend subrule 20.3(13) as follows:

**20.3(13)** Extensions to customers.

a. No change.

b. ~~Terms and conditions.~~ *The utility shall extend service to new customers under the following terms and conditions: Distribution or secondary lines other than service lines.*

(1) Plant additions. The utility will provide all electric plant at its cost and expense without requiring an advance for construction from customers or developers except in those unusual circumstances where extensive plant additions are required before the customer can be served, or where the customer will not attach within the agreed-upon attachment period after completion of construction. In such instances, the utility shall require, no more than 30 days prior to commencement of construction, the customer or developer to ad-

vance funds which are subject to refund as additional customers are attached. A contract between the utility and the customer which requires an advance by the customer to make plant additions shall be available for board inspection. *The utility shall allow the customer or developer, at the customer's or developer's option, to provide a contribution in aid of construction instead of an advance for construction, under subparagraphs 20.3(13) "b" (2) and (3) below.*

(2) and (3) No change.

(4) ~~Contribution in aid of construction for service line extensions.~~ *The utility shall finance and construct either an overhead or underground service line extension without requiring a contribution in aid of construction or any payment by the applicant where the length of the overhead extension to the first point of attachment is up to 50 feet on private property or where the cost of the underground extension to the meter or service disconnect is less than or equal to the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.*

~~Where the length of the overhead service extension exceeds 50 feet on private property, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the point of attachment, within 30 days after completion. The contribution in aid of construction for that portion of the service extension shall be computed as follows:~~

~~(Estimated Cost of Construction) ×~~

$$\left[ \frac{(\text{Total Length in Excess of 50 Feet})}{(\text{Total Length of Service Extension})} \right]$$

~~Where the cost of the underground service extension exceeds the estimated cost of constructing an equivalent overhead service extension of up to 50 feet, the applicant shall be required to provide a contribution in aid of construction within 30 days after completion equal to the difference between the estimated cost of constructing the underground service extension and the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.~~

e. (4) Refunds. The utility shall refund to the depositor for a period of ten years, from the date of the original advance, a pro-rata share for each service attachment to the extension. The pro-rata refund shall be computed in the following manner:

(1) 1. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension exceeds the total estimated construction cost to provide the extension, the entire amount of the advance provided by the depositor shall be refunded to the depositor.

(2) 2. If the combined total of three times estimated base revenue for the depositor and each customer who has attached to the extension is less than the total estimated construction cost to provide the extension, the amount to be refunded to the depositor shall equal three times estimated base revenue of the customer attaching to the extension.

(3) 3. In no event shall the total amount to be refunded to a depositor exceed the amount of the advance for construction made by the depositor. Any amounts subject to refund shall be paid by the utility without interest. At the expiration of the above-described ten-year period, the customer advance for construction record shall be closed and the remaining balance shall be credited to the respective plant account.

c. *Service lines.* *The utility shall finance and construct either an overhead or underground service line extension without requiring a contribution in aid of construction or any*

## UTILITIES DIVISION[199](cont'd)

payment by the applicant where the length of the overhead extension to the first point of attachment is up to 50 feet on private property or where the cost of the underground extension to the meter or service disconnect is less than or equal to the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

Where the length of the overhead service extension exceeds 50 feet on private property, the applicant shall be required to provide a contribution in aid of construction for that portion of the service extension on the private property, exclusive of the point of attachment, within 30 days after completion. The contribution in aid of construction for that portion of the service extension shall be computed as follows:

$$\frac{(\text{Estimated Construction Costs}) \times (\text{Total Length in Excess of 50 Feet})}{(\text{Total Length of Service Extension})}$$

Where the cost of the underground service extension exceeds the estimated cost of constructing an equivalent overhead service extension of up to 50 feet, the applicant shall be required to provide a contribution in aid of construction within 30 days after completion equal to the difference between the estimated cost of constructing the underground service extension and the estimated cost of constructing an equivalent overhead service extension of up to 50 feet.

d. and e. No change.

This rule is intended to implement Iowa Code section 476.8.

ITEM 22. Amend rule 199—20.6(476) as follows:

Amend subrule 20.6(5), introductory paragraph, as follows:

**20.6(5)** Request tests. Upon request by a customer, a utility shall test the meter servicing that customer. ~~except that such tests~~ A test need not be made more frequently than once in 18 months.

Amend subrule 20.6(6) as follows:

**20.6(6)** Referee tests. Upon written request by a customer or utility, the utilities board will conduct a referee test of a meter. ~~except that such tests~~ A test need not be made more frequently than once in 18 months. The customer request shall be accompanied by a \$30 check or money order made payable to the utility.

Within five days of receipt of the written request and payment, the utilities board shall forward the deposit to the utility and notify the utility of the requirement for a test. The utility shall, within 30 days after notification of the request, schedule the date, time and place of the test with the board and customer. The meter shall not be removed or adjusted before the test. ~~and the~~ The utility shall furnish all testing equipment and facilities for the test. If the tested meter is found to be more than 2 percent fast or 2 percent slow, the deposit will be returned to the party requesting the test and billing adjustments shall be made as required in 20.4(14). The board shall issue its report within 15 days after the test is conducted, with a copy to the customer and the utility.

Adopt **new** subrule 20.6(7) as follows:

**20.6(7)** Condition of meter. No meter which is known to be mechanically or electrically defective, or to have incorrect constants, or which has not been tested and adjusted if necessary in accordance with these rules shall be installed or continued in service. The capacity of the meter and the index mechanism shall be consistent with the electric requirements of the customer.

ITEM 23. Amend subrule 20.7(8) as follows:

**20.7(8)** Equipment for voltage measurements.

a. Secondary standard indicating voltmeter. Each utility shall have available at least one indicating voltmeter with an accuracy class of 0.25 pursuant to the acceptable standard listed at 20.5(2)“e.” This instrument shall be maintained with error no greater than 0.25 percent of full scale.

b. Working standard indicating voltmeters. Each utility shall have at least two indicating voltmeters of 1.0 accuracy class pursuant to the acceptable standard listed at 20.5(2)“e.” These instruments shall be maintained so as to have as-left errors of no greater than 1 percent of full scale.

c. Recording voltmeters. Each utility must have readily available at least two portable recording voltmeters with a rated accuracy of 1 percent of full scale. ~~pursuant to acceptable standards listed at 20.5(2)“f.”~~

ITEM 24. Amend subrule 20.8(3) as follows:

**20.8(3)** Reportable accidents. Each utility shall maintain a summary of all reportable accidents, as defined in 199—25.5(476,478), arising from its operations.

ITEM 25. Amend subparagraph **20.9(2)“b”(6)** as follows:

(6) Purchases of energy and capacity from qualifying alternate energy production facilities and qualifying small hydro facilities, at rates required under rule 199—15.12(476) subrule 15.11(1).

ITEM 26. Amend paragraph **20.10(2)“c”** as follows:

c. Generating capacity estimates or allocations among and within classes shall recognize that utility systems are designed to serve both peak and off-peak demand, and shall attribute costs based upon both peak period demand and the contribution of off-peak period demand in determining generation mix. Generating capacity estimates and allocations among and within classes shall be based on load data for each class as described in 20.13(3)“c”(5) 199—subrule 35.9(2).

ITEM 27. Rescind and reserve subrules **20.10(7)**, **20.10(8)**, and **20.10(9)**.

ITEM 28. Amend rule 199—20.11(476) as follows:

**199—20.11(476) Customer notification of peaks in electric energy demand.** Each electric utility shall inform its customers of the significance of reductions in consumption of electricity during hours of peak demand.

**20.11(1)** Annual notice. Each electric utility shall provide its customers, on an annual basis, with a written notice explaining how growth in demand affects a utility’s investment costs and why reduction of customer usage during periods of peak demand may help delay or reduce the amount of future rate increases. ~~On or before April 1 of each year, the utility shall either request board approval of its proposed annual notice or file a letter with the board stating that a previously approved annual notice will be used. This letter shall include the date of board approval of the annual notice. An approved~~ The notice shall be delivered to its customers between May 1 and June 15 of each year if peak demand is likely to occur during the months of June through September. ~~A copy of the notice, together with an affidavit showing when and how the notice was delivered, shall be filed with the board on or before June 30 of each year. If peak demand usually occurs during the months of October through February, the utility on or before July 1 of each year, shall either request board approval of its proposed annual notice or file a letter with the board stating that a previously approved annual notice will be used. This letter shall include the date of board approval of the annual notice. An approved~~ the notice shall be delivered to its customers between August 1 and September 15. ~~of each year.~~

## UTILITIES DIVISION[199](cont'd)

~~A copy of the notice, together with an affidavit showing when and how the notice was delivered, shall be filed with the board on or before September 30 of each year.~~

~~20.11(2) Notification plan. On or before April 15, 1983, each Each investor-owned utility shall have on file with the board a plan to notify its customers of an approaching peak demand on the day when peak demand is likely to occur.~~

a. and b. No change.

~~20.11(3) Implementation of notification plan. Upon approval of a peak notification plan by the board, the utility shall immediately prepare for implementation of the plan. The utility shall implement the approved plan on each day of the year when peak demand is likely to occur, as prescribed by 20.11(2)“b.”~~

~~20.11(4) and 20.11(5) No change.~~

ITEM 29. Rescind and reserve rule ~~199—20.12(476)~~.

ITEM 30. Amend subrule 20.14(4) as follows:

~~20.14(4) Reporting requirements. Each electric utility electing to offer flexible rates shall file semiannual annual reports with the commission board within 30 days of the end of each six 12 months. Reports shall include the following information:~~

a. Section 1 of the report ~~will concern concerns~~ discounts initiated in the last ~~six 12~~ months. For all discounts initiated in the last ~~six 12~~ months, the report shall include:

- (1) The identity of the new customers (by account number, if necessary);
- (2) The value of the discount offered;
- (3) The cost-benefit analysis results;
- (4) The end-use cost of alternate fuels or energy supplies available to the customer, if relevant;
- (5) The energy and demand components by month of the amount of electricity sold to the customer in the preceding ~~six 12~~ months.

b. Section 2 of the report relates to overall program evaluation. Amount of electricity refers to both energy and demand components when the customer is billed for both elements. For all discounts currently being offered, the report shall include:

- (1) The identity of each customer (by account number, if necessary);
- (2) The amount of electricity sold in the last ~~six 12~~ months to each customer at discounted rates, by month;
- (3) The amount of electricity sold to each customer in the same ~~six 12~~ months of the preceding year, by month;
- (4) The dollar value of the discount in the last ~~six 12~~ months to each customer, by month; and
- (5) The dollar value ~~of~~ sales to each customer for each of the previous 12 months.

c. Section 3 of the report concerns discounts denied or discounts terminated. For all customers specifically evaluated and denied or having a discount terminated in the last ~~six 12~~ months, the report shall include:

- (1) Customer identification (by account number, if necessary);
- (2) The amount of electricity sold in the last ~~six 12~~ months to each customer, by month;
- (3) The amount of electricity sold to each customer in the same ~~six 12~~ months of the preceding year, by month; and
- (4) The dollar value of sales to each customer for each of the past 12 months.

d. No change.

ITEM 31. Amend rule 199—20.15(476) as follows:

**199—20.15(476) Customer contribution fund.**

~~20.15(1) Applicability and purpose. This rule applies to each electric public utility, as defined in Iowa Code sections 476.1, 476.1A, and 476.1B. Each utility shall develop maintain a program plan to assist the utility’s low-income customers with weatherization and to supplement assistance received under the federal low-income heating home energy assistance program for the payment of winter heating bills. The program shall be implemented on or before March 1, 1989.~~

~~20.15(2) Program plan. On or before February 1, 1989, each Each utility shall have on file with the utilities board a detailed description of its proposed current program plan. At a minimum, the plan shall include the following information:~~

- a. A list of the members of the governing board or committee established to determine the appropriate distribution of the funds collected. The list shall include the organization each member represents;
- b. A sample of the customer notification with a description of the method and frequency of its distribution;
- c. A sample of the authorization form provided to customers;
- d. The anticipated date of implementation.

~~Program plans for new customer contribution funds shall be rejected if not in compliance with this rule. Program plans for existing customer contribution funds existing prior to July 1, 1988, and determined by the board not to be in compliance with this rule shall be allowed until July 1, 1989, to comply, during which time such programs shall continue to operate.~~

~~20.15(3) to 20.15(6) No change.~~

ITEM 32. Rescind and reserve rule ~~199—20.16(476)~~.

ITEM 33. Amend rule 199—20.17(476) as follows:

**199—20.17(476) Ratemaking treatment of emission allowances.**

~~20.17(1) to 20.17(12) No change.~~

~~20.17(13) Prudence of allowance transactions. The prudence of allowance transactions shall be determined by the board in the annual periodic electric energy supply and cost review. The prudency review of allowance transactions and accompanying compliance plans shall be based on information available at the time the options or plans were developed. Costs recovered from ratepayers through the energy adjustment that are deemed imprudent by the board shall be refunded with interest to ratepayers through the energy adjustment as specified in rule 20.9(476).~~

ITEM 34. Amend rule 199—21.1(476) as follows:

**199—21.1(476) Application of rules.**

~~21.1(I) Application of rules. The rules apply to any water utility operating within the state of Iowa under the jurisdiction of the Iowa utilities board and are established under Iowa Code chapter 476.~~

~~These rules are intended to promote service to the public, provide standards for uniform practices by utilities, and establish a basis for determining the reasonableness of the demands made by the public upon the utilities.~~

~~If unreasonable hardship to a utility or to a customer results from the application of any rule prescribed, application may be made to the board for the modification of the rule or for temporary exception from its requirements. A utility or customer may file for a waiver of these rules in accordance with the provisions of 199—1.3(17A,474,476,78GA, HF2206).~~

## UTILITIES DIVISION[199](cont'd)

These rules shall not relieve a utility from its duties under the laws of this state.

**21.1(2)** *Authorization of rules. Iowa Code chapter 476 provides that the Iowa utilities board shall establish all needful, just, and reasonable rules, not inconsistent with law, to govern the exercise of its powers and duties, the practice and procedure before it, and to govern the form, content, and filing of reports, documents, and other papers necessary to carry out the provisions of this law.*

ITEM 35. Amend subrule 21.2(1) as follows:

**21.2(1)** ~~Notice of location~~ *Location and retention of records. Unless otherwise specified in this chapter, the utility shall keep the board informed in writing of the location at which the utility keeps the various classes of records, such all records required by these rules shall to be kept and preserved in accordance with the applicable provisions of Iowa Administrative Code 199—Chapter 18. “Utility Records.”*

ITEM 36. Amend paragraph **21.3(5)“e,”** first unnumbered paragraph, as follows:

This rule shall not be construed as prohibiting an individual, partnership, or company from constructing its own extension. An extension constructed by a nonutility entity must meet at a minimum the applicable portions of the standards in 21.5(1) and 21.5(2) and such other reasonable standards as the utility may employ in constructing extensions, so long as the standards do not mandate a particular supplier. All connections to the utility-owned equipment or facilities shall be made by the utility at the applicant's expense. At the time of attachment to the utility-owned equipment or facilities, the applicant shall transfer ownership of the extension to the utility and the utility shall book the original cost of construction of the extension as an advance for construction, and refunds shall be made to the applicant in accordance with 21.3(4-5)“c.” The utility shall be responsible for the operation and maintenance of the extension after attachment.

ITEM 37. Amend subrule 21.6(6) as follows:

**21.6(6)** Request tests. A utility shall test any water meter upon written request of a customer. ~~provided a request is not made~~ *The utility will not be required to perform request tests more than once each 18 months. The customer shall be given the opportunity to be present at the request tests.*

ITEM 38. Amend paragraph **21.8(3)“e”** as follows:

e. An affidavit from the utility showing that the notice required by Iowa Code Supplement section 476.6(18)“c” and subrule 21.8(4) has been provided and paid for by the applicant and mailed by the utility to all affected customers.

ITEM 39. Adopt **new** rule 199—35.14(476) as follows:

**199—35.14(476) New structure energy conservation standards.** A utility providing gas or electric service shall not provide service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—16.801(103A) and 661—16.802(103A). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service, or are not intended primarily for human occupancy.

ITEM 40. Adopt **new** rule 199—35.15(476) as follows:

**199—35.15(476) Exterior flood lighting.**

**35.15(1)** Newly installed lighting. All newly installed public utility-owned exterior flood lighting shall be high-pressure sodium lighting or lighting with equivalent or better energy efficiency.

**35.15(2)** In-service lighting replacement schedule. In-service lighting shall be replaced with high-pressure sodium lighting or lighting with equivalent or better energy efficiency when worn out due to ballast or fixture failure for any other reason, such as vandalism or storm damage. Each utility shall file with the board as part of its annual report a report stating progress to date in converting to high-pressure sodium lighting or lighting with equivalent or higher energy efficiency.

**35.15(3)** Efficiency standards. The standard for lighting efficiency shall be expressed in “lumens per watt.” A schedule of lumens per watt, correlated to bulb size, shall be used to reflect the inherent increase in efficiency as bulb sizes increase. The table of values for lighting efficacy extracted from the Standard Handbook for Electrical Engineers, Donald G. Fink and H. Wayne Beaty, Eds., Twelfth Edition, Table 26-14, shall be the standard for high-pressure sodium street and security lighting, within a 10 percent range below the stated values.

ITEM 41. Adopt **new** rule 199—36.7(476) as follows:

**199—36.7(476) New structure energy conservation standards.**

A utility providing gas or electric service shall not provide such service to any structure completed after April 1, 1984, unless the owner or builder of the structure has certified to the utility that the building conforms to the energy conservation requirements adopted under 661—16.801(103A) and 661—16.802(103A). If this compliance is already being certified to a state or local agency, a copy of that certification shall be provided to the utility. If no state or local agency is monitoring compliance with these energy conservation standards, the owner or builder shall certify that the structure complies with the standards by signing a form provided by the utility. No certification will be required for structures that are not heated or cooled by electric service, or are not intended primarily for human occupancy.

ITEM 42. Adopt **new** rule 199—36.8(476) as follows:

**199—36.8(476) Exterior flood lighting.**

**36.8(1)** Newly installed lighting. All newly installed public utility-owned exterior flood lighting shall be high-pressure sodium lighting or lighting with equivalent or better energy efficiency.

**36.8(2)** In-service lighting replacement schedule. In-service lighting shall be replaced with high-pressure sodium lighting or lighting with equivalent or better energy efficiency when worn out due to ballast or fixture failure for any other reason, such as vandalism or storm damage. Each utility shall file with the board as part of its annual report a report stating progress to date in converting to high-pressure sodium lighting or lighting with equivalent or higher energy efficiency.

**36.8(3)** Efficiency standards. The standard for lighting efficiency shall be expressed in “lumens per watt.” A schedule of lumens per watt, correlated to bulb size, shall be used to reflect the inherent increase in efficiency as bulb sizes increase. The table of values for lighting efficacy extracted from the Standard Handbook for Electrical Engineers, Donald G. Fink and H. Wayne Beaty, Eds., Twelfth Edition, Table 26-14, shall be the standard for high-pressure sodium

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street and security lighting, within a 10 percent range below the stated values.

## ARC 2285B

### UTILITIES DIVISION[199]

#### Notice of Intended Action

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

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

Pursuant to Iowa Code sections 17A.4, 476.1, 476.2, and 476.20, the Utilities Board (Board) gives notice that on January 16, 2003, the Board issued an order in Docket No. RMU-03-2, In re: Customer Rights and Remedies to Avoid Disconnection, “Order Commencing Rule Making.” The rule making proposes amendments to the Board’s standard notice that sets out the rights and remedies for gas and electric customers. The amendments are to 199 IAC 19.4(15)“h”(3) and 20.4(15)“h”(3), and they are designed to make the notice more readable and consistent with the Board’s rules on disconnection. The support for the proposed amendments is discussed in the Board’s “Order Commencing Rule Making” issued simultaneously with this Notice.

Pursuant to Iowa Code sections 17A.4(1)“a” and “b,” any interested person may file a written statement of position pertaining to the proposed amendments. The statement must be filed on or before March 4, 2003, by filing an original and ten copies in a form substantially complying with 199 IAC 2.2(2). All written statements should clearly state the author’s name and address and should make specific reference to this docket. All communications should be directed to the Executive Secretary, Utilities Board, 350 Maple Street, Des Moines, Iowa 50319-0069.

A public hearing to receive oral comments on the proposed amendments will be held at 10 a.m. on April 8, 2003, in the Board’s hearing room at the address listed above. Persons with disabilities requiring assistive services or devices to observe or participate should contact the Utilities Board at (515)281-5256 in advance of the scheduled date to request that appropriate arrangements be made.

These amendments are intended to implement Iowa Code sections 17A.4, 476.1, 476.2, and 476.20.

The following amendments are proposed.

ITEM 1. Amend subparagraph **19.4(15)“h”(3)** as follows:

(3) The summary of the rights and remedies must be approved by the board. Any utility providing gas service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval. *A utility billing a combination customer for both gas and electric service may modify the standard form to replace each use of the word “gas” with the words “gas and electricity” in all instances.*

#### CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

~~The following is a summary of your rights and remedies under the rules of the Utilities Division of the Iowa Department of Commerce to avoid disconnection of utility service.~~

~~Disconnection can be avoided by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.~~

~~Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least 12 days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.~~

~~Disconnection of your service may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If you make payment or other arrangements during normal business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect your service that day. If you make payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect your service not later than 11 a.m. the next day. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.~~

~~Delinquent bill. If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least 12 months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Board (within 10 days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll-free (877)565-4450). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day’s notice.~~

~~Health.—Disconnection for nonpayment will be delayed 30 days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the 30-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial 30 days, you may receive an additional 30-day delay.~~

~~Disputed bill. If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to 45 days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the board (address and telephone number listed previously), disconnection~~

## UTILITIES DIVISION[199](cont'd)

may be further postponed, should the board request the extension.

~~Winter energy assistance (November 1 through April 1). You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, you will be given 12 days from the date on which the disconnection notice was mailed to apply to the local community action agency. You must apply prior to the disconnection date. If the community action agency certifies you as being eligible for either low-income energy assistance or weatherization assistance within 30 days from the date of your application, then your service cannot be disconnected between November 1 and April 1.~~

It is unlikely, however, that energy assistance funds will pay all of your utility bills. It is to your advantage to make a payment arrangement now to avoid disconnection of your service after April 1.

If you have been certified as eligible for assistance, and you receive a disconnection notice from your gas or electric company, it is up to you to ensure that the utility is notified of your eligibility. Your certification will cover the current November 1 through April 1 period only. For further information on how to apply for assistance and qualifications, contact our business office, the Division of Community Action Agencies of the Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319 (1-515-281-0859), or your community action agency [list of community action agency addresses and telephone numbers for the utility's service territory].

#### **AVOIDING SHUTOFF OF GAS SERVICE FOR NONPAYMENT**

**1. What can I do if I receive a notice from the utility that says my gas will be shut off because I have a past due bill?**

- a. Pay the bill in full;
- b. Enter into a reasonable payment plan with the utility (see #2 below);
- c. Apply for and become eligible for low-income energy assistance (see #3 below);
- d. Give the utility a written statement from a doctor or public health official stating that shutting off your gas would be a serious health danger for a person living at the residence (see #4 below); or
- e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

**2. How do I go about making a reasonable payment plan?**

- a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that is at least 12 months long. The plan may be longer depending on your financial situation.
- b. If you have not made the payments you promised in a previous payment plan with the utility and still owe money, the utility can refuse to offer you another payment plan.
- c. If you do not make the payments you promised, the utility may shut off your utility service after one day's notice unless all the money you owe the utility is paid. If your utility service is shut off, the utility may refuse to offer you any further payment plans.

**3. How do I apply for low-income energy assistance? (Residential Customer Only)**

- a. Contact the local community action agency in your area (see attached list); or
- b. Contact the Division of Community Action Agencies at the Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; telephone (515)281-0859.
- c. To avoid disconnection, you must apply for energy assistance before your service is shut off. Notify your utility that you may be eligible and have applied for energy assistance.

**4. What if someone living at the residence has a serious health condition? (Residential Customer Only)**

Contact the utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your utility service would be a serious health danger for a person living at the residence. The doctor or public health official must provide a written statement to the utility office within 5 days of when your doctor or public health official notified the utility of the health condition; otherwise, your utility service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements.

**5. What should I do if I believe my bill is not correct?**

You may dispute your utility bill. You must tell the utility in writing that you dispute the bill. You must go ahead and pay the part of the bill you think is correct. If you do this, the utility will not shut off your gas for 45 days from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect.

**6. When can the utility shut off my utility service because I have not paid my bill?**

- a. Your utility can shut off service between the hours of 6 a.m. and 2 p.m., Monday through Friday.
- b. The utility will not shut off your service on nights, weekends, or holidays for nonpayment of a bill.
- c. The utility will not shut off your service if you enter into a reasonable payment plan to pay the overdue amount (see #2).
- d. The utility will not shut off your service if the temperature is forecasted to be colder than 20 degrees Fahrenheit during the 24-hour period, including the day your service is scheduled to be shut off.
- e. If you have qualified for low-income energy assistance, the utility cannot shut off your service between November 1 and April 1. However, you will still owe the utility for the service used during this time.
- f. The utility will not shut off your service if you have notified the utility in writing that you dispute a portion of your bill and you pay the part of the bill that you agree is correct.

**7. How will I be told the utility is going to shut off my gas?**

- a. You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment. This notice will include the reason for shutting off your service.



## UTILITIES DIVISION[199](cont'd)

b. *The utility must also try to reach you by telephone or in person before it shuts off your service. Between November 1 and April 1, if the utility cannot reach you by telephone or in person, the utility will put a written notice on the door of the residence to tell you that your utility service will be shut off.*

8. *If service is shut off, when will it be turned back on?*

a. *The utility will turn your service back on if you pay the whole amount you owe or agree to a reasonable payment plan (see #2).*

b. *If you make your payment during regular business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after regular business hours, the utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility must do it by 11 a.m. the next day.*

c. *The utility may charge you a fee to turn your service back on. Those fees are higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.*

9. *Is there any other help available besides my utility?*

*If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll free at 1-877-565-4450. You may also write the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069, or by E-mail at [iubcustomer@iub.state.ia.us](mailto:iubcustomer@iub.state.ia.us).*

ITEM 2. Amend subparagraph **20.4(15)“h”(3)** as follows:

(3) The summary of the rights and remedies must be approved by the board. Any utility providing electric service and defined as a public utility in Iowa Code section 476.1 which does not use the standard form set forth below for customers billed monthly shall submit to the board an original and six copies of its proposed form for approval. *A utility billing a combination customer for both gas and electric service may modify the standard form to replace each use of the word “electric” with the words “gas and electricity” in all instances.*

#### CUSTOMER RIGHTS AND REMEDIES TO AVOID DISCONNECTION

*The following is a summary of your rights and remedies under the rules of the Utilities Division of the Iowa Department of Commerce to avoid disconnection of utility service.*

*Disconnection can be avoided by paying the past due amount or by making arrangements to pay on or before the date listed on the notice.*

*Disconnection for nonpayment may occur only after we have sent a written notice of disconnection by regular mail postmarked at least 12 days before service is to be shut off. This notice must include the reason for disconnection. We must try to contact you by phone or in person prior to disconnection. If disconnection is scheduled between November 1 and April 1 and it has not been possible to contact you by phone or in person, a notice must be placed on the door of the home at least one day before service is disconnected.*

*Disconnection of your service may take place only between the hours of 6 a.m. and 2 p.m. on a weekday and not on weekends or holidays. If you make payment or other arrangements during normal business hours, or*

*by 7 p.m. for utilities permitting such payment or other arrangements after normal business hours, all reasonable efforts shall be made to reconnect your service that day. If you make payment or other arrangements after 7 p.m., all reasonable efforts shall be made to reconnect your service not later than 11 a.m. the next day. Between November 1 and April 1, we cannot require you to pay a deposit before service is reconnected or as part of an agreement for service to be continued.*

*Delinquent bill. If you are unable to pay a past due bill in full, you will be given an opportunity to enter into a payment agreement to avoid disconnection of service. The agreement will be negotiated to meet your individual needs and you may spread payments for the past due bill over at least twelve months. You must also agree to pay each new monthly bill as it comes due. If we refuse an agreement, you will be told in writing why we refused, and you may continue to pay under your proposed agreement without disconnection of service if you ask the Board (within ten days after receiving the written refusal) for assistance in working out an agreement with us. (Iowa Utilities Board, 350 Maple Street, Des Moines, Iowa 50319, (515)281-3839 or toll free (877)565-4450). If you break the payment agreement, we are not required to offer you a second payment agreement and may disconnect service on one day's notice.*

*Health. Disconnection for nonpayment will be delayed thirty days if a physician or public health official determines that a permanent resident in your house has a serious health problem and will be endangered if service is shut off. At our request, a telephone call from the physician or public health official to our office must be followed up by a letter within five days. During the thirty-day delay, you must work out a payment agreement. If the physician or health official states that the health problem still exists at the end of the initial thirty days, you may receive an additional thirty-day delay.*

*Disputed bill. If you disagree with the accuracy of your bill, you may pay the undisputed portion and notify our office of the disagreement. Disconnection will be delayed for up to forty-five days from the date the bill was mailed so that the disagreement may be settled. If you file a written complaint with the Board (address and telephone number listed previously), disconnection may be further postponed, should the Board request the extension.*

*Winter energy assistance (November 1 through April 1). You may be eligible for low-income energy assistance or weatherization funds. If you tell us that you may qualify for energy assistance, you will be given twelve days from the date on which the disconnection notice was mailed to apply to the local community action agency. You must apply for assistance prior to the disconnection date. If the community action agency certifies you as being eligible for either low-income energy assistance or weatherization assistance within thirty days from the date of your application, then your service cannot be disconnected between November 1 and April 1.*

*It is unlikely, however, that energy assistance funds will pay all of your utility bills. It is to your advantage to make a payment arrangement now to avoid disconnection of your service after April 1.*

*If you have been certified as eligible for assistance, and you receive a disconnection notice from your gas or*

## UTILITIES DIVISION[199](cont'd)

electric company, it is up to you to ensure that the utility is notified of your eligibility. Your certification will cover the current November 1 through April 1 period only. For further information on how to apply for assistance and qualifications, contact our business office, the Division of Community Action Agencies of the Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319 (1-515-281-0859), or your community action agency [list of community action agency addresses and telephone numbers for the utility's service territory].

#### **AVOIDING SHUTOFF OF ELECTRIC SERVICE FOR NONPAYMENT**

**1. What can I do if I receive a notice from the utility that says my electricity will be shut off because I have a past due bill?**

- a. Pay the bill in full;
- b. Enter into a reasonable payment plan with the utility (see #2 below);
- c. Apply for and become eligible for low-income energy assistance (see #3 below);
- d. Give the utility a written statement from a doctor or public health official stating that shutting off your electricity would be a serious health danger for a person living at the residence (see #4 below); or
- e. Tell the utility if you think part of the amount shown on the bill is wrong. However, you must still pay the part of the bill you agree you owe the utility (see #5 below).

**2. How do I go about making a reasonable payment plan?**

- a. Contact the utility as soon as you know you cannot pay the amount you owe. If you cannot pay all the money you owe at one time, the utility may offer you a payment plan that is at least 12 months long. The plan may be longer depending on your financial situation.
- b. If you have not made the payments you promised in a previous payment plan with the utility and you still owe money, the utility can refuse to offer you another payment plan.
- c. If you do not make the payments you promised, the utility may shut off your utility service after one day's notice unless all the money you owe the utility is paid. If your utility service is shut off, the utility may refuse to offer you any further payment plans.

**3. How do I apply for low-income energy assistance? (Residential Customer Only)**

- a. Contact the local community action agency in your area (see attached list); or
- b. Contact the Division of Community Action Agencies at the Iowa Department of Human Rights, Lucas State Office Building, Des Moines, Iowa 50319; telephone (515)281-0859.
- c. To avoid disconnection, you must apply for energy assistance before your service is shut off. Notify your utility that you may be eligible and have applied for assistance.

**4. What if someone living at the residence has a serious health condition? (Residential Customer Only)**

Contact the utility if you believe this is the case. Contact your doctor or a public health official and ask the doctor or health official to contact the utility and state that shutting off your utility service would be a serious health danger for a person living at the residence.

The doctor or public health official must provide a written statement to the utility office within 5 days of when your doctor or public health official notified the utility of the health condition; otherwise, your utility service may be shut off. If the utility receives this written statement, your service will not be shut off for 30 days. This 30-day delay is to allow you time to arrange payment of your utility bill or find other living arrangements.

**5. What should I do if I believe my bill is not correct?**

You may dispute your utility bill. You must tell the utility in writing you dispute the bill. You must go ahead and pay the part of the bill you think is correct. If you do this, the utility will not shut off your electricity for 45 days from the date the bill was mailed while you and the utility work out the dispute over the part of the bill you think is incorrect.

**6. When can the utility shut off my utility service because I have not paid my bill?**

- a. Your utility can shut off service between the hours of 6 a.m. and 2 p.m., Monday through Friday.
- b. The utility will not shut off your service on nights, weekends, or holidays for nonpayment of a bill.
- c. The utility will not shut off your service if you enter into a reasonable payment plan to pay the overdue amount (see #2).
- d. The utility will not shut off your service if the temperature is forecasted to be colder than 20 degrees Fahrenheit during the 24-hour period, including the day your service is scheduled to be shut off.
- e. If you have qualified for low-income energy assistance, the utility cannot shut off your service between November 1 and April 1. However, you will still owe the utility for the service used during this time.
- f. The utility will not shut off your service if you have notified the utility in writing that you dispute a portion of your bill and if you pay the part of the bill that you agree is correct.

**7. How will I be told the utility is going to shut off my electricity?**

- a. You must be given a written notice at least 12 days before the utility service can be shut off for nonpayment. This notice will include the reason for shutting off your service.
- b. The utility must also try to reach you by telephone or in person before it shuts off your service. Between November 1 and April 1, if the utility cannot reach you by telephone or in person, the utility will put a written notice on the door of the residence to tell you that your service will be shut off.

**8. If service is shut off, when will it be turned back on?**

- a. The utility will turn your service back on if you pay the whole amount you owe or agree to a reasonable payment plan (see #2).
- b. If you make your payment during regular business hours, or by 7 p.m. for utilities permitting such payment or other arrangements after regular business hours, the utility must make a reasonable effort to turn your service back on that day. If service cannot reasonably be turned on that same day, the utility must do it by 11 a.m. the next day.
- c. The utility may charge you a fee to turn your service back on. Those fees are higher in the evening or on weekends, so you may ask that your service be turned on during normal utility business hours.

UTILITIES DIVISION[199](cont'd)

***9. Is there any other help available besides my utility?***

*If the utility has not been able to help you with your problem, you may contact the Iowa Utilities Board toll*

*free at 1-877-565-4450. You may also write the Iowa Utilities Board at 350 Maple Street, Des Moines, Iowa 50319-0069, or by E-mail at [iubcustomer@iub.state.ia.us](mailto:iubcustomer@iub.state.ia.us).*

**ARC 2260B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code sections 217.6 and 234.6, the Department of Human Services amends Chapter 14, "Offset of County Debts Owed Department," Iowa Administrative Code.

The Department bills county governments for a portion of the expenses incurred in several Medicaid programs that serve people who have mental retardation or mental illness. Examples include care in an intermediate care facility for the mentally retarded, such as the State Resource Centers at Woodward and Glenwood, and services provided under the home- and community-based waiver for people with mental retardation. Disputes over these billings most often arise in relation to whether the person who received the service has legal settlement in the county receiving the bill.

Amendments to clarify the appeal process to be used when the Department plans to collect county debts through offset of other payments were published in the Iowa Administrative Bulletin on May 1, 2002, as **ARC 1594B**. The adopted amendments were published in the Iowa Administrative Bulletin on August 7, 2002, as **ARC 1839B**. On September 10, 2002, the Administrative Rules Review Committee imposed a 70-day delay on those amendments and directed the Department to hold further discussions with county government representatives about the offset process. These amendments are the result of those discussions.

In response to county concerns, these amendments state explicitly that:

- The Department shall not begin the offset process until the Department has responded in writing to the county's request to resolve the unpaid bill.
- If the county appeals the notice of potential offset, the Department will suspend the offset process until a final decision is rendered on the appeal.
- When requesting an appeal, the county does not have to resubmit documentation that it previously submitted for bill resolution or administrative review.

New subrule 14.4(3) on appeal requests incorporates existing rule language with the latter two changes.

These amendments do not provide for waivers in specified situations because they provide a benefit to county governments.

The Department of Human Services finds that notice and public participation are unnecessary because the Department has already solicited comments on the offset process in May, and these amendments are an outgrowth of those comments. Therefore, these amendments are filed pursuant to Iowa Code section 17A.4(2).

The Department finds that these amendments confer a benefit on county governments by resolving concerns about the fairness of the offset process. Therefore, the normal effective date is waived, and these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments on January 8, 2003.

These amendments are intended to implement Iowa Code sections 217.6 and 234.6.

These amendments became effective on February 1, 2003. The following amendments are adopted.

ITEM 1. Amend rule **441—14.1(217,234)**, definition of "offset," as follows:

"Offset" shall mean to set off or compensate the department which has a legal claim against a county where there exists a county's valid claim on a state agency that is in the form of a liquidated sum due, owing and payable. Before setoff, the amount of a county's claims on a state agency shall be at least \$50. *The offset process shall not begin until the department has responded in writing to the county's request to resolve the unpaid bill.*

ITEM 2. Amend rule 441—14.4(217,234) as follows:

Amend subrule **14.4(1)**, paragraph "e," as follows:

e. The county's right to appeal the offset pursuant to 441—Chapter 7. ~~The county shall have 30 days to request an appeal. The request for appeal should include any relevant legal citations and any additional information supporting the county's position.~~

Rescind and reserve subrule **14.4(1)**, paragraph "f."

Adopt **new** subrule 14.4(3) as follows:

**14.4(3)** Appeal request.

a. The county shall have 30 days to request an appeal. The county shall waive any right to appeal if the county fails to respond within 30 calendar days of the date of the notification.

b. The request for appeal should include any relevant legal citations and any additional information supporting the county's position. If the county believes it has provided all relevant information as a part of the disputed-billing process, the county may instead note that the department already has the relevant information.

c. The county's request for appeal shall suspend the offset action until a final appeal decision is issued.

[Filed Emergency 1/9/03, effective 2/1/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2261B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency After Notice**

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

These amendments change the procedure for collecting information to support an independent determination of disability for SSI-related Medicaid by adding a separate report form to be used for applicants under 18 years of age. This mirrors the procedure used by the Social Security Administration and reflects the fact that disability is determined using different standards for children than are used for adults. Separate forms will help ensure that the correct information is gathered to make the disability determination.

These amendments do not provide for waivers in specified situations because it is a benefit to applicants to be required to furnish only information that is appropriate to their situation.

Notice of Intended Action for these amendments was published in the Iowa Administrative Bulletin on November 27, 2002, as **ARC 2141B**. The Department received no comments on the Notice of Intended Action. These amendments

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

are identical to those published under Notice of Intended Action.

The Department finds that these amendments confer a benefit on children applying for benefits based on disability by facilitating the disability determination process. Therefore, the normal effective date of these amendments should be waived, pursuant to Iowa Code section 17A.5(2)"b"(2).

The Council on Human Services adopted these amendments on January 8, 2003.

These amendments are intended to implement Iowa Code section 249A.3.

These amendments became effective February 1, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **75.1(35)**, paragraph "**1**," subparagraph (**2**), as follows:

(2) For an independent determination of disability, ~~a Disability Report, Form 470-2465, must be obtained from the applicant or recipient or the applicant's or recipient's authorized representative shall submit either Form 470-2465, Disability Report for Adults, if the applicant or recipient is aged 18 or over, or Form 470-3912, Disability Report for Children, if the applicant or recipient is under the age of 18.~~ A signed Authorization for Source to Release Information to the Department of Human Services, Form 470-2467, shall be completed for each medical source listed on the disability report.

ITEM 2. Amend subrule **75.20(2)**, paragraph "**b**," unnumbered paragraph, as follows:

~~A disability report shall be completed by the~~ The client or the client's authorized representative shall complete either ~~on~~ Form 470-2465, Disability Report for Adults, if the client is aged 18 or over, or Form 470-3912, Disability Report for Children, if the client is under the age of 18. A signed release, Form 470-2467, Authorization for Source to Release Information to the Department of Human Services, shall be completed for each medical source listed on the disability report.

[Filed Emergency After Notice 1/9/03, effective 2/1/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

## ARC 2258B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 249A.4 and 2002 Iowa Acts, chapter 1120, division IV, the Department of Human Services hereby amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," Iowa Administrative Code.

These amendments change Medicaid coverage requirements for community mental health centers by:

- Eliminating the current requirement for an initial patient staffing by a psychiatrist and instead requiring an initial staffing by a mental health professional, with a referral to a psychiatrist if indicated.
- Replacing the current requirements for four-week and ongoing four-month staffings involving a psychiatrist and other staff with a requirement for ongoing reviews that are part of the center's peer review process.

These amendments do not provide for waivers in specified situations because these changes are required by 2002 Iowa Acts, chapter 1120, and the Department does not have the authority to waive legislative provisions.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because 2002 Iowa Acts, chapter 1120, division IV, authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective February 1, 2003, as authorized by 2002 Iowa Acts, chapter 1120, division IV.

The Council on Human Services adopted these amendments on January 8, 2003.

These amendments are intended to implement 2002 Iowa Acts, chapter 1120, division III.

These amendments became effective February 1, 2003.

The following amendments are adopted.

ITEM 1. Amend subrule **78.16(1)**, paragraph "**b**," as follows:

Amend subparagraph (**1**) as follows:

(1) Each patient shall have an initial evaluation completed which shall include at least one personal *evaluation* interview with a ~~board-eligible or board-certified psychiatrist mental health professional, as defined under Iowa Code section 228.1.~~ If the evaluation interview results indicate a need for an interview with a board-eligible or board-certified psychiatrist, then such referral shall be made. This must be accomplished ~~prior to admission~~ before submission of the first claim for services rendered to that patient.

Rescind subparagraph (**2**) and adopt the following new subparagraph in lieu thereof:

(2) Ongoing review and assessment of patients' treatment needs, treatment plans, and the appropriateness of services rendered shall be assured through the peer review process in effect for community mental health centers, as directed by 2002 Iowa Acts, chapter 1120, section 13.

Rescind subparagraphs (**3**) and (**4**).

ITEM 2. Rescind subrule **78.16(2)** and adopt the following new subrule in lieu thereof:

**78.16(2)** The treatment plans for and services rendered to patients of the center shall be evaluated and revised as necessary and appropriate, consistent with the standards of the peer review process described in subparagraph 78.16(1)"b"(1).

ITEM 3. Amend subrule 78.16(3) as follows:

**78.16(3)** ~~The staffing of patients at four weeks and the subsequent periodic four-month reviews peer review process and related activities, as described under subparagraph 78.16(1)"b"(1), are not payable as separate services under the treatment Medicaid program. These reviews shall be documented in the record.~~ The center shall maintain the results of and information related to the peer review process, and ~~are~~ these records shall be subject to audit by the department of human services, its Medicaid fiscal agent, or other department designees, as necessary and appropriate.

[Filed Emergency 1/9/03, effective 2/1/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2257B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2002 Iowa Acts, chapter 1120, division I, section 7, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Care," Iowa Administrative Code.

These amendments remove requirements regarding supported community living services under the Medicaid home- and community-based mental retardation and brain injury waivers. The amendments remove provisions requiring that the living units of the consumers served be "located throughout the community with regard for community norms in geographical proximity of residences" and "integrated with living units occupied by people without disabilities."

The language to be removed was adopted in amendments intended to implement 2002 Iowa Acts, chapter 1120, division I, section 7, that were published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2161B** and published on the same date as a Notice of Intended Action to solicit public comment. Those amendments eliminated restrictions on the number of supported community living recipients that could be provided for in a living unit. The Administrative Rules Review Committee has placed a 70-day delay on implementation of **ARC 2161B**, in part out of concern that the language on integration with living units occupied by people without disabilities would pose a barrier to obtaining construction funds.

The Department has agreed that these specific provisions are not necessary, given that language in 441—subrules 77.37(14) and 77.39(13) and 441—paragraphs 78.41(1)"c" and 78.43(2)"c" already requires that supported community living services be provided in community-based, integrated settings.

These amendments do not provide for waivers because they remove restrictions on providers.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because these amendments implement 2002 Iowa Acts, chapter 1120, section 14, which authorizes the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of these amendments should be waived and these amendments made effective on February 1, 2003, as authorized by 2002 Iowa Acts, chapter 1120, section 14.

The Council on Human Services adopted these amendments on January 8, 2003.

These amendments are intended to implement Iowa Code section 249A.6 and 2002 Iowa Acts, chapter 1120, division I.

These amendments became effective February 1, 2003.

The following amendments are adopted.

ITEM 1. Rescind and reserve subrule **78.41(1)**, paragraph "d."

ITEM 2. Rescind and reserve subrule **78.43(2)**, paragraph "d."

[Filed Emergency 1/9/03, effective 2/1/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2259B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed Emergency**

Pursuant to the authority of Iowa Code section 249A.4 and 2002 Iowa Acts, chapter 1120, division IV, the Department of Human Services hereby amends Chapter 82, "Intermediate Care Facilities for the Mentally Retarded," Iowa Administrative Code.

This amendment removes provisions for participation by the Department of Human Services in the process for an intermediate care facility for the mentally retarded to obtain a "certificate of need" from the Iowa Department of Public Health for conversion or construction. Statutory changes to Iowa Code chapter 135 make these provisions unnecessary.

This amendment does not provide for waivers in specified situations because it removes a restriction on facilities.

In compliance with Iowa Code section 17A.4(2), the Department of Human Services finds that notice and public participation are unnecessary because 2002 Iowa Acts, chapter 1120, division IV, directs the Department to adopt rules without notice and public participation.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(1), that the normal effective date of this amendment should be waived and this amendment made effective February 1, 2003, as authorized by 2002 Iowa Acts, chapter 1120, division IV.

The Council on Human Services adopted this amendment on January 8, 2003.

This amendment is intended to implement 2002 Iowa Acts, chapter 1120, division II.

This amendment became effective February 1, 2003.

The following amendment is adopted.

Rescind rule **441—82.19(249A)**.

[Filed Emergency 1/9/03, effective 2/1/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2290B****CAPITAL INVESTMENT  
BOARD, IOWA[123]****Adopted and Filed**

Pursuant to the authority of 2002 Iowa Acts, chapter 1005, section 3, the Iowa Capital Investment Board hereby adopts Chapter 3, "Tax Credit for Investments in Venture Capital Funds," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXV, No. 12 (12/11/02) p. 852, **ARC 2199B**.

Chapter 3 is adopted to provide for an investment tax credit administered by the Iowa Capital Investment Board for investments in venture capital funds.

These rules are being filed by the Department of Revenue and Finance on behalf of the Iowa Capital Investment Board pursuant to an Administrative Services Agreement between the Department and the Board.

These rules are identical to those published under Notice of Intended Action.

These rules will become effective March 12, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These rules are intended to implement Iowa Code chapter 15E as amended by 2002 Iowa Acts, chapter 1156.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 3] is being omitted. These rules are identical to those published under Notice as **ARC 2199B**, IAB 12/11/02.

[Filed 1/17/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**ARC 2274B****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 1, "Organization and Operation," Iowa Administrative Code.

These amendments implement 2002 Iowa Acts, chapter 1140, sections 1 through 3.

The purpose of these amendments is to give public secondary students in Iowa a voice, although not a vote, on the State Board of Education, and to give voting Board members the benefit of the thoughts and experiences of the secondary student. The entire education community should benefit from these amendments.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2202B**. Notice of Intended Action was published in the Iowa Administrative Bulletin on the same date as **ARC 2176B** to allow for public comment. No written or oral comments were received. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The State Board of Education adopted these amendments January 16, 2003.

These amendments are intended to implement Iowa Code chapters 17A and 256.

These amendments will become effective March 12, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.1 to 1.4] is being omitted. These amendments are identical to those published under Notice as **ARC 2176B** and Adopted and Filed Emergency as **ARC 2202B**, IAB 12/11/02.

[Filed 1/17/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**ARC 2273B****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby amends Chapter 17, "Open Enrollment," Iowa Administrative Code.

The purpose of these amendments is to make the rules conform to the statute, Iowa Code section 282.18, by clarifying the open enrollment application deadline and clarifying the authority of the Department in the event of a complaint lodged with the Department by one district against another district.

These amendments were Adopted and Filed Emergency and published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2203B**. Notice of Intended Action was published as **ARC 2191B** in the Iowa Administrative Bulletin on the same date to allow for public comment. No written or oral comments were received. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

The State Board of Education adopted these amendments January 16, 2003.

These amendments are intended to implement Iowa Code section 282.18.

These amendments will become effective March 12, 2003, at which time the Adopted and Filed Emergency amendments are hereby rescinded.

The following amendments are adopted.

ITEM 1. Amend rule 281—17.4(282), introductory paragraph, as follows:

**281—17.4(282) Filing after the January 1 deadline—good cause.** A parent/guardian may apply for open enrollment after the filing deadline of January 1 of the school year preceding the school year for which open enrollment is requested *and before the third Friday in September of that calendar year* if good cause exists for the failure to meet the deadline. Good cause is a change in the status of the pupil's residence or a change in the status of the pupil's resident district taking place after January 1, or the closing or loss of accreditation of a nonpublic school of attendance after January 1 resulting in the desire of the parent/guardian to obtain open

## EDUCATION DEPARTMENT[281](cont'd)

enrollment for the following school year. If good cause can be established, the parent/guardian shall be permitted to apply for open enrollment in the same manner as if the deadline had been met pursuant to rule 17.3(282).

ITEM 2. Amend subrule 17.4(6) as follows:

**17.4(6)** Upon receiving a complaint from a resident district that a receiving district has been unreasonable in approving applications submitted after January 1 with good cause for approval, the department shall review the complaint. If the department believes that the receiving district has been unreasonable in approving such applications, the department may counsel the receiving district that its approval was unreasonable ~~or may direct that the receiving district not receive funding for the affected pupil(s).~~

[Filed 1/17/03, effective 3/12/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2278B****EDUCATION DEPARTMENT[281]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 256.7(5), the State Board of Education hereby rescinds Chapter 68, "Pilot Charter Schools," Iowa Administrative Code.

2002 Iowa Acts, chapter 1124, permits the State Board of Education to select ten pilot charter schools. The legislation contains a contingency provision which makes the new law effective upon Iowa's receipt of federal charter school funds. The United States Department of Education notified this agency on October 3, 2002, that the state would not receive federal funding this year.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2192B**. No public hearing was held. No written or oral comments were received. This amendment is identical to that published under Notice.

The State Board of Education adopted this amendment on January 16, 2003.

This amendment is intended to implement 2002 Iowa Acts, chapter 1124.

This amendment will become effective March 12, 2003. The following amendment is adopted.

Rescind and reserve **281—Chapter 68**.

[Filed 1/17/03, effective 3/12/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2283B****GENERAL SERVICES  
DEPARTMENT[401]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 18.3, 18.4, 18.8 and 18.12, the Department of General Services hereby

amends Chapter 3, "Capitol Complex Operations," Iowa Administrative Code.

These amendments are intended to standardize office space management at the seat of government in order to improve office space planning and utilization, and to promote connectivity and reuse of modular office systems. The amendments outline the responsibilities of state agencies relative to use of office space assigned to them by the Department of General Services and the responsibilities of the Department to manage and coordinate changes to an agency's use of its assigned space.

Agencies may seek waivers or variances from the provisions of these rules in accordance with the Department's waiver rule.

Notice of Intended Action was published in the December 11, 2002, Iowa Administrative Bulletin as **ARC 2196B**. A public hearing was held on January 6, 2003. One vendor appeared and commented that the amendments were acceptable. These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code section 18.8.

These amendments will become effective March 12, 2003.

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 [3.1, 3.6] is being omitted. These amendments are identical to those published under Notice as **ARC 2196B**, IAB 12/11/02.

[Filed 1/17/03, effective 3/12/03]

[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**ARC 2254B****HUMAN SERVICES  
DEPARTMENT[441]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 217.6, the Department of Human Services proposes to amend Chapter 53, "Rent Subsidy Program," Iowa Administrative Code.

These amendments change the eligibility guidelines and procedures for the provision of rental assistance to people who participate in a Medicaid home- and community-based services waiver program. Changes include:

- Removing the limit on the number of people at risk of institutional placement who may be eligible for assistance. Currently, only 100 recipients of rent subsidy funds may be adults who were not living in a medical institution immediately before being approved for waiver services.
- Requiring documentation of the risk of institutional placement as part of the application. This will speed up eligibility determination for people in this group.
- Updating legal references and organizational names and addresses.

These amendments do not provide for waivers in specified situations because they either benefit applicants or are technical changes.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on November 27,



HUMAN SERVICES DEPARTMENT[441](cont'd)

2002, as **ARC 2139B**. The Department received several comments on the Notice of Intended Action that requested changes that are outside the scope of the Notice. The Department plans to establish a work group to consider these proposals. These amendments are identical to the Notice of Intended Action.

The Council on Human Services adopted these amendments on January 8, 2003.

These amendments are intended to implement 2002 Iowa Acts, chapter 1003, section 118, subsection 3.

These amendments will become effective April 1, 2003.

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 [53.1, 53.2(4), 53.3, 53.3(2), 53.3(4), 53.5(2), 53.6(2), 53.6(3)] is being omitted. These amendments are identical to those published under Notice as **ARC 2139B**, IAB 11/27/02.

[Filed 1/9/03, effective 4/1/03]

[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

## ARC 2255B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code section 249A.4, the Department of Human Services amends Chapter 75, "Conditions of Eligibility," Iowa Administrative Code.

Medicaid policy allows a couple to appeal the Department's division (or "attribution") of the couple's resources when one spouse is in a medical institution and the other remains at home if the couple believes that the amount of resources protected for the spouse at home is insufficient. Current rules require the couple to obtain three estimates of the cost of a single-premium lifetime annuity that would pay the spouse at home the amount of income needed to bring the spouse's income up to the "minimum monthly maintenance needs allowance" for the spouse's life expectancy. If the average annuity quotation is higher than the attributed amount, additional resources of up to the amount of the annuity quotation are protected. Purchase of an annuity is not required.

This amendment changes the number of estimates required from three to one. This change will simplify the process and reduce administrative burdens for both the applicant and the Department. The Department has not seen a large disparity in the amounts of the three quotes. Some sources require applicants to pay for these estimates.

This amendment does not provide for waivers in specified situations because the change removes a requirement.

Notice of Intended Action for this amendment was published in the Iowa Administrative Bulletin on November 27, 2002, as **ARC 2140B**. The Department received no comments on the Notice of Intended Action. This amendment is identical to that published under Notice of Intended Action.

The Council on Human Services adopted this amendment on January 8, 2003.

This amendment is intended to implement Iowa Code section 249A.3 and chapter 249G.

This amendment shall become effective April 1, 2003.

The following amendment is adopted.

Amend subrule **75.5(3)**, paragraph "**f**," subparagraphs **(4)**, **(5)**, and **(7)**, as follows:

(4) To receive the substituted allowance, the applicant shall be required to obtain ~~three estimates~~ *one estimate* of the cost of the annuity ~~and these amounts shall be averaged to determine the cost of the annuity.~~

(5) The ~~averaged estimates representing the~~ *estimated* cost of an annuity shall be substituted for the amount of resources attributed to the community spouse when the amount of resources previously determined is less than the ~~averaged~~ *estimated* cost of an annuity. If the amount of resources previously attributed for the community spouse is greater than the ~~averaged~~ *estimated* cost of an annuity, there shall be no substitution for the cost of the annuity, and the attribution will remain as previously determined.

(7) If the appellant provides a statement from ~~three an insurance companies company~~ that ~~they~~ *it* will not provide ~~estimates~~ *an estimate* due to the potential annuitant's age, the amount to be set aside shall be determined using the following calculation: The difference between the community spouse's gross monthly income not generated by countable resources (times 12) and the minimum monthly maintenance needs allowance (times 12) shall be multiplied by the annuity factor for the age of the community spouse in the Table for an Annuity for Life published at the end of Iowa Code chapter 450. This amount shall be substituted for the amount of resources attributed to the community spouse pursuant to subparagraph 75.5(3)"**f**"(5).

[Filed 1/9/03, effective 4/1/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

## ARC 2256B

### HUMAN SERVICES DEPARTMENT[441]

#### Adopted and Filed

Pursuant to the authority of Iowa Code sections 217.6, 252B.3, 252H.4, 252H.14, and 252H.19, the Department of Human Services amends Chapter 99, "Support Establishment and Adjustment Services," Iowa Administrative Code.

These amendments update the rules of the Child Support Recovery Unit concerning the establishment of paternity and the establishment, review, adjustment, administrative modification, suspension, and reinstatement of support obligations. These changes are the result of the rules review conducted pursuant to Executive Order Number 8. The changes update statutory references, organizational names, form numbers, and terminology; remove unnecessary language; and attempt to clarify and simplify the rules.

Changes to Division I, "Child Support Guidelines," also include defining types of exempt income and clarifying the treatment of social security disability payments paid for dependents.

Changes to Division II, "Paternity Establishment," also include clarifying that both the mother and the alleged father can waive the time period for contesting paternity and clarifying the allocation of genetic testing costs.

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

Changes to Division IV, "Review and Adjustment of Child Support Obligations," also include requiring verification that a reduction in income is not voluntary and allowing a parent in a public assistance case to withdraw a request for review.

Changes to Division V, "Administrative Modification," also include clarifying that both parents receive notice of the intent to modify a support order, that there must be a verified 50 percent change of net income to justify a request for modification, and that medical support provisions in an order also apply to any children added to the order.

These amendments do not provide for waivers in specified situations because they are required by federal or state law or they remove restrictions or clarify benefits to the parties to the action.

Notice of Intended Action concerning these amendments was published in the Iowa Administrative Bulletin on November 13, 2002, as **ARC 2116B**. The Department received no comments on the Notice of Intended Action. The only change made to the Notice of Intended Action is a correction of the reference to veteran's dependent benefits in paragraph 99.1(1)"c."

Paragraph 99.1(1)"c" now reads as follows:

"c. Income such as child support, social security dependent benefits received by a parent for a child because of the other parent's disability, and veteran's dependent benefits received by a parent on behalf of a child."

The Council on Human Services adopted these amendments on January 8, 2003.

These amendments are intended to implement Iowa Code chapters 252B, 252F, 252H, and 252K and Iowa Code sections 252.6A, 598.21, 598.22C, and 600B.41A.

These amendments shall become effective on April 1, 2003.

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 [amendments to Ch 99] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 2116B**, IAB 11/13/02.

[Filed 1/9/03, effective 4/1/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**ARC 2281B****LABOR SERVICES DIVISION[875]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 88.5 and 17A.3(1), the Labor Commissioner adopts an amendment to Chapter 26, "Construction Safety and Health Rules," Iowa Administrative Code.

This rule making adopts by reference amendments to the federal safety standards for signs, signals, and barricades. No waiver or variance provision is included in these rules because Iowa Code Chapter 88 contains a variance provision.

Adoption of these amendments is required by 29 Code of Federal Regulations 1953.23(a)(2) and Iowa Code section

88.5(1)"a." These rules are intended to implement legislative intent and protect the safety and health of workers.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2164B**. A public hearing was scheduled for January 3, 2003. No comments were received. This amendment is identical to that published under Notice of Intended Action.

This amendment is intended to implement Iowa Code section 88.5.

The amendment will become effective March 12, 2003.

The following amendment is adopted.

Amend rule **875—26.1(88)** by inserting at the end thereof:

67 Fed. Reg. 57736 (September 12, 2002)

[Filed 1/17/03, effective 3/12/03]

[Published 2/5/03]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2287B****PERSONNEL DEPARTMENT[581]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 97B.15, the Department of Personnel hereby amends Chapter 21, "Iowa Public Employees' Retirement System," appearing in the Iowa Administrative Code.

The amendments are intended to establish a new method of benefits payment, also known as level payment choice, for qualified special service members effective July 1, 2002, permitting a special service member to receive a relatively level stream of IPERS income before the age of 62 and after the age of 62 when IPERS benefits and Social Security payments are combined; remove restrictions relating to trailing wage payments to those employees retiring effective January 1, 2003; and allow qualified pension plans maintained by public waterworks and water utilities to be merged into IPERS, if IPERS and the merging plan agree to the terms of the merger.

Notice of Intended Action was published in the Iowa Administrative Bulletin on December 11, 2002, as **ARC 2171B**.

A public hearing was held on December 31, 2002, at 9 a.m. at IPERS, 7401 Register Drive, Des Moines, Iowa. No parties attended the public hearing, and no written comments were received prior to the hearing. These amendments are identical to those published under Notice.

These amendments were prepared after consultation with the IPERS legal, accounting and benefits units.

There are no waiver provisions included in the amendments because the amendments confer benefits or are required by statute.

These amendments will become effective March 12, 2003.

These amendments are intended to implement Iowa Code chapter 97B as amended by 2002 Iowa Acts, chapter 1135.

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 [21.13(13), 21.18(2), 21.35] is being

PERSONNEL DEPARTMENT[581](cont'd)

omitted. These amendments are identical to those published under Notice as **ARC 2171B**, IAB 12/11/02.

[Filed 1/17/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

## **ARC 2252B**

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

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Optometry Examiners hereby amends Chapter 180, "Licensure of Optometrists," Iowa Administrative Code.

These amendments require that licensees who regularly examine, attend, counsel or treat adults or children document on the renewal application completion of mandatory training on abuse identification and reporting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 13, 2002, as **ARC 2088B**. A public hearing was held on December 4, 2002, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective March 12, 2003.

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

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 [180.1, 180.5(3) to 180.5(5)] is being omitted. These amendments are identical to those published under Notice as **ARC 2088B**, IAB 11/13/02.

[Filed 1/15/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

## **ARC 2253B**

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

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 147.76 and 272C.3, the Board of Podiatry Examiners hereby amends Chapter 220, "Licensure of Podiatrists," and Chapter 223, "Practice of Podiatry," Iowa Administrative Code.

These amendments require that licensees who regularly examine, attend, counsel or treat adults or children document on the renewal application completion of mandatory training on abuse identification and reporting. These amendments include a rule covering how unlicensed graduates of podiatric colleges may function in the offices of licensed podiatrists.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 30, 2002, as **ARC 2065B**. A public hearing was held on November 19, 2002, from 9 to 11 a.m. in the Professional Licensure Conference Room, Fifth Floor, Lucas State Office Building, Des Moines, Iowa. No public comments were received at the hearing.

The following change has been made to the Notice of Intended Action: Paragraphs "d" to "g" of subrule 220.9(3) were reformatted to be consistent with the formatting used in other Board chapters.

These amendments will become effective March 12, 2003.

These amendments are intended to implement Iowa Code chapters 139, 147, 272C and 514F.

The following amendments are adopted.

ITEM 1. Amend rule **645—220.1(149)** by adopting the following **new** definition in alphabetical order:

"Mandatory training" means training on identifying and reporting child abuse or dependent adult abuse required of podiatrists who are mandatory reporters. The full requirements on mandatory reporting of child abuse and the training requirements are found in Iowa Code section 232.69. The full requirements on mandatory reporting of dependent adult abuse and the training requirements are found in Iowa Code section 235B.16.

ITEM 2. Renumber subrules **220.9(3)** and **220.9(4)** as **220.9(4)** and **220.9(5)** and adopt the following **new** subrule 220.9(3):

**220.9(3)** Mandatory reporting of child abuse and dependent adult abuse.

a. A licensee who regularly examines, attends, counsels or treats children in Iowa shall indicate on the renewal application completion of two hours of training in child abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

b. A licensee who regularly examines, attends, counsels or treats dependent adults in Iowa shall indicate on the renewal application completion of two hours of training in dependent adult abuse identification and reporting in the previous five years or condition(s) for waiver of this requirement as identified in paragraph "e."

c. A licensee who regularly examines, attends, counsels or treats both dependent adults and children in Iowa shall indicate on the renewal application completion of training in abuse identification and reporting in dependent adults and children or condition(s) for waiver of this requirement as identified in paragraph "e."

Training may be completed through separate courses as identified in paragraphs "a" and "b" or in one combined two-hour course that includes curricula for identifying and reporting child abuse and dependent adult abuse.

d. The licensee shall maintain written documentation for five years after mandatory training as identified in paragraphs "a" to "c," including program date(s), content, duration, and proof of participation.

e. The requirement for mandatory training for identifying and reporting child and dependent adult abuse shall be suspended if the board determines that suspension is in the public interest or that a person at the time of license renewal:

(1) Is engaged in active duty in the military service of this state or the United States.

(2) Holds a current waiver by the board based on evidence of significant hardship in complying with training requirements, including waiver of continuing education requirements or extension of time in which to fulfill requirements

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

due to a physical or mental disability or illness as identified in 645—Chapter 222.

f. The board may select licensees for audit of compliance with the requirements in paragraphs “a” to “e.”

ITEM 3. Amend 645—Chapter 223 by adopting the following **new** rule:

**645—223.3(149) Unlicensed graduate of a podiatric college.** An unlicensed graduate of a podiatric college may function in the licensed podiatrist’s office only as a podiatric assistant. The licensed podiatrist shall have full responsibility and liability for the unlicensed person.

**223.3(1)** Treatments, charting, and notations completed by the unlicensed graduate must be initialed by that person and countersigned by the licensed podiatrist.

**223.3(2)** An unlicensed graduate shall not:

- a. Be referred to as “doctor” during professional contact with patients.
- b. Treat patients in the office without a licensed podiatrist present.
- c. Perform surgical work without direct supervision of a licensed podiatrist.
- d. Diagnose or prescribe medicine.
- e. Take independent actions regarding diagnosis, treatment or prescriptions.
- f. Visit nursing homes or make house calls without the presence of the licensed podiatrist.
- g. Bill for any services.

[Filed 1/15/03, effective 3/12/03]  
[Published 2/5/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2270B**

**PUBLIC HEALTH DEPARTMENT[641]**

**Adopted and Filed**

Pursuant to the authority of Iowa Code section 691.6, the Department of Public Health amends Chapter 126, “State Medical Examiner,” Iowa Administrative Code.

The purpose of these amendments is to be consistent with and reflect changes to the Code of Iowa, establish an hourly fee for time spent on court cases, as well as increase the cost of an autopsy performed by the Department.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 27, 2002, as **ARC 2136B**. No public comments were received.

At the suggestion of the Department’s Administrative Rules Coordinator and for clarification purposes, two definitions have been added. “Autopsy” and “county of appointment” are now defined.

The Department has determined that these amendments are not subject to waiver or variance.

These amendments are intended to implement Iowa Code chapter 22 as amended by 2002 Iowa Acts, chapter 1098, and Iowa Code chapters 331 and 691.

The Board of Health adopted these amendments on January 8, 2003.

These amendments shall become effective March 12, 2003.

The following amendments are adopted.

ITEM 1. Amend 641—Chapter 126 by adopting the following **new** rule:

**641—126.1(144,331,691) Definitions.**

“Autopsy” means the external and internal postmortem examination of a deceased person.

“County of appointment” means the county which requests a medical examiner to conduct an investigation, perform or order an autopsy, or prepare a report(s) in a death investigation case. The request may be authorized by the county attorney or the county medical examiner. The county of appointment shall be the county in which the death occurred.

ITEM 2. Amend rule 641—126.3(691) as follows:

**641—126.3(691) Fees for autopsies and related services and reimbursement for related expenses.**

Autopsies performed by the state medical examiner division are provided on a fee-for-service basis. Costs of autopsies and related services and expenses are the responsibility of the county of residence ~~appointment of the deceased when requested by a public agency and of the person requesting the autopsy when the request is made by a private party.~~ *The county of residence of the deceased shall reimburse the county of appointment. The estate of the deceased shall be responsible for payment of these fees and expenses when the request for an autopsy is made by the executor of the estate on behalf of the estate.*

**126.3(1)** Fee schedule. The following fees shall apply to autopsies conducted by the state medical examiner division:

Autopsy . . . . .	\$1000 <del>\$1000</del> \$1200
Copies of reports . . . . .	\$20

EXCEPTIONS: A copy of the autopsy report is included in the autopsy fee. A single copy of an autopsy report may be provided to a ~~family member~~ *the immediate next of kin* of the deceased without fee. Copies of autopsy reports may be provided to public officials *and physicians of record* for official purposes without fee.

*State, deputy, or associate . . . . . \$350 per hour with medical examiner(s) time a one-hour minimum for all court cases*

*This fee is for time spent reviewing case materials, preparing for deposition or court, testifying in deposition or court, and travel time.*

**126.3(2)** Expense reimbursement. Other laboratory services associated with an autopsy, which shall include, but not be limited to, photography, toxicology, radiology, microbiology, and morgue fees, shall be billed by the department to the county of ~~residence appointment of the deceased or to the private individual requesting the autopsy at the cost to the department of the service.~~ *Moneys collected pursuant to this subrule shall be paid by the department to the laboratory or other entity providing the service.*

**126.3(3)** No change.

This rule is intended to implement Iowa Code section 691.6.

[Filed 1/16/03, effective 3/12/03]  
[Published 2/5/03]

EDITOR’S NOTE: For replacement pages for IAC, see IAC Supplement 2/5/03.

**ARC 2271B****PUBLIC HEALTH  
DEPARTMENT[641]****Adopted and Filed**

Pursuant to the authority of Iowa Code section 691.6, the Department of Public Health amends Chapter 127, "County Medical Examiners," Iowa Administrative Code.

The purpose of these amendments is to reflect changes to the Code of Iowa, indicate which deaths must be autopsied by the State Medical Examiner's office, indicate which deaths require an autopsy, and add types of deaths for which an autopsy is recommended.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 27, 2002, as **ARC 2137B**. No public comments were received. These amendments are identical to the amendments published under Notice of Intended Action.

The Department has determined these amendments are not subject to waiver or variance.

These amendments are intended to implement Iowa Code chapters 331 and 691 and 2002 Iowa Acts, chapter 1098.

These amendments shall become effective March 12, 2003.

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 [127.3, 127.5(1)] is being omitted. These amendments are identical to those published under Notice as **ARC 2137B**, IAB 11/27/02.

[Filed 1/16/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**ARC 2280B****RACING AND GAMING  
COMMISSION[491]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 99D.7 and 99F.4, the Racing and Gaming Commission hereby adopts amendments to Chapter 4, "Contested Cases and Other Proceedings," Chapter 5, "Track and Excursion Boat Licensees' Responsibilities," Chapter 6, "Occupational and Vendor Licensing," Chapter 9, "Harness Racing," Chapter 10, "Thoroughbred and Quarter Horse Racing," and Chapter 11, "Gambling Games," Iowa Administrative Code.

Items 1 to 4 remove redundant language.

Item 5 clarifies the procedure that the Commission must follow when honoring a ruling from another jurisdiction.

Item 6 sets forth the procedures for service of administrative actions.

Item 7 defines a certified police officer for purposes of rule 491—5.4(99D,99F).

Item 8 defines a probationary period attached to an occupational license.

Item 9 prohibits the transfer of a racing animal to avoid application of a Commission rule.

Item 10 allows for the applicant's forfeiture of a license fee if the applicant does not comply in the allotted amount of time.

Item 11 removes the restriction which requires that a person be a member of the United States Trotting Association in order to claim a horse.

Item 12 sets a time certain by which medication reports must be submitted to the state veterinarian.

Items 13 to 15 allow for alternate sources of funding progressive jackpots.

A public hearing was held on January 7, 2003. No comments were received.

These amendments are identical to those published under Notice of Intended Action in the December 11, 2002, Iowa Administrative Bulletin as **ARC 2195B**.

These amendments will become effective March 12, 2003.

These amendments are intended to implement Iowa Code chapters 99D and 99F.

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 [amendments to Chs 4 to 6, 9 to 11] is being omitted. These amendments are identical to those published under Notice as **ARC 2195B**, IAB 12/11/02.

[Filed 1/17/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**ARC 2288B****REVENUE AND FINANCE  
DEPARTMENT[701]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.17(19) and 422.68, the Department of Revenue and Finance hereby amends Chapter 19, "Sales and Use Tax on Construction Activities," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXV, No. 12 (12/11/02) p. 882, **ARC 2201B**.

The adopted rule explains a new sales tax exemption, which was effective January 1, 2003, that allows building contractors to buy certain building materials, supplies, and equipment free from tax if those goods will be used in the completion of construction contracts of which "designated exempt entities" are the sponsors.

This rule is identical to the one published under Notice of Intended Action, and catchwords have been added.

This rule will become effective March 12, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

This rule is intended to implement 2002 Iowa Acts, chapter 1151.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of this rule [19.12] is being omitted. With the exception of the

REVENUE AND FINANCE DEPARTMENT[701](cont'd)

change noted above, this rule is identical to the one published under Notice as **ARC 2201B**, IAB 12/11/02.

[Filed 1/17/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

## **ARC 2289B**

### **REVENUE AND FINANCE DEPARTMENT[701]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 421.14 and 422.68, the Department of Revenue and Finance hereby adopts amendments to Chapter 42, "Adjustments to Computed Tax," Chapter 52, "Filing Returns, Payment of Tax and Penalty and Interest," and Chapter 58, "Filing Returns, Payment of Tax, Penalty and Interest, and Allocation of Tax Revenues," Iowa Administrative Code.

Notice of Intended Action was published in IAB Vol. XXV, No. 12 (12/11/02) p. 883, **ARC 2200B**.

Item 1 adopts new subrule 42.18(2), which provides for an investment tax credit for equity investments made in a venture capital fund. This investment credit is a new individual income tax credit available to individuals who make investments in venture capital funds that have been approved by the Iowa Capital Investment Board.

Item 2 updates an implementation clause.

Item 3 adopts new subrule 52.21(2), which provides for an investment tax credit for equity investments made in a venture capital fund for corporation income tax purposes. Subrule 52.21(2) is similar to the subrule in Item 1.

Item 4 updates an implementation clause.

Item 5 adopts new subrule 58.11(2), which provides for an investment tax credit for equity investments made in a venture capital fund for franchise tax purposes. Subrule 58.11(2) is similar to the subrule in Item 1.

Item 6 updates an implementation clause.

These amendments are identical to those published under Notice of Intended Action.

These amendments will become effective March 12, 2003, after filing with the Administrative Rules Coordinator and publication in the Iowa Administrative Bulletin.

These amendments are intended to implement Iowa Code chapters 15E and 422 as amended by 2002 Iowa Acts, chapter 1156.

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 [42.18(2), 52.21(2), 58.11(2)] is being omitted. These amendments are identical to those published under Notice as **ARC 2200B**, IAB 12/11/02.

[Filed 1/17/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

## **ARC 2262B**

### **STATE PUBLIC DEFENDER[493]**

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 1, "Administration," and Chapter 12, "Claims for Indigent Defense Services," Iowa Administrative Code.

These amendments implement 2002 Iowa Acts, chapter 1067, which revises procedures regarding administrative approval and judicial review of claims filed with the State Public Defender. These amendments clarify current practice of the State Public Defender in review and approval of attorney fee claims.

Notice of Intended Action was published in the September 4, 2002, Iowa Administrative Bulletin as **ARC 1966B**. No public comment was received on these amendments. In addition, these amendments were simultaneously Adopted and Filed Emergency as **ARC 1965B**. These amendments are identical to those published under Notice of Intended Action and Adopted and Filed Emergency.

These amendments were approved by the State Public Defender on January 15, 2003.

These amendments will become effective on March 12, 2003.

These amendments are intended to implement Iowa Code chapters 13B and 815 as amended by 2002 Iowa Acts, chapter 1067.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these amendments [1.4(4), 12.2(9), 12.6, 12.8(1), 12.9] is being omitted. These amendments are identical to those published under Notice as **ARC 1966B** and Adopted and Filed Emergency as **ARC 1965B**, IAB 9/4/02.

[Filed 1/15/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

## **ARC 2266B**

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

#### **Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on January 14, 2003, adopted amendments to Chapter 20, "Procurement of Equipment, Materials, Supplies and Services," Iowa Administrative Code.

Notice of Intended Action for these amendments was published in the November 27, 2002, Iowa Administrative Bulletin as **ARC 2118B**.

Amendments to this chapter were identified as a result of reviews conducted in accordance with Executive Order Number 8. Several changes have been made to remove outdated language, increase clarity, and otherwise make minor corrections. More significant changes or clarifications are discussed in the following paragraphs.

## TRANSPORTATION DEPARTMENT[761](cont'd)

The dollar threshold for formal advertising is increased to \$50,000. Limited solicitation of bids is permitted if the purchase is less than \$50,000. The dollar limit for negotiated purchases is increased to \$5,000. A new provision permits a negotiated purchase when the manufacturer is willing to sell directly to the state at distributor cost.

Rule 761—20.4(307) regarding formal advertising procedures and requirements is amended as follows:

1. Occasionally, the Department may use a preliminary proposal process to obtain vendor input before the final request for proposals is issued. This process is amended to indicate that the Department will send the final request for proposals to prospective bidders that participated in the preliminary process, rather than to all prospective bidders.

2. A provision regarding changes and additions to the request for proposals is amended to indicate that the request for a change or an addition must be received by the purchasing office in sufficient time to allow an appropriate analysis and response to all bidders.

3. The time period for the successful bidder to execute the contract and to file a performance bond and certificate of insurance, when required, is reduced from 15 days after contract award to 14 days after contract award to keep responses from weekday to weekday.

4. A provision regarding removal of trade-ins is deleted. Trade-ins should be addressed in individual procurement documents, rather than by rule.

New rule 761—20.5(307) provides procedures for limited solicitation of bids.

Rule 761—20.8(307) regarding negotiated contracts for procurement of architectural, landscape architectural, engineering and related professional and technical services is rewritten. Highlights are as follows:

1. The revised rule requires subconsultants and firms selected using sole source or emergency procedures to be prequalified.

2. An on-line computer system is now used for prequalification. Firms wishing to prequalify are encouraged to use this system.

3. The selection procedures are modified to provide for both a "complete" process and a "small contract" process. A selection committee is used for both processes. A consultant steering committee is also used for the "complete" process. The revised rule sets out typical evaluation criteria used to evaluate firms submitting proposals.

4. The revised rule requires the Department to evaluate all contracts after completion of the work. The rule sets out the items to be considered in the evaluation.

5. The current rule allows sole source selection if the product of the work to be accomplished shall ultimately be maintained by the firm. This provision has been deleted.

6. Criteria for emergency selection have been added.

These amendments do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These amendments are identical to those published under Notice of Intended Action.

These amendments are intended to implement Iowa Code chapter 307.

These amendments will become effective March 12, 2003.

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 [amendments to Ch 20] is being omitted. These amendments are identical to those published under Notice as **ARC 2118B**, IAB 11/27/02.

[Filed 1/16/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**ARC 2265B****TRANSPORTATION  
DEPARTMENT[761]****Adopted and Filed**

Pursuant to the authority of Iowa Code sections 307.10 and 307.12, the Department of Transportation, on January 14, 2003, adopted Chapter 122, "Keep Iowa Beautiful Program," Iowa Administrative Code.

Notice of Intended Action for these rules was published in the November 13, 2002, Iowa Administrative Bulletin as **ARC 2090B**.

Iowa Code Supplement section 422.12A, which was enacted in 2001, establishes an Iowa income tax checkoff for deposit in the Keep Iowa Beautiful Fund. Iowa Code Supplement section 314.28, which was also enacted in 2001, authorizes the Department to grant moneys appropriated to the Department from the fund to private or public organizations. Iowa Code Supplement section 314.28 requires the Department to establish standards relating to the types of projects available for assistance.

These rules authorize the allocation of up to 70 percent of the appropriated funds to community projects. Community projects are those that will have a local impact. The remaining funds are allocated to the Keep Iowa Beautiful organization for statewide projects. These rules establish the requirements for both types of projects.

These rules do not provide for waivers. Any person who believes that the person's circumstances meet the statutory criteria for a waiver may petition the Department for a waiver under 761—Chapter 11.

These rules are identical to those published under Notice of Intended Action.

These rules are intended to implement Iowa Code section 314.28.

These rules will become effective March 12, 2003.

EDITOR'S NOTE: Pursuant to recommendation of the Administrative Rules Review Committee published in the Iowa Administrative Bulletin, September 10, 1986, the text of these rules [Ch 122] is being omitted. These rules are identical to those published under Notice as **ARC 2090B**, IAB 11/13/02.

[Filed 1/16/03, effective 3/12/03]  
[Published 2/5/03]

[For replacement pages for IAC, see IAC Supplement 2/5/03.]

**\*SUMMARY OF OPINIONS OF THE ATTORNEY GENERAL****THOMAS J. MILLER****October through December, 2002****COUNTIES AND COUNTY OFFICERS**

Board of Supervisors; Veteran Affairs Commission; payment of expenses and review of certified claims. Iowa Code §§ 35B.6, 35B.7, 35B.10, 35B.13, 35B.14, 35B.17 (2001). County commissions of veteran affairs must pay for training the executive director, or designee, and burial expenses of any indigent veteran up to the level established by the supervisors. The supervisors must provide funds for the maintenance of the graves of veterans and their spouses and children, if other provisions for such maintenance are not in place. Appropriations for grave markers and other allowable benefits, as delineated in Code section 35B.14, are discretionary. After funds are appropriated, county supervisors possess limited power to review certified claims for the purpose of preventing results based upon biased or unreasonable judgment; they must confine their review to the record, which consists of the certified list of names and amounts, applications, investigation reports, and case records; and they may overturn decisions of county commissions only if the evidence clearly preponderates against the decisions. A board of supervisors may, through enactment of an ordinance, obligate the county to provide veterans with services and benefits which are discretionary under chapter 35B. (Scase to Ferguson, Black Hawk County Attorney, 10-22-02) #02-10-1(L)

**PROFESSIONAL LICENSING BOARDS; CONSTITUTIONAL LAW**

Validity of administrative rule adopted by the Board of Dental Examiners. Iowa Const. art I, § 7, Iowa Code §§ 153.34, 272C.10 (2001). 650 Iowa Admin. Code subrule 27.7(8) is designed as a restriction on commercial speech. Whether the rule infringes upon a dentist's free speech rights largely rests on resolution of the factual question of whether the restricted speech is false, deceptive, or misleading. An Attorney General's opinion is not the proper forum in which to weigh the strength of competing views on whether the removal of restorations from nonallergic patients may free the body of toxic substances. Having codified a specific standard of care, the Dental Board has the corresponding responsibility to monitor continued support for its position. Dentists do not have a free speech right to practice incompetent dentistry or recommend to prospective or current patients treatment regimens which are deceptive or which fall substantially below an acceptable standard of care. Dentists do have a free speech right to voice a personal opinion and to in good faith counsel patients free of unwarranted governmental intervention. The Dental Board must be cautious in the application of this or a similar rule to avoid encapturing fully-protected speech. (Griebel to Rittmer, State Senator, 12-10-02) #02-12-1



**2001 IOWA CODE**

35B.6  
35B.7  
35B.10  
35B.13  
35B.14  
35B.17  
153.34  
272C.10

**OPINION**

#02-10-1(L)  
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#02-12-1

**IOWA CONSTITUTION**

Art. I, § 7

**OPINION**

#02-12-1





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