IOWA ADMINISTRATIVE BULLETIN

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February 1, 2006 Pages 1161 to 1216

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PUBLISHED UNDER AUTHORITY OF IOWA CODE SECTIONS 2B.5 AND 17A.6

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 and rules adopted by state agencies.

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

The Bulletin may also contain public funds interest rates [12C.6]; workers' compensation rate filings [515A.6(7)]; usury rates [535.2(3)"a"]; 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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Miller Building
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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)

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

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

Schedule for Rule Making
2006

NOTICE SUBMISSION DEADLINE	NOTICE PUB. DATE	HEARING OR COMMENTS 20 DAYS	FIRST POSSIBLE ADOPTION DATE 35 DAYS	ADOPTED FILING DEADLINE	ADOPTED PUB. DATE	FIRST POSSIBLE EFFECTIVE DATE	POSSIBLE EXPIRATION OF NOTICE 180 DAYS
Dec. 30 '05	Jan. 18 '06	Feb. 7 '06	Feb. 22 '06	Feb. 24 '06	Mar. 15 '06	Apr. 19 '06	July 17 '06
Jan. 13	Feb. 1	Feb. 21	Mar. 8	Mar. 10	Mar. 29	May 3	July 31
Jan. 27	Feb. 15	Mar. 7	Mar. 22	Mar. 24	Apr. 12	May 17	Aug. 14
Feb. 10	Mar. 1	Mar. 21	Apr. 5	Apr. 7	Apr. 26	May 31	Aug. 28
Feb. 24	Mar. 15	Apr. 4	Apr. 19	Apr. 21	May 10	June 14	Sept. 11
Mar. 10	Mar. 29	Apr. 18	May 3	May 5	May 24	June 28	Sept. 25
Mar. 24	Apr. 12	May 2	May 17	***May 17***	June 7	July 12	Oct. 9
Apr. 7	Apr. 26	May 16	May 31	June 2	June 21	July 26	Oct. 23
Apr. 21	May 10	May 30	June 14	June 16	July 5	Aug. 9	Nov. 6
May 5	May 24	June 13	June 28	***June 28***	July 19	Aug. 23	Nov. 20
May 17	June 7	June 27	July 12	July 14	Aug. 2	Sept. 6	Dec. 4
June 2	June 21	July 11	July 26	July 28	Aug. 16	Sept. 20	Dec. 18
June 16	July 5	July 25	Aug. 9	Aug. 11	Aug. 30	Oct. 4	Jan. 1 '07
June 28	July 19	Aug. 8	Aug. 23	***Aug. 23***	Sept. 13	Oct. 18	Jan. 15 '07
July 14	Aug. 2	Aug. 22	Sept. 6	Sept. 8	Sept. 27	Nov. 1	Jan. 29 '07
July 28	Aug. 16	Sept. 5	Sept. 20	Sept. 22	Oct. 11	Nov. 15	Feb. 12 '07
Aug. 11	Aug. 30	Sept. 19	Oct. 4	Oct. 6	Oct. 25	Nov. 29	Feb. 26 '07
Aug. 23	Sept. 13	Oct. 3	Oct. 18	Oct. 20	Nov. 8	Dec. 13	Mar. 12 '07
Sept. 8	Sept. 27	Oct. 17	Nov. 1	Nov. 3	Nov. 22	Dec. 27	Mar. 26 '07
Sept. 22	Oct. 11	Oct. 31	Nov. 15	***Nov. 15***	Dec. 6	Jan. 10 '07	Apr. 9 '07
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Nov. 15	Dec. 6	Dec. 26	Jan. 10 '07	Jan. 12 '07	Jan 31 '07	Mar. 7 '07	June 4 '07
Dec. 1	Dec. 20	Jan. 9 '07	Jan. 24 '07	Jan. 26 '07	Feb. 14 '07	Mar. 21 '07	June 18 '07
Dec. 13	Jan. 3 '07	Jan. 23 '07	Feb. 7 '07	Feb. 9 '07	Feb. 28 '07	Apr. 4 '07	July 2 '07
Dec. 27	Jan. 17 '07	Feb. 6 '07	Feb. 21 '07	Feb. 23 '07	Mar. 14 '07	Apr. 18 '07	July 16 '07

PRINTING SCHEDULE FOR IAB

ISSUE NUMBER	SUBMISSION DEADLINE	ISSUE DATE
18	**Friday, February 10, 2006**	**March 1, 2006**
19	**Friday, February 24, 2006**	**March 15, 2006**
20	**Friday, March 10, 2006**	**March 29, 2006**

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. West, Iowa Administrative Code Editor
SUBJECT: Publication of Rules in Iowa Administrative Bulletin

The Administrative Code Division uses QuickSilver XML Publisher, version 2.0.0, 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:

bruce.carr@legis.state.ia.us and
kathleen.west@legis.state.ia.us

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, Third Floor West, Ola Babcock Miller 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, 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.

The Administrative Rules Review Committee will hold a special meeting on Friday, February 10, 2006, at 8 a.m. in Room 116, State Capitol, Des Moines, Iowa. The following rules will be reviewed:

NOTE: See also Agenda published in the January 18, 2006, Iowa Administrative Bulletin.

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Women, infants, and children/farmers' market and senior farmers' market nutrition programs, ch 50,
Notice **ARC 4286B** Terminated **ARC 4837B** 2/1/06
Animal exhibition requirements, 64.34(2), 64.34(5)"b," Notice **ARC 4857B** 2/1/06

ARTS DIVISION[222]

CULTURAL AFFAIRS DEPARTMENT[221]"umbrella"
Arts council and related programs and services, rescind chs 1, 2, 5 to 13, 18, 20, 23;
adopt chs 1 to 5, 9, 12, 13, Filed **ARC 4848B** 2/1/06

BANKING DIVISION[187]

COMMERCE DEPARTMENT[181]"umbrella"
Mobile offices, courier services, convenience offices, 2.4(3), 2.12(2), 2.17, 8.10, Notice **ARC 4849B** 2/1/06

EDUCATION DEPARTMENT[281]

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Medicaid reimbursement for mileage, 78.13(5)"a," 93.110(6)"b," Filed **ARC 4841B** 2/1/06

INSPECTIONS AND APPEALS DEPARTMENT[481]

Determination of death for purposes of organ and tissue requests and procurement,
51.8(2), Filed **ARC 4838B** 2/1/06

IOWA FINANCE AUTHORITY[265]

ECONOMIC DEVELOPMENT, IOWA DEPARTMENT OF[261]"umbrella"
Water pollution control works and drinking water facilities financing, adopt ch 26, Filed **ARC 4855B** 2/1/06

LAW ENFORCEMENT ACADEMY[501]

Hearing standards for law enforcement officers, 2.1(10), Filed **ARC 4860B** 2/1/06

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Optometry examiners, 180.5(2), 183.2(25), 184.1, Filed **ARC 4850B** 2/1/06
Podiatry examiners, 219.1, 224.5, Notice **ARC 4854B** 2/1/06
Podiatry examiners, 220.9(2), 224.2(26), 225.1, Filed **ARC 4853B** 2/1/06

PUBLIC HEALTH DEPARTMENT[641]

Immunization requirements for children enrolled in elementary or secondary school,
7.4(1), Filed Emergency **ARC 4839B** 2/1/06
Laboratory testing of samples for detection of alcohol or drugs—definition of "sample,"
12.2, 12.4(3), Notice **ARC 4845B** 2/1/06
Private well sampling, reconstruction, and plugging—grants to counties,
adopt ch 24, Notice **ARC 4843B** 2/1/06
Radiation, amendments to chs 38 to 42, 45, 46, Notice **ARC 4842B** 2/1/06
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ADMINISTRATIVE RULES REVIEW COMMITTEE MEMBERS

Regular statutory meetings are held the second Tuesday of each month at the seat of government as provided in Iowa Code section 17A.8. A special meeting may be called by the Chair at any place in the state and at any time.
EDITOR'S NOTE: Terms ending April 30, 2007.

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Governor's Ex Officio Representative
Capitol, Room 11
Des Moines, Iowa 50319

AGENCY	HEARING LOCATION	DATE AND TIME OF HEARING
BLIND, DEPARTMENT FOR THE[111]		
Facility security; business enterprises program, 1.4, 1.13, 7.8(1), 7.10, 7.17 IAB 1/18/06 **ARC 4827B**	Director's Conference Rm., First Floor 524 Fourth St. Des Moines, Iowa	February 7, 2006 1 p.m.
EDUCATIONAL EXAMINERS BOARD[282]		
Removal of reference to a public letter of reprimand, 11.38, 11.39 IAB 1/18/06 **ARC 4812B**	Room 3 North, Third Floor Grimes State Office Bldg. Des Moines, Iowa	February 7, 2006 1 p.m.
ELDER AFFAIRS DEPARTMENT[321]		
Case management programs for frail elders, ch 21 IAB 1/4/06 **ARC 4806B** (See also **ARC 4805B**) **(ICN Network)**	Dept. of Public Safety Wallace State Office Bldg. Des Moines, Iowa	February 3, 2006 1 p.m.
	Iowa Western Community College 2700 College Rd. Council Bluffs, Iowa	February 3, 2006 1 p.m.
	Iowa City Community Schools 509 S. Dubuque St. Iowa City, Iowa	February 3, 2006 1 p.m.
	Bldg. 4, Indian Hills Comm. College 651 Indian Hills Dr. Ottumwa, Iowa	February 3, 2006 1 p.m.
	High School 800 Third St. Spencer, Iowa	February 3, 2006 1 p.m.
	Schindler 130A, Univ. of Northern Iowa Hudson Rd. and 23rd St. Cedar Falls, Iowa	February 3, 2006 1 p.m.
EMPOWERMENT BOARD, IOWA[349]		
Community empowerment, amendments to ch 1 IAB 2/1/06 **ARC 4836B**	Room G14 State Capitol Des Moines, Iowa	February 23, 2006 9:30 a.m.
ENVIRONMENTAL PROTECTION COMMISSION[567]		
Incorporation of Clean Air Interstate Rule, 20.1, 21.1(4), 22.120; ch 34 IAB 1/18/06 **ARC 4823B**	Gritter Room, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	February 21, 2006 1 p.m.
	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	February 22, 2006 1 p.m.

ENVIRONMENTAL PROTECTION COMMISSION[567] (Cont'd)

Incorporation of Clean Air Mercury Rule, 22.3(5), 23.1, 25.1 to 25.3; adopt ch 34 IAB 1/18/06 **ARC 4824B**	Gritter Room, Iowa Hall Kirkwood Community College Cedar Rapids, Iowa	February 21, 2006 1 p.m.
	Conference Rooms, Air Quality Bureau 7900 Hickman Rd. Urbandale, Iowa	February 22, 2006 1 p.m.
Household hazardous materials, 144.3 IAB 1/18/06 **ARC 4825B**	Fifth Floor West Conference Room Wallace State Office Bldg. Des Moines, Iowa	February 8, 2006 11 a.m.

LABOR SERVICES DIVISION[875]

Federal OSHA regulations—adoption by reference, 10.20, 26.1 IAB 1/18/06 **ARC 4828B**	Capitol View Room 1000 E. Grand Ave. Des Moines, Iowa	February 10, 2006 9 a.m.

PROFESSIONAL LICENSURE DIVISION[645]

Optometrists, 179.1, 183.5 IAB 2/1/06 **ARC 4851B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	February 21, 2006 10:30 to 11 a.m.
Podiatrists, 219.1, 224.5 IAB 2/1/06 **ARC 4854B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	March 8, 2006 9 to 9:30 a.m.
Athletic trainers, 353.5 IAB 1/18/06 **ARC 4810B**	Fifth Floor Board Conference Rm. Lucas State Office Bldg. Des Moines, Iowa	February 7, 2006 8:30 to 9 a.m.

PUBLIC HEALTH DEPARTMENT[641]

Private well sampling, reconstruction, and plugging—grants to counties, ch 24 IAB 2/1/06 **ARC 4843B**	Room 415 Lucas State Office Bldg. Des Moines, Iowa	February 21, 2006 10 a.m.
Radiation, amendments to chs 38 to 42, 45, 46 IAB 2/1/06 **ARC 4842B**	Conference Room 142 Lucas State Office Bldg. Des Moines, Iowa	February 28, 2006 8:30 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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AGENCY	PROGRAM	SERVICE DELIVERY AREA	ELIGIBLE APPLICANTS	TYPES OF PROJECTS	E-Grants Application DUE DATE
Iowa Homeland Security & Emergency Management Division (HLSEM)	Flood Mitigation Assistance (FMA) FY2006 FMA Program authorized by the National Flood Insurance Reform Act of 1994, Title V, Sections 553 & 554, Public Law 103-325 U.S.C. 515a., to reduce the number of repetitive loss claims against the NFIP.	Statewide for NFIP participants	Mitigation Plan Requirement: To be eligible for Project grants, an eligible Sub-applicant must develop, and have approved by the FEMA Regional Director, a Flood Mitigation Plan in accordance with 44 CFR 78.5 • State-level agencies; Local communities; • Private individuals and private non-profit (PNP) organizations are **NOT** eligible; however, a relevant State agency or local community may apply to the applicant for assistance to mitigate private or PNP structures. • Federally-recognized Indian tribal governments; to include State-recognized Indian tribes; authorized Indian tribal organizations, and Alaska Native villages) • NFIP Participation: Communities must not be on probation, suspended or withdrawn from the NFIP. Property owners must have a current flood insurance policy and flood insurance shall be maintained in perpetuity on an improved property. To learn more about the FMA program, use the following link: FEMA — Flood Mitigation Assistance Applicants must complete an application through the Electronic Grant (e-Grants) System. To learn more about the e-grant system use the following link on HLSEM's website: http://www.iowahomelandsecurity.org/asp/CoEM_FR/grant/Egrants.asp **For additional information please contact:** **John Wageman 515-281-7125** **Linda Roose 515-281-6612** **Dennis Harper 515-281-6477** **Iowa Homeland Security and Emergency Management Division** **Des Moines, Iowa 50319-0113**	• FMA is to assist State and Local Governments in funding cost-effective actions that reduce or eliminate the long-term risk of flood damage to buildings, manufactured homes, and other insurable structures. • Planning Grant to Communities to assess the flood risks and identify actions to reduce that risk. Eligible projects include, but are not limited to: • Acquisition of insured structures and underlying real property in fee simple and easements restricting real property to open space uses. • Relocation of insured structures from acquired or restricted real property to non hazard-prone sites. • Demolition and removal of insured structures on acquired or restricted real property. Anticipated Funding: • Planning - $15,400 • Project - $145,260	March 19, 2006

ARC 4837B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Termination

Pursuant to the authority of Iowa Code section 159.5(11), the Department of Agriculture and Land Stewardship terminates the rule making initiated by its Notice of Intended Action published in the Iowa Administrative Bulletin on July 6, 2005, as **ARC 4286B**, rescinding Chapter 50, "Women, Infants, and Children/Farmers' Market Nutrition Program and Senior Farmers' Market Nutrition Program," and adopting new Chapter 50, "Women, Infants, and Children/Farmers' Market Nutrition Program and Senior Farmers' Market Nutrition Program," Iowa Administrative Code.

The Notice proposed to reduce the requirements for authorization of farmers' markets, add moveable farmstands as eligible for authorization, and incorporate the senior component of the Farmers' Market Nutrition Program based on the proposed rule "Senior Farmers' Market Nutrition Program Regulations," Federal Register, Volume 70, No. 101, Thursday, May 26, 2005.

The Department is terminating the rule making commenced in **ARC 4286B** because, simultaneously with its filing, the rule making was also Adopted and Filed Emergency as **ARC 4285B**. The Department has concluded the public participation portion of the noticed rule making. After evaluating the public comment, the Department decided not to make any modifications to the rule making that was Adopted and Filed Emergency as **ARC 4285B**. The Department plans to initiate a new rule making to amend Chapter 50 in the near future to address matters that have recently arisen.

ARC 4857B

AGRICULTURE AND LAND STEWARDSHIP DEPARTMENT[21]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 159.5(11) and 163.l, the Department of Agriculture and Land Stewardship hereby gives Notice of Intended Action to amend Chapter 64, "Infectious and Contagious Diseases," Iowa Administrative Code.

The purpose of these amendments is to update animal exhibition requirements in Iowa to be used at county fairs, 4-H fairs or exhibitions, or similar exhibitions. The Department intends to file these amendments Emergency After Notice in order to provide as much advance notice as possible to exhibitors and exhibition officials.

Any interested persons may make written comments or suggestions on these proposed amendments until 4:30 p.m. on February 21, 2006. Such written materials should be directed to Dr. John Schiltz, State Veterinarian, Department of Agriculture and Land Stewardship, Wallace State Office Building, 502 East Ninth Street, Des Moines, Iowa 50319; or faxed to (515)281-4282. E-mail comments may be sent to John.Schiltz@idals.state.ia.us.

No waiver provision is included in these proposed amendments because an existing rule allows for waivers in appropriate cases. The waiver rule also applies to the rules amended in this filing.

These amendments are intended to implement Iowa Code chapter 163.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 64.34(2) as follows:

64.34(2) Breeding cattle.

a. Tuberculosis. Cattle originating from an accredited-free state or zone may be exhibited without other testing requirements when accompanied by a Certificate of Veterinary Inspection that lists individual official identification. Cattle from a herd or area under quarantine for tuberculosis may not be exhibited. Cattle from a state or zone which is not an accredited-free state or zone must meet ~~one of~~ the following requirements:

(1) Have had ~~a negative whole herd test conducted within the last twelve months and~~ an individual animal test conducted within 30 days of the exhibition; or

(2) Originate from a tuberculosis accredited-free herd, with the accredited herd number and date of last test listed on the Certificate of Veterinary Inspection~~.~~ *; and*

(3) Have been issued a preentry permit from the state veterinarian's office.

b. Brucellosis.

(1) Native Iowa cattle originating from a herd not under quarantine may be exhibited when accompanied by a Certificate of Veterinary Inspection that lists individual official identification.

(2) Cattle originating outside the state must meet one of the following requirements:

1. Originate from brucellosis class "free" states, ~~when~~ accompanied by a Certificate of Veterinary Inspection that lists individual official identification; or

2. ~~Beef~~ *Be beef* heifers under 24 months of age and dairy heifers under 20 months of age which are official brucellosis vaccinates, ~~when~~ accompanied by a Certificate of Veterinary Inspection that lists the official calfhood vaccination tattoo and individual official identification; or

3. ~~Animals~~ *Be animals* of any age that originate from a herd not under quarantine ~~when~~ , accompanied by a Certificate of Veterinary Inspection that lists a report of a negative brucellosis test conducted within 30 days prior to opening date of exhibition and individual official identification; or

4. Originate from a certified brucellosis-free herd, accompanied by a Certificate of Veterinary Inspection that lists individual official identification, herd number, and date of last test; or

5. ~~Calves~~ *Be calves* under six months of age ~~when~~ , accompanied by a Certificate of Veterinary Inspection that lists individual official identification.

(3) All brucellosis tests must have been confirmed by a state-federal laboratory. All nurse cows which accompany calves to be exhibited must meet the health requirements set forth in 64.34(2)"b."

(4) All cattle originating from states not classified as "free" for brucellosis must have been issued a preentry permit from the state veterinarian's office.

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

ITEM 2. Amend paragraph **64.34(5)"b"** as follows:

b. Goats—brucellosis and tuberculosis. Goats must be from a state certified brucellosis-free herd~~, or from a class "free" state (brucellosis),~~ or have a record of a negative brucellosis test performed within 90 days of the exhibition. In addition, they must originate from a herd having a negative tuberculosis test within the last 12 months~~, or from a class "free" state (TB);~~ or have a record of a negative tuberculosis test performed within 90 days of exhibition.

ARC 4849B

BANKING DIVISION[187]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code sections 17A.3 and 524.213, the Banking Division of the Commerce Department hereby gives Notice of Intended Action to amend Chapter 2, "Application Procedures," and Chapter 8, "General Banking Powers," Iowa Administrative Code.

The amendments address requirements for establishing mobile bank offices, bank-owned courier services, and convenience offices. The amendments also address the permissibility of state-chartered banks providing third-party courier services to their customers.

Interested persons may make written comments on the proposed amendments on or before February 21, 2006. Such written material should be directed to the Superintendent of Banking, Banking Division, Department of Commerce, 200 East Grand Avenue, Suite 300, Des Moines, Iowa 50309. Persons who want to convey their views orally should contact the Superintendent of Banking, Department of Commerce, at (515)281-4014 or at 200 East Grand Avenue, Suite 300.

These amendments are intended to implement Iowa Code sections 17A.3 and 524.213.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule 2.4(3) as follows:

2.4(3) Guidelines. In determining whether to approve or deny a bank office application *for other than a mobile office, a bank-owned courier service, or a convenience office*, the superintendent will consider the following factors:

a. Whether the convenience and needs of the public and existing customers of the applicant bank will be served by the proposed office.

b. Whether the population density and other economic characteristics of the area primarily to be served by the proposed office afford reasonable promise of adequate support for the office.

c. Whether the capital structure of the applicant bank is adequate in relation to the costs and anticipated increased business, if any, occasioned by the proposed office.

d. The history of operation and management of the applicant bank.

e. Such other factors as the superintendent may determine are relevant.

ITEM 2. Amend subrule 2.12(2) to read as follows:

2.12(2) Notice of filing of application. Except in the case of proposed transactions where notice by publication is governed by statute, the applicant shall, within 15 days after the superintendent ~~shall have~~ *has* notified the applicant in writing that an application has been accepted for processing, publish one time ~~in a newspaper of general circulation in the community in which the applicant's main office is located and~~ in a newspaper of general circulation in the community in which the applicant proposes to engage in business~~,~~ a notice containing the name of the applicant or applicants, the subject matter of the application, and the date upon which the application was accepted for processing. Immediately thereafter, the applicant shall furnish the superintendent with proof of such publication. The superintendent may solicit, in whatever manner deemed appropriate, comments from banks which may be affected by or have an interest in the pending application.

ITEM 3. Amend 187—Chapter 2 by adopting the following **new** rule:

187—2.17(17A,524) Mobile offices, courier services, and convenience offices.

2.17(1) Definitions.

"Bank-owned courier service" means a service that has the sole purpose of serving specific customers with pick-up or delivery services for banking activities such as deposits, withdrawals, and loan transactions.

"Convenience office" means a bank office at a fixed site that is open only at certain times or dates, such as at a nursing home, college orientation, or fair. The sole purpose of a convenience office is to serve the convenience of the bank's customers at specified special events or who may have limited mobility.

"Mobile office" means a bank office that does not have a permanent site and functions out of a mobile banking unit that stops at predetermined locations to conduct banking activities.

2.17(2) Policy. The board of directors of a state bank that operates a mobile office, bank-owned courier service, or convenience office shall adopt a policy governing operation of the mobile office, bank-owned courier service or convenience office. The policy shall be appropriate for the nature and scope of the state bank's use of the mobile office, bank-owned courier service, or convenience office and shall, at a minimum, include the following:

a. The policy shall address the steps the bank will take to protect the security of the office, its customers, employees, its customers' financial information and deposits. The security plan may include implementation of customer and employee security systems such as security cameras, external lighting, and internal or attached protection zones.

b. The policy shall require the bank to maintain deposit insurance coverage for the mobile office, bank-owned courier service, or convenience office.

c. The policy shall require the bank to maintain adequate insurance coverage covering the bank in case of robbery, accident, other loss of items, delay in the delivery of items to other destinations, and other liabilities associated with operating the office.

BANKING DIVISION[187](cont'd)

d. The policy shall address types of activities the bank will conduct from the mobile office, bank-owned courier service, or convenience office.

e. The policy shall require a bank office manager or officer of the bank to be physically present at the mobile office, bank-owned courier service, or convenience office during a majority of its business hours as required by Iowa Code section 524.1201.

f. The policy shall require the bank to maintain a daily log of operations, including descriptions of the time and locations of each stop made by the mobile office or bank-owned courier service, the locations and the hours a convenience office was operated, and the names of the bank personnel working at the mobile office, bank-owned courier service, or convenience office during those times.

g. The policy shall address what, if any, signage the bank will place on the mobile office, bank-owned courier service, or convenience office.

h. For mobile offices and bank-owned courier services, the policy shall address how the bank will determine the locations at which it will provide services and the times it will be at those locations. The policy shall address how the bank will ensure that the mobile office, bank-owned courier service, or convenience office is located in a safe location and that it has the necessary permission of the owner of the property where the mobile office, bank-owned courier service, or convenience office is located to operate at that location.

2.17(3) Publication requirements. A banks that submits an application to operate a mobile office or bank-owned courier service shall describe the general geographic area to be served by the mobile office or courier service in the notice of application it publishes pursuant to 187 IAC 2.12(2). Publication in several newspapers may be required to establish mobile offices or bank-owned courier services that will serve several communities or geographic areas. The publication need not identify specific sites to be served by the mobile office or courier service, but should state the general geographic area to be served, such as the city, county, or other identifiable geographic area. Changes in the general geographic area to be served require additional publication of notice in the new geographic areas and are subject to approval by the superintendent.

2.17(4) Necessary federal approval. If the bank must receive approval from any federal agency, such as the Federal Deposit Insurance Corporation (FDIC), prior to operating a mobile office, bank-owned courier service, or convenience office, such federal approval will be a condition of approval by the superintendent of banking of the application to operate a mobile office, bank-owned courier service, or convenience office.

2.17(5) Interstate banking. A mobile office or bank-owned courier service shall not operate in another state unless it has obtained any required permissions from the other state and the appropriate federal regulator.

This rule is intended to implement Iowa Code section 524.1201.

ITEM 4. Amend 187—Chapter 8 by adopting the following **new** rule:

187—8.10(524) Courier services. A state bank may provide courier services to its bank customers by using a third-party provider operated under the provider's name or using the state bank's employees operating in the bank's own name. Customer deposits picked up by a courier service become deposits of the bank at the time the deposits are picked up by the courier service.

8.10(1) Third-party courier services. A state bank that uses a third party to provide courier services to its customers may pay the third party directly for those services and may charge its customers for third-party courier services as the state bank deems appropriate. Superintendent approval is not required for a state bank to provide courier services to its customers by using a third party.

8.10(2) Bank-owned courier services. A state bank that establishes and operates courier services in its own name using its own employees must establish the vehicle it uses to provide courier services as a bank office in accordance with the provisions of 187 IAC 2.17(17A,524).

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, 2005, is approximately $1,131.00. 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 4859B

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 Iowa Department of Education proposes to amend Chapter 41, "Special Education," Iowa Administrative Code.

The proposed amendments align the rules with the federal regulations. A more comprehensive review of Chapter 41 will follow after the federal regulations are finalized.

Any interested person may submit electronic, oral or written comments on or before February 21, 2006, by addressing them to Suana Wessendorf, Department of Education, Grimes State Office Building, Des Moines, Iowa 50319-0146; telephone (515)281-5447; fax (515)242-6019; E-mail suana.wessendorf@iowa.gov.

These amendments are intended to implement the Reauthorized Individuals with Disabilities Education Act, Public Law Number 108-446, which went into effect in December 2004.

EDUCATION DEPARTMENT[281](cont'd)

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind and reserve rule **281—41.56(256B, 34CFR300)**.

ITEM 2. Rescind subrules **41.67(1)** to **41.67(5)**.

ITEM 3. Rescind and reserve rule **281—41.71(256B, 34CFR300)**.

ITEM 4. Rescind and reserve rule **281—41.72(256B, 34CFR300)**.

ITEM 5. Rescind and reserve rule **281—41.77(256B, 34CRF300)**.

ITEM 6. Amend subrule **41.113(1)**, paragraph **"c,"** as follows:

c. A public agency may use the preappeal or hearing procedures to determine if the individual may be evaluated ~~or initially provided special education and related services~~ without parental consent. If a public agency requests a hearing and the administrative law judge upholds the agency, the agency may evaluate ~~or initially provide special education and related services to~~ the individual without the parent's consent.

ITEM 7. Rescind subrules **41.113(6)** and **41.113(10)** and renumber subrules **41.113(7)** to **41.113(9)** as **41.113(6)** to **41.113(8)**.

ARC 4836B

EMPOWERMENT BOARD, IOWA[349]

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 28.4, the Iowa Empowerment Board hereby gives Notice of Intended Action to amend Chapter 1, "Community Empowerment," Iowa Administrative Code.

The proposed amendments incorporate specific language from 2005 Iowa Acts, chapter 148, and provide an overall update to the rules. These amendments update definitions to clarify terminology; expand the responsibility of the Office of Empowerment and the State Empowerment Technical Assistance Team; update the state empowerment indicators; integrate statewide quality standards and results indicators into the Iowa Empowerment Board's responsibility; provide for Web site coordination for early childhood; and set forth a policy for carryforward of school ready funds.

Any interested person may make written suggestions or comments on the proposed amendments on or before February 21, 2006. Such written materials should be sent to the Facilitator, Office of Empowerment, Iowa Department of Management, State Capitol Building, Des Moines, Iowa 50319; by facsimile to (515)281-4225; or by electronic mail to shanell.wagler@iowa.gov.

A public hearing will be held on February 23, 2006, at 9:30 a.m. in Room G14 at the State Capitol, Des Moines, Iowa, at which time comments may be submitted orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact Shanell Wagler at (515)281-4321 to advise of any specific needs.

These amendments are intended to implement Iowa Code chapter 28 as amended by 2005 Iowa Acts, chapter 148.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rules 349—1.1(28) and 349—1.2(28) as follows:

349—1.1(28) Scope. Community empowerment is created to establish partnerships between state government and communities. The emphasis is to develop community empowerment areas to improve the well-being of children and their families and, through collaboration, to improve the efficiency and effectiveness of local *early care*, education, health and human services.

349—1.2(28) Purpose. Community empowerment is intended to empower individuals and their communities to achieve desired results to improve the quality of life for children and their families in Iowa. Community empowerment will enable local citizens to lead collaborative efforts involving *early care*, education, health, and human services on behalf of children, families, and other citizens residing in the area. It is believed that individuals in local communities working together through the process of community assessment, identification of priorities and development of their community plan is the best means to reach desired results. The role of the Iowa empowerment board and the state is to support and facilitate growth of individual and community responsibility in place of the directive role the public has come to expect of government.

Every community in Iowa will develop the capacity and commitment to achieve these desired results for children and their families:

1. Healthy children.
2. Children ready to succeed in school.
3. Safe and supportive communities.
4. Secure and nurturing families.
5. Secure and nurturing ~~child care~~ *early care and education* environments.

ITEM 2. Amend rule **349—1.4(28)** as follows:

Rescind the definitions of "family home visiting," "parent support," "redesignation," and "volunteer."

Amend the following definitions:

"Citizen *representative*" means a resident of the empowerment area, who is not an elected official or a required representative for education, health, and human services, or a paid staff member of an agency whose services fall under the plan or purview of the community board. A citizen representative may also represent faith, consumer or business.

"Community plan" means the local *school ready grant* plan, adopted by the community board following input from the community, implemented in the empowerment area.

EMPOWERMENT BOARD, IOWA[349](cont'd)

"State empowerment team" means the central office of empowerment and identified personnel from the state agencies of *economic development,* education, public health, human services, and human rights to provide the day-to-day operational work of local- and state-level community empowerment and support to the Iowa board.

"Technical assistance" means an ongoing, systematic and interactive process that is designed to achieve results and that enables knowledge from research, policy and ~~best practice~~ *evidence-based practices* to be shared in partnerships through a variety of strategies with specific groups, agencies, communities and other partners to use within their unique contexts.

Adopt the following **new** definitions in alphabetical sequence:

"Early care," "early care services," or "early care system" means the programs, services, support or other assistance made available to a parent or other person who is involved with addressing the health and education needs of a child from birth through the age of five. "Early care," "early care services," or "early care system" includes but is not limited to public and private efforts and formal and informal settings.

"Family support" means community-based services to promote the well-being of children and families.

1. Family support programs have the following characteristics:

- Family-driven, meaning there is a true partnership with families.
- Comprehensive, flexible, and individualized to each family based on the family's culture, needs, values and preferences.
- Build on strengths to increase the stability of family members and the family unit.
- Utilize informal and formal support networks.

2. Family support programs produce the following results:

- Increased parent confidence and competence in their parenting abilities.
- Safe, stable, and supportive families who are connected to their communities.
- Enhanced health, growth, and development of children and adults in the family unit.

ITEM 3. Amend subrules 1.5(3) and 1.5(4) as follows:

1.5(3) Responsibility. The central office of empowerment and state empowerment team shall:

a. Provide primary staffing to the Iowa board.

b. Coordinate state technical assistance activities.

c. Implement a technical assistance system. The technical assistance system:

(1) Utilizes local representatives of state agencies represented on the Iowa board.

(2) Utilizes other state agencies and individuals involved with empowerment areas.

d. Communicate and coordinate functions.

e. Increase state- and local-level collaboration.

f. Provide coordination and other support to the state's early care system.

~~f~~ *g.* Move authority and decision-making responsibility from the state to communities.

~~g~~ *h.* Compile an annual report to the governor and general assembly on Iowa board activity and policy development, state-level indicators toward desired results and the empowerment area's collaboration process, local indicators and performance measures. The annual report will include progress to avoid duplication, enhance efforts, combine planning and best utilize identified funding to meet the needs of the children and their families in the empowerment areas.

i. Work with the state and local components of the community empowerment initiative, shared visions programs funded under Iowa Code chapter 256A, and other public and private efforts to improve the early care system.

j. Provide support to the public and private stakeholders who are involved with the early care system, acting to strengthen the early care system and develop accountability measures for early care efforts.

k. Develop and disseminate accountability measures for assessing the outcomes produced by the department of education, the community empowerment initiative, and other publicly funded efforts to improve early care of young children. The initial measures utilized shall be the individual growth and development indicators developed by the early childhood research institute on measuring growth and development or other measures of high quality authorized by law.

l. Collect, interpret, and redisseminate data gathered from the measures for assessing outcomes under paragraph "j." Factors subject to interpretation may include area demographics, relative expenditures, collaboration between programs in an area, and other factors impacting the outcomes produced by an individual program.

m. Annually provide information to the governor and general assembly regarding the outcomes produced by individual programs. The information shall be included in the Iowa board's annual report.

1.5(4) Technical assistance. Funds will be allocated to support the central office of empowerment. ~~Regional technical assistance teams will be established and include staff from community colleges, area education agencies and the Iowa State University of Science and Technology cooperative extension service in agriculture and home economics and various agencies.~~

a. Technical assistance shall be provided continuously as well as upon request at the state and community level by the state empowerment team~~, regional technical assistance teams,~~ and appropriate local providers.

b. State or regional technical assistance may be provided, upon request, to assist in the resolution of a disagreement arising in empowerment areas or community boards.

ITEM 4. Amend subrule 1.6(1) as follows:

1.6(1) Membership. The Iowa board shall consist of ~~17~~ *18* voting members: 13 citizen members and ~~4~~ *5* state agency director members. Six legislators shall serve as nonvoting members.

a. ~~Four~~ *Five* members shall be the directors, not the designees, of the state agencies of *economic development,* education, human rights, human services and public health.

b. and c. No change.

ITEM 5. Amend subrule 1.6(3) as follows:

1.6(3) Iowa board responsibility.

a. The Iowa board may designate an advisory council consisting of representatives from community boards and persons knowledgeable or interested in the fields of health, human services, education and early childhood.

b. The Iowa board shall strive for coordination of services for children and their families through a state and local community partnership.

c. The Iowa board shall provide for maximum flexibility and creativity in the designation and administration of the responsibilities and authority of community boards and empowerment areas.

EMPOWERMENT BOARD, IOWA[349](cont'd)

d. The Iowa board shall adopt guidance for community empowerment in Iowa. The guidance shall include at a minimum:

(1) The following state-level indicators are adopted and indirectly quantify the achievement of the desired results~~.~~ *set forth in rule 1.2(28):*

1. Low birth weight;
2. ~~Rate of immunization by age two~~ *Immunized children*;
3. ~~Children entering kindergarten are ready for school~~ *Preliteracy skills*;
4. *Children in quality preschools;*
~~4.~~ *5.* Incidence of child abuse;
~~5~~ *6.* Teen ~~birth rate~~ *births*;
~~6~~ *7.* ~~Serious crime~~ *Crime rate*;
~~7. Poverty level;~~
8. *Juvenile crime;*
~~8~~ *9.* Employment rate;
~~9~~ *10.* Child abuse in a child care setting; ~~and~~
~~10~~ *11.* Availability of child care~~.~~ *; and*
12. *Quality child care ratings.*

(2) State-level indicators to be measured and available each fiscal year as compared with a baseline and prior fiscal years, as data is available.

(3) A process to request a plan of action from an empowerment area regarding progress toward desired results.

(4) Guidelines for progress reports by empowerment areas, including a process to report progress toward achieving results.

(5) Core functions for ~~home visitation~~ *family support*, parent support and preschool services provided through the community plan.

(6) Integration of statewide quality standards and results indicators adopted by other boards and commissions into the Iowa board's funding requirements for investments in early care, education, health, and human services.

e. The Iowa board shall annually submit results to the governor and general assembly.

f. The Iowa board shall regularly make information available identifying community empowerment funding and funding distributed for purposes of the early care system.

~~f~~ *g.* The Iowa board shall evaluate and determine empowerment area requests for approval of revised local structure and boundaries.

~~g~~ *h.* The Iowa board shall develop guidelines for insurance or other liability coverage of community boards.

~~h~~ *i.* The Iowa board shall, with extensive community input, develop and annually update a five-year and a ten-year plan to assist empowerment areas to reach collaboration and strive to align local assets and resources to reach desired results. The annual plan update will be provided each December to empowerment areas, the governor, and the general assembly.

~~i~~ *j.* The Iowa board shall identify bodies in state government providing overlapping and similar purposes to the public in *early care,* education, health, and human service and make recommendations *and provide an annually updated strategic plan* to the governor and general assembly to *improve efficiencies,* increase alignment, coordination, consolidation or integration *of quality functions* to achieve desired results*, and for integration of state-administered funding streams directed to community empowerment areas and other community-based efforts for providing early care, education, health, and human service.*

~~j~~ *k.* The Iowa board shall coordinate, consolidate, or integrate community-level committees, coalitions, planning groups, and other bodies with common purposes and memberships formed in response to state requirements.

~~k~~ *l.* The Iowa board shall evaluate and respond to requests from a community board for consolidation or integration to enhance reaching desired results. In order to implement a waiver, the community boards will follow the current waiver process as identified in administrative rules of each state agency.

~~l~~ *m.* The Iowa board shall establish a process for ~~redesignation~~ *designation* to occur every three fiscal years.

(1) The Iowa board determines the award of ~~redesignation~~ *designation* status to an empowerment area.

(2) The community board evaluates:

1. Community plan;
2. Progress toward local indicators and performance measures;
3. Collaboration process;
4. Management of empowerment funds; and
5. Local system development.

n. The Iowa board shall review annual reports that include indicator data and performance measure data submitted from local areas and may request a plan for corrective action or withdraw grant funding.

o. The Iowa board shall provide for the operation of an Internet Web page for purposes of widely distributing early care information provided by the departments represented on the board and the public and private agencies addressing the early care system.

(1) Information provided on the Internet Web page shall include but not be limited to all of the following:

1. The early learning standards for children aged three to five proposed by the early learning standards group created pursuant to federal child care and development block grant requirements and with assistance from the Iowa child care and early education network, department of education, department of human services, Iowa head start association, and Iowa state university of science and technology, as prepared with consideration of the standards and recommendations issued by the United States Department of Education regarding early childhood cognitive development and learning and preschool and research-based standards for high-quality early care, including but not limited to the practices identified by the Institute of Education Sciences of the United States Department of Education. As early learning standards are identified in law, the proposed standards posted on the Web page shall be replaced with the standards identified in law.

2. A link to a special Web page directed to parents, including parent-specific information on early care and information regarding the early childhood development credits under Iowa Code section 422.12C, and links to other resources available on the Internet and from other sources.

3. Program standards for early care that have been approved by state agencies.

4. A single point of contact for use by a parent in accessing the community empowerment area programs and early care programs that are available in the parent's area.

(2) The Iowa board shall include information regarding the extent and frequency of usage of the Web page in the board's annual report to the governor and general assembly.

ITEM 6. Amend subrule 1.7(1), introductory paragraph, as follows:

1.7(1) Structure. A large enough population and geographic area exist to efficiently and effectively administer the responsibilities and authority of the community board to enable citizens to lead collaborative efforts involving *early*

EMPOWERMENT BOARD, IOWA[349](cont'd)

care, education, health, and human services on behalf of children, families and other citizens in the empowerment area.

ITEM 7. Amend subparagraph **1.8(2)"a"(7)** as follows:

(7) Develop and implement a community plan, with identified priorities, based on community assessments which address *early care,* human service, education and health needs to support children and their families to reach desired results.

ITEM 8. Amend subrule 1.10(1) as follows:

1.10(1) Purpose. The purpose of Iowa empowerment funds is to:

a. Encourage early intellectual stimulation of very young children;

b. Increase the basic skill levels of students entering school;

c. Increase the health status of children;

d. Reduce the incidence of child abuse and neglect;

~~e. Increase the access of children to an adult mentor;~~

~~f~~ *e.* Increase parents' involvement with their children; and

~~g~~ *f.* Increase the quality and accessibility of child care and preschool.

ITEM 9. Amend subrule **1.10(3)** by adopting the following **new** paragraph **"d"** and relettering paragraphs **"d"** to **"f"** as **"e"** to **"g"**:

d. The Iowa board will incorporate statewide quality standards and results indicators adopted by other boards and commissions into the Iowa board's funding requirements for investments in early care, education, health, and human service.

ITEM 10. Adopt the following **new** subrule:

1.10(4) The Iowa board shall identify and apply limitations on the carryforward of school ready children grant funding. Carryforward of funds cannot exceed three years.

The Iowa board defined an unusually high percentage as 30 percent of the annual school ready allocation, based on an accrual reporting system. For fiscal years ending after July 1, 2006, empowerment areas reporting a carryover balance of school ready funds in excess of 30 percent of the previous year's allocation will receive a reduction equal to the excess amount above the 30 percent in their next year's school ready allocation, based on accrual reporting.

All local community empowerment areas receive an automatic waiver for fiscal year '06 because of the significant increased allocation and stipulations to the school ready fund for fiscal year '06. Beginning in fiscal year '07, local CEAs shall file an appeal to the Iowa board to carry forward more than 30 percent of their annual school ready allocation. The appeal would provide an opportunity for local CEAs to explain their special circumstances, the particular use designated for the carryforward funds, how this action is in alignment with their community plan, and how this plan benefits Iowa's children and families.

Any excess carryforward funds will be distributed to all local boards, through the formula, for locally identified activities that are within the guidelines for use of school ready funds.

ARC 4851B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby gives Notice of Intended Action to amend Chapter 179, "Administrative and Regulatory Authority for the Board of Optometry Examiners," and Chapter 183, "Discipline for Optometrists," Iowa Administrative Code.

The proposed amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening and to retain licensure overpayments.

Any interested person may make written comments on the proposed amendments no later than February 21, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on February 21, 2006, from 10:30 to 11 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—179.1(17A)** by adding a **new** definition in alphabetical order as follows:

"Overpayment" means payment in excess of the required fee. Overpayment of less than $10 received by the board shall not be refunded.

ITEM 2. Adopt **new** rule 645—183.5(154) as follows:

645—183.5(154) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

183.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

183.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

183.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

183.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

183.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

183.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

183.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ARC 4854B

PROFESSIONAL LICENSURE DIVISION[645]

Notice of Intended Action

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

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

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby gives Notice of Intended Action to amend Chapter 219, "Administrative and Regulatory Authority for the Board of Podiatry Examiners," and Chapter 224, "Discipline for Podiatrists," Iowa Administrative Code.

The proposed amendments provide the Board the ability to order an examination for mental, physical, or clinical competency or alcohol or drug screening and to retain licensure overpayments.

Any interested person may make written comments on the proposed amendments no later than March 8, 2006, addressed to Pierce Wilson, Professional Licensure Division, Department of Public Health, Lucas State Office Building, Des Moines, Iowa 50319-0075; E-mail pwilson@idph.state.ia.us.

A public hearing will be held on March 8, 2006, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building, at which time persons may present their views either orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject of the proposed amendments.

These amendments are intended to implement Iowa Code chapters 21, 147, 149 and 272C.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **645—219.1(17A)** by adding the following **new** definition in alphabetical order:

"Overpayment" means payment in excess of the required fee. Overpayment of less than $10 received by the board shall not be refunded.

ITEM 2. Adopt **new** rule 645—224.5(149) as follows:

645—224.5(149) Order for mental, physical, or clinical competency examination or alcohol or drug screening. A licensee who is licensed by the board is, as a condition of licensure, under a duty to submit to a mental, physical, or clinical competency examination, including alcohol or drug screening, within a time specified by order of the board. Such examination may be ordered upon a showing of probable cause and shall be at the licensee's expense.

224.5(1) Content of order. A board order for a mental, physical, or clinical competency examination shall include the following items:

a. A description of the type of examination to which the licensee must submit.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

b. The name and address of the examiner or of the evaluation or treatment facility that the board has identified to perform the examination on the licensee.

c. The time period in which the licensee must schedule the required examination.

d. The amount of time which the licensee has to complete the examination.

e. A requirement that the licensee sign necessary releases for the board to communicate with the examiner or the evaluation or treatment facility.

f. A requirement that the licensee cause a report of the examination results to be provided to the board within a specified period of time.

g. A requirement that the licensee communicate with the board regarding the status of the examination.

h. A concise statement of the facts relied on by the board to order the evaluation.

224.5(2) Alternatives. Following issuance of the examination order, the licensee may request additional time to schedule or complete the examination or may request the board to approve an alternative examiner or treatment facility. The board in its sole discretion shall determine whether to grant such a request.

224.5(3) Objection to order. A licensee who is the subject of a board order and who objects to the order may file a request for hearing. The request for hearing must be filed within 30 days of the date of the examination order, and the request for hearing shall specifically identify the factual and legal issues upon which the licensee bases the objection. The hearing shall be considered a contested case proceeding and shall be governed by the provisions of 645—Chapter 11. A contested case involving an objection to an examination order will be captioned in the name of Jane Doe or John Doe in order to maintain the licensee's confidentiality.

224.5(4) Closed hearing. Any hearing on an objection to the board order shall be closed pursuant to Iowa Code section 272C.6(4).

224.5(5) Order and reports confidential. An examination order, and any subsequent examination reports issued in the course of a board investigation, are confidential investigative information pursuant to Iowa Code section 272C.6(4).

224.5(6) Admissibility. In the event the licensee submits to evaluation and subsequent proceedings are held before the board, all objections shall be waived as to the admissibility of the examining physicians' or health care providers' testimony or examination reports on the grounds that they constitute privileged communication. The medical testimony or examination reports shall not be used against the licensee in any proceeding other than one relating to licensee discipline by the board.

224.5(7) Failure to submit. Failure of a licensee to submit to a board-ordered mental, physical, or clinical competency examination or to submit to alcohol or drug screening constitutes a violation of the rules of the board and is grounds for disciplinary action.

ARC 4845B

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 sections 135.11 and 730.5, the Department of Public Health gives Notice of Intended Action to amend Chapter 12, "Approval of Confirmatory Laboratories for Private Sector Drug-Free Workplace Testing," Iowa Administrative Code.

The rules in Chapter 12 describe the procedures that a laboratory must follow to receive approval by the Department to conduct confirmatory testing of samples for the detection of alcohol or other drugs, or their metabolites, in employees or prospective employees. These amendments expand the definition of "sample" from the human body to include saliva, which is consistent with the definition of "sample" in the Iowa Code. This amendment provides private-sector employers additional options for samples from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. These amendments also reflect the change in the name of the Health Care Financing Administration (HCFA) to Centers for Medicare and Medicaid Services (CMS).

Any interested person may make written comments or suggestions on the proposed amendments on or before February 21, 2006. Such written comments should be directed to G. Dean Austin, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code section 730.5.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend rule **641—12.2(730)**, definitions of "HCFA" and "sample," as follows:

~~"HCFA"~~ *"CMS"* means ~~Health Care Financing Administration~~ *Centers for Medicare and Medicaid Services*. ~~HCFA~~ *CMS* is the federal agency responsible for implementing and administering the CLIA regulations.

"Sample" means such sample from the human body capable of revealing the presence of alcohol or other drugs, or their metabolites. However, "sample" does not mean blood except as authorized pursuant to Iowa Code subsection 730.5(7), paragraph "l." For the purpose of these rules, the substances determined by the department to be samples from the human body capable of accurately and reliably revealing the presence of alcohol or other drugs, or their metabolites, are urine, breath, ~~and~~ blood, *and saliva*.

ITEM 2. Amend subrule 12.4(3) as follows:

12.4(3) Proof of enrollment in a recognized proficiency testing program. Recognized programs include those approved by ~~HCFA~~ *CMS*.

ARC 4843B

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 135.11(29), the Iowa Department of Public Health hereby gives Notice of Intended Action to adopt Chapter 24, "Private Well Sampling, Reconstruction, and Plugging—Grants to Counties," Iowa Administrative Code.

The authority for this program was transferred to the Iowa Department of Public Health from the Iowa Department of Natural Resources during the 2003 legislative session. These rules will replace, with some modifications, the rules that the Environmental Protection Commission has in place for this program at 567 IAC 47.

The major changes include assigning administrative authority for the program to the county board of health and increasing fees reimbursed to the county for services provided under this program. Draft rules were distributed to local board of health representatives in October 2005 and comments and suggestions were incorporated into the proposed Chapter 24.

Any interested person may make written suggestions or comments on these rules on or before February 21, 2006. Written materials should be directed to Ken Sharp, Iowa Department of Public Health, 321 E. 12th Street, Des Moines, Iowa 50319; fax (515)281-4529; or E-mail ksharp@idph.state.ia.us.

There will be a public hearing on February 21, 2006, at 10 a.m. in Room 415, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa, at which time persons may present their views either orally or in writing. Any persons who intend to attend the public hearing and have special requirements such as those related to hearing or mobility impairments should contact the Department of Public Health and advise of specific needs.

These rules are intended to implement Iowa Code sections 135.11(29) and 455E.11.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following **new** chapter is proposed.

CHAPTER 24
PRIVATE WELL SAMPLING, RECONSTRUCTION, AND PLUGGING—GRANTS TO COUNTIES

641—24.1(135) Applicability. These rules apply to administration of the grants to counties program by the department in accordance with Iowa Code sections 135.11(29) and 455E.11, subsection 2, paragraph "b," subparagraph (3), subparagraph subdivision (b), for the purpose of testing private water wells, reconstructing private water wells, and the proper plugging of abandoned private water wells (including cisterns that present a contamination risk to groundwater), within the jurisdiction of each county board of health.

641—24.2(135) Definitions.

"Abandoned private water well" means a private water well which is no longer in use or which is in such a state of disrepair that continued use for the purpose of accessing groundwater is unsafe or impractical.

"Administrative authority" means the county board of health or the county board of health's designee.

"Administrative expenses" means salary, transportation and other associated costs for conducting the private well testing, reconstruction, and plugging program.

"Certified laboratory" means a laboratory certified by the Iowa department of natural resources in accordance with 567 IAC 83.1(3)"a."

"Cistern" means an artificial reservoir or tank constructed underground in which rainwater or private well water is stored.

"County board of health" means the board of health of a county as established in accordance with Iowa Code chapter 137.

"Department" means the Iowa department of public health.

"Plugging" means the closure of an abandoned well with plugging materials by procedures which will permanently seal the well from contamination by surface drainage and permanently seal off the well from contamination into an aquifer. "Well plugging" includes the proper application of filling and sealing materials.

"Private water well" means any excavation that is drilled, cored, driven, dug, bored, augered, jetted, washed or otherwise constructed for the purpose of supplying water for human consumption which has fewer than 15 service connections and regularly serves fewer than 25 individuals daily at least 60 days out of the year and agricultural use wells.

"Reconstruction" means modification of the original construction of a well. "Reconstruction" includes, but is not limited to, deepening the well, installing a liner, installing or replacing a screen with one of a different diameter or length, installing a pitless adapter, extending the casing, or hydrofracturing a well. Replacing a screen with one of identical diameter and length or replacing a pitless adapter is considered repair, not reconstruction.

"Total funds available" means the sum of the pesticide/fertilizer taxes allocated within Iowa Code section 455E.11(2)"b" (agricultural management account), within a specific state fiscal year, plus any carryover funds remaining from the previous fiscal year, which are returned to the section 455E.11(2)"b" (agricultural management account) grants to counties fund.

641—24.3(135) Eligibility. Grant applications must be submitted by a county board of health. Only counties which have adopted standards for private water supply and private sewage disposal facilities (on-site wastewater treatment systems) at least as stringent and consistent with 567 IAC 49 and 567 IAC 69 and demonstrate an effort to enforce such standards will be eligible to receive grant funds. A county is eligible to submit only one application, either as an individual applicant or as a member of a multicounty application.

641—24.4(135) Goal and objectives.

24.4(1) The goal of the program is to protect groundwater quality by providing assistance in testing all private water supply wells and to use the test information to improve the quality of water in these supplies; to assist in reconstructing eligible private wells; and to assist in plugging all abandoned

private water wells (including cisterns that present a contamination risk to groundwater).

24.4(2) During each fiscal year, the amount granted each eligible applicant shall be the total funds available as defined in Iowa section Code 455E.11 divided by the number of eligible counties applying.

24.4(3) Specific program objectives for each county.

a. The specific objectives of the well testing program are:

(1) To provide for regular and periodic testing of private water supply wells using proper sampling, handling and analytical techniques.

(2) To provide for timely responses and corrective action in instances of contamination of private water supply wells.

(3) To establish a reliable and accurate database of information on the location and construction of private water supply wells and water quality of private water supply wells.

b. The specific objectives of the well reconstruction program are:

(1) To identify all private wells eligible for reconstruction cost assistance and to administer private well reconstruction programs.

(2) To ensure the proper reconstruction of all eligible private wells.

(3) To provide cost-sharing grants to owners to assist in the costs of properly reconstructing private wells.

c. The specific objectives of the abandoned private water well plugging program are:

(1) To identify all abandoned private water wells and administer abandoned private water well plugging programs.

(2) To develop abandoned private water well plugging plans in accordance with administrative rules relating to the priority order and the proper plugging of abandoned wells (including cisterns that present a contamination risk to groundwater).

(3) To ensure the proper plugging of all abandoned private water wells (including cisterns that present a contamination risk to groundwater).

(4) To provide cost-sharing grants to owners to assist in the costs of properly plugging abandoned private water wells (including cisterns that present a contamination risk to groundwater).

641—24.5(135) Eligible grant costs. The following are annual eligible costs for which the department will reimburse participating counties:

24.5(1) Up to $500 for private water well-related training expenses, including registration, mileage, and per diem for employees attending department-approved trainings. Training approval is granted to water well-related training sponsored by the department, Iowa Water Well Association, Iowa department of natural resources, and the Iowa Ground Water Association. Other trainings must receive approval of the department prior to submitting a voucher for expenses.

24.5(2) Up to $250 for equipment expenses related to the grants to counties program. Eligible equipment includes, but is not limited to, Global Positioning System (GPS) units, private water well data software, inspection equipment, cameras, and sampling equipment.

24.5(3) Up to $250 for advertising and promotional expenses to educate county residents about the availability of funds for private water well testing, abandoned well plugging, and private water well reconstruction.

24.5(4) $75 will be paid for each private water well test conducted under the program, including $45 for administrative expenses. At a minimum, well sampling shall include analyses for total nitrate (including nitrite) and total coliform bacteria.

24.5(5) $375 will be paid for each abandoned private water well plugging conducted in accordance with 567 IAC 38, including $75 for administrative expenses. Private water well plugging must be conducted by a certified individual as defined in 567 IAC 82 or by the well owner under direct supervision by the county.

24.5(6) $375 will be paid for each cistern plugging but only for those cisterns deemed by the administrative authority to impact groundwater, including $75 for administrative expenses. Cistern plugging must be conducted by a certified individual as defined in 567 IAC 82 or by the well owner under direct supervision by the county.

24.5(7) Up to $600 in reconstruction costs plus 33 percent of actual reconstruction costs for administrative purposes will be paid for each private water well reconstruction. Grant funds may be used to conduct reconstruction intended to preclude contamination due to surface water intrusion by coliform or other infectious bacteria. Examples include repairs of casing, well caps, or pitless adapters, and elimination of well pits.

641—24.6(135) Ineligible grant costs. Grant funds shall not be used for the following:

24.6(1) Conducting environmental health programs other than those related to private well testing, reconstruction, and plugging program.

24.6(2) Conducting activities outlined in rule 24.5(135) prior to or after the grant period specified.

24.6(3) Analytical services performed by other than a certified laboratory.

24.6(4) Sampling and analytical costs for testing public water supply wells.

24.6(5) Cost of laboratory analytical equipment.

24.6(6) Sampling and analytical costs for testing of wells other than private water supply wells.

24.6(7) Sampling and analytical costs for testing of parameters which have not had either a maximum contaminant level or an Environmental Protection Agency (EPA) health advisory level established.

24.6(8) Reconstructing a well which does not meet separation distances as established in 567 IAC 49. Grant moneys cannot be used for reconstruction of a well which, in the judgment of the administrative authority, will remain a hazard to groundwater quality.

641—24.7(135) Performance requirements. Each county participating must have authority at least as stringent as and consistent with 567 IAC 49 and 567 IAC 69 to regulate the construction of private wells. The following minimum standards must be met by all grantees:

24.7(1) Sample collection. Private water supply well samples are to be collected using proper sample collection and handling techniques as specified by the department.

24.7(2) Background information. For each well tested, reconstructed, or plugged, all appropriate information must be entered into the private well tracking system (PWTS) managed by the Iowa department of natural resources. Information shall include at a minimum:

a. The name and address of the private water well or abandoned private water well owner.

b. Private water well or abandoned private water well location to the quarter, quarter, quarter section or latitude and longitude coordinates.

c. Records of dates for reconstructing private water wells or plugging abandoned private water wells (including cisterns).

d. The name and the license number of the water well contractor conducting the private water well reconstruction or the abandoned private water well plugging.

24.7(3) Qualified staff. Staff performing services under this agreement shall maintain a minimum of 12 hours of continuing education every year as approved by the Iowa Environmental Health Association Environmental Health Registry Program.

24.7(4) Laboratory analyses. All analyses must be performed by a laboratory certified by the department of natural resources in accordance with 567 IAC 83.1(3)"a" and shall conform with the following:

a. The total coliform bacteria analyses must be performed using an EPA-approved reference method suitable for producing accurate results considering the conditions of the water being tested.

b. Copies of test results must be retained by the grantee and be provided to the owner and user and to the board of health of the county in which the well is located. Copies of the test results will be provided to the department upon request.

24.7(5) Follow-up. The grantee will be responsible for follow-up and response to requests from the well owner or well user for assistance relative to well test results, the well testing program, and satisfactory well construction and location.

24.7(6) Adopted standards. All counties participating in the program must have adopted standards for private water supplies and private sewage disposal facilities which are at least as stringent as and consistent with the standards adopted by the commission in 567 IAC 49 for nonpublic water wells and 567 IAC 69 for on-site wastewater treatment and disposal systems.

24.7(7) Quarterly reports. All counties participating in the program shall submit quarterly reports to claim expenses incurred under this program on a claim voucher provided by the department.

24.7(8) Workplan. A detailed workplan including, but not limited to, the following:

a. The names and qualifications of personnel responsible for carrying out the program.

b. The name and address of the certified laboratory(ies) which will be providing analytical services.

c. A description of any proposed environmental health and public information programs related to the private well testing, abandoned well, or private well reconstruction programs.

d. Methods to be used by the applicant for selecting private water wells for testing, abandoned private water wells for plugging, or private water wells for reconstruction.

e. The duties to be performed by any subcontractor for any part of the grant.

f. A description of the follow-up activities to be performed by staff in responding to test results.

g. A record-keeping and reporting policy.

h. Methods of notifying participating well owners.

641—24.8(135) Contents of grant application. The application shall include:

24.8(1) The name, address, and telephone number of the chairperson of the county board of health. For applications representing more than one county, the applicant is the chairperson of the county board of health of the lead county responsible for administering the grant.

24.8(2) The name of each county or counties represented in the grant application.

24.8(3) Upon request from the department, a copy of the adopted standards outlined in subrule 24.7(6) for each county represented in the application.

24.8(4) For multicounty applications, signed Iowa Code chapter 28E agreements between each participating county and the applicant.

24.8(5) If applicable, an identification of any subcontractor who will participate in the private water well testing, abandoned private water well plugging program, or private water well reconstruction program, including mailing address and telephone number.

641—24.9(135) Grant application submission.

24.9(1) Application form. Participating counties shall complete an application form provided by the department.

24.9(2) Submission. The department will notify each county board of health at least 60 days prior to the grant application due date. Completed applications must be received by the Iowa Department of Public Health, Division of Environmental Health, 321 E. 12th Street, Des Moines, Iowa 50319, by the close of business on the application due date. Applications not received by the application due date will be considered ineligible to receive funding during the appropriate fiscal year.

641—24.10(135) Multicounty grant applications. Two or more counties may join together to apply for a grant. However, for the purposes of multicounty grant programs, the department will accept only one application from the counties involved. The application shall identify the lead county responsible for administering the grant. For multicounty programs, the department will make one grant to the lead county and not to each individual participating county. However, each county represented in the grant application will receive an equal distribution of dollars.

641—24.11(135) Grant period. Grants will be awarded to successful applicants on an annual basis concurrent with the state fiscal year beginning on July 1 and ending on June 30 of the following calendar year.

641—24.12(135) Record keeping and retention. A grantee shall retain all records and supporting documents related to the administration of the grant for a period of three years. Representatives of the state auditor's office and the department or the department's designee shall have access to all files, accounts and documents pertaining to the grant.

641—24.13(135) Grant amendments. Grant agreements which have been approved may be amended, if funds are available, to increase or decrease the program scope or to increase or decrease the program costs.

641—24.14(135) Termination or forfeiture of grant funds.

24.14(1) The grant will be forfeited if the grant was obtained by fraud or misrepresentation regardless of whether grant moneys have already been given to the grantee. Any grant moneys received or spent shall be repaid to the department.

24.14(2) If the department determines that activities agreed upon in the grant agreement have not been satisfactorily completed, forfeiture of a portion of or the entire grant may result.

24.14(3) The continuation or renewal of a grant shall be contingent upon the county's acceptable performance in carrying out its responsibilities described in the workplan and in

meeting the grant program goals and objectives. All grants will be issued for not more than a period of one year concurrent with a state fiscal year. Applicants must reapply to continue or renew any grant within the specified grant application acceptance period. The department may deny awarding of a grant extension or withdraw a grant if it is determined that the county has not carried out the grant responsibilities.

24.14(4) An applicant may appeal the denial of a properly submitted grant application. Appeals shall be governed by 641 IAC 176.8(135,17A).

These rules are intended to implement Iowa Code sections 455E.11 and 135.11.

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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," Chapter 45, "Radiation Safety Requirements for Industrial Radiographic Operations," and Chapter 46, "Minimum Requirements for Tanning Facilities," Iowa Administrative Code.

The following itemize the proposed changes.

Items 1, 11, 18, 21, 23, and 57 amend the rules to reflect current federal regulations.

Items 2 and 24 amend definitions to meet Nuclear Regulatory Commission (NRC) compatibility requirements.

Item 3 adds requirements for electronic records as new technology.

Items 4 and 10 correct the agency address.

Item 5 increases fees to cover the cost of the inspections.

Items 6 and 7 increase fees to cover the cost of administering the service.

Item 8 removes an incorrect reference.

Item 9 adds new language for highway route controlled quantities to correspond to the definition added in Item 2. It also increases a fee to cover the cost of monitoring the shipments.

Item 12 changes language to meet NRC compatibility requirements for decommissioning.

Items 13 and 15 increase fees required for financial assurance for decommissioning to meet NRC compatibility requirements.

Items 14 and 16 adopt new language for decommissioning to meet NRC compatibility requirements.

Item 17 adds new language for transportation of radioactive material to clarify language and to meet NRC compatibility requirements.

Items 19 and 20 add new language for security and control of certain licensed material to meet NRC compatibility requirements.

Item 22 clarifies the requirements for operators of different types of X-ray equipment.

Item 25 corrects a reference that is rescinded in another item.

Items 26, 27, 28, 29, and 30 correct language for medical use of radioactive material to meet NRC compatibility requirements.

Item 31 clarifies the term "physically present."

Item 32 rescinds subrule 41.2(65) and replaces it with updated language to meet NRC compatibility requirements for a radiation safety officer.

Item 33 rescinds subrule 41.2(66). The content of the rescinded subrule is incorporated into subrule 41.2(75) in Item 42.

Item 34 rescinds subrule 41.2(67) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users for uptake, dilution, and excretion studies.

Item 35 amends language to meet NRC compatibility requirements for training of authorized users for imaging and localization studies.

Item 36 rescinds subrule 41.2(69) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of certain unsealed by-product material.

Item 37 rescinds subrule 41.2(70) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of manual brachytherapy sources.

Item 38 rescinds subrule 41.2(71) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users for ophthalmic use of strontium-90.

Item 39 rescinds subrule 41.2(72) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of sealed sources for diagnosis.

Item 40 rescinds subrule 41.2(73) and replaces it with updated language to meet NRC compatibility requirements for training of authorized users of remote afterloader units, teletherapy units, and gamma stereotactic radiosurgery units.

Item 41 rescinds subrule 41.2(74) and replaces it with updated language to meet NRC compatibility requirements for training of authorized medical physicists.

Item 42 amends language to meet NRC compatibility requirements for experienced radiation safety officers, authorized medical physicists, authorized nuclear pharmacists, authorized users and teletherapy or medical physicists.

Item 43 corrects language by adding a reference.

Item 44 amends language to meet NRC compatibility requirements for authorized nuclear pharmacists.

Item 45 adopts new language to meet NRC compatibility requirements for training for authorized users for oral administration of sodium iodide I-131 in certain quantities.

Items 46, 47, and 48 remove certain mammography continuing education requirements for interpreting physicians because the FDA no longer requires the training.

Items 49 and 50 add requirements for physicians in mammography to be licensed physicians in Iowa. This change is

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to meet FDA and Iowa Board of Medical Examiners requirements.

Item 51 amends definitions by correcting a reference, removing a subject that does not apply and removing definitions that are defined in previous chapters.

Item 52 adds a word to correct a phrase.

Item 53 adds language to require additional training for limited radiographers opting to perform pediatric radiography. This training is not included in the basic training of limited radiographers. The additional training provides competency in pediatric radiography to improve imaging.

Item 54 clarifies dual imaging devices and adopts new language to require training for individuals operating certain dual imaging devices. This change is made in order to address new technology in imaging.

Item 55 corrects a misspelled word.

Item 56 adopts a new requirement for radiologist assistant to have a delegation agreement, similar to licensed physicians, on file at a facility.

Item 58 adds language to meet NRC compatibility requirements.

Item 59 removes language that does not apply to the subrule.

Item 60 removes all references to ethnic groups and leaves only references to skin and eye color. It removes any offensive language to certain groups.

These rules are subject to waiver pursuant to the Department's exemption provision contained 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 28, 2006. Such written materials should be directed to Donald A. Flater, Chief, Bureau of Radiological Health, Iowa Department of Public Health, Lucas State Office Building, 5th Floor, 321 East 12th Street, Des Moines, Iowa 50319; fax (515)281-4529; or E-mail dflater@idph.state.ia.us.

A public hearing will be held on February 28, 2006, at 8:30 a.m. in Conference Room 142, Iowa Department of Public Health, Lucas State Office Building, Des Moines, Iowa, at which time persons may present their views orally or in writing. At the hearing, persons will be asked to give their names and addresses for the record and to confine their remarks to the subject 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.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

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 ~~May 4, 2005~~ *May 3, 2006*.

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

Amend the following definitions:

"Authorized medical physicist" means an individual who meets the requirements of 641—subrule 41.2(74) and 641—subrule 41.2(77)*; or before May 3, 2006, meets the requirements in 10 CFR 35.961(a) or (b) and 10 CFR 35.59;* ~~and~~ *or* is identified as an authorized medical physicist or teletherapy physicist on a specific medical license issued by this agency, the NRC, or an agreement state, a medical use permit issued by the NRC master material licensee, a permit issued by an NRC or agreement state broad scope medical use licensee, a permit issued by an NRC or agreement state broad scope medical use licensee, or a permit issued by an NRC master material license broad scope medical use permittee.

"Type A quantity" means a quantity of radioactive material, the aggregate radioactivity of which does not exceed A_1 for special form radioactive material, or A_2, for normal form radioactive material *as defined in 10 CFR 71.4*.

"Type B quantity" means a quantity of radioactive material greater than a Type A quantity *as defined in 10 CFR 71.4*.

Rescind the definitions for "A_1" and "A_2."

Add the following **new** definitions in alphabetical order:

"Carrier" means a person engaged in the transportation of passengers or property by land or water as a common, contract, or private carrier, or by civil aircraft.

"Consignment" means each shipment of a package or groups of packages or load of radioactive material offered by a shipper for transport.

"Highway route controlled quantity" means a quantity within a single package which exceeds:

1. 3,000 times the A_1 value of the radionuclides as specified in 49 CFR 173.435 for special form Class 7 (radioactive) material;
2. 3,000 times the A_2 value of the radionuclides as specified in 49 CFR 1783.435 for normal form Class 7 (radioactive) material; or
3. 1,000 TBq (27,000 Ci), whichever is least.

"Preceptor" means an individual who provides, directs, or verifies training and experience required for an individual to become an authorized user, an authorized medical physicist, an authorized nuclear pharmacist, or a radiation safety officer.

"Radionuclide" means a radioactive element or a radioactive isotope.

"Radiopharmaceutical" means a substance defined by the Food and Drug Administration as a radioactive drug.

"Site area emergency" means events may occur, are in progress, or have occurred that could lead to a significant release of radioactive material and that could require a response by off-site response organizations to protect persons off site.

"X-radiation" means penetrating electromagnetic radiation with energy greater than 0.1 kV produced by bombarding a metallic target with fast electrons in a high vacuum.

ITEM 3. Amend subrule 38.4(1) as follows:

38.4(1) Records.

a. Each licensee and registrant shall maintain records showing the receipt, transfer, and disposal of all sources of radiation. Additional record requirements are specified elsewhere in these rules.

b. Electronic records.

(1) A record or signature shall not be denied legal effect or enforceability solely because it is in electronic form.

(2) A contract shall not be denied legal effect or enforceability solely because an electronic record was used in its formation.

(3) If a rule requires a record to be in writing, an electronic record shall satisfy the rule.

(4) If a rule requires a signature, an electronic signature shall satisfy the rule.

ITEM 4. Amend subrule 38.7(1) as follows:

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38.7(1) All communications and reports concerning these rules, and applications filed thereunder, should be addressed to the agency at its office located at the Iowa Department of Public Health, Bureau of Radiological Health, ~~401 SW 7th Street, Suite D, Des Moines, Iowa 50309-4611~~ *Lucas State Office Building, 5th Floor, Des Moines, Iowa 50319*.

ITEM 5. Amend subrule **38.8(1)**, paragraph **"b,"** subparagraph (**1**), as follows:

(1) Mammography unit inspections fees:

- ~~$850~~ *$900* for the first unit and, if the facility has additional units at the address of the first unit, a fee of ~~$300~~ *$325* for each additional unit; or
- ~~$850~~ *$900* per portable unit for each site where the unit is off-loaded and used and where the processing and patient films are stored; or
- Dollar amount to be determined and justified by the department on a case-by-case basis for facilities which do not meet the above criteria; or
- ~~$400~~ *$450* for the second facility follow-up visit to review or determine the corrective action taken to address noncompliances~~.~~ *; or*
- ~~$850~~ *$900* for each stereotactic breast biopsy unit.

ITEM 6. Amend subrule **38.8(1)**, paragraph **"d,"** as follows:

d. Each person engaged in providing health physics services in mammography in Iowa, who meets the requirements of 641—paragraph 41.6(3)"c" and is deemed qualified by this agency, must submit a ~~$35~~ *$40* annual listing fee to this agency.

ITEM 7. Amend subrule **38.8(3)**, paragraph **"a,"** as follows:

a. A nonrefundable fee of ~~$125~~ *$150* shall be submitted with each application for taking an industrial radiography examination to become certified by the agency.

ITEM 8. Amend subrule **38.8(8)**, paragraph **"a,"** as follows:

a. Radiation machines. Any out-of-state person who wishes to bring an X-ray machine or linear accelerators into the state to perform work or services shall pay a reciprocity fee of $100 for each source of radiation ~~pursuant to 38.8(7)~~.

ITEM 9. Amend subrule 38.8(11) as follows:

Amend the introductory paragraph:

38.8(11) Radioactive ~~waste~~ *material* transport fee schedule~~, effective July 1, 2002~~.

Amend paragraph **"a,"** subparagraphs (**1**) to (**3**), as follows:

(1) $1800 per highway cask for each truck shipment of spent nuclear fuel, high-level radioactive waste ~~or~~ , transuranic waste, *or highway route controlled quantity of radioactive materials or any material shipped in accordance with 641—subrule 40.54(5)* traversing the state or any portion thereof. Single cask truck shipments are subject to a surcharge of $20 per mile for every mile over 250 miles traveled.

(2) $1300 for the first cask and $125 for each additional cask for each rail shipment of spent nuclear fuel, high-level radioactive waste ~~or~~ , transuranic waste, *or highway route controlled quantity of radioactive materials or any material shipped in accordance with 641—subrule 40.54(5)* traversing the state or any portion thereof.

(3) ~~$125~~ *$175* 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 10. Amend subrule **38.8(11)**, paragraph **"b,"** as follows:

b. All fees must be received by the department prior to shipment. Fees must be in the form of a check or money order made payable to the Iowa Department of Public Health and sent to the Iowa Bureau of Radiological Health, ~~401 SW 7th Street, Suite D~~ *Lucas State Office Building, 5th Floor,* Des Moines, Iowa ~~50309-4611~~ *50319*. Other methods of fee payment may be considered by the department on a case-by-case basis upon request of the shipper. A request for an alternative method of payment must be made to the department prior to shipment.

ITEM 11. Amend subrule 39.1(3) as follows:

39.1(3) All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 4, 2005~~ *May 3, 2006*.

ITEM 12. Amend subrule **39.4(26)**, paragraph **"b,"** as follows:

b. *(1) Each holder of or applicant for a specific license authorizing possession and use of sealed sources or plated foils of half-life greater than 120 days and in quantities exceeding 10^{12} times the applicable quantities set forth in 39.4(26)"d" (or when a combination of isotopes is involved if R, as defined in 39.4(26)"a," divided by 10^{12} is greater than 1) shall submit a decommissioning funding plan as described in 39.4(26)"e."*

(2) Each applicant for a specific license authorizing possession and use of radioactive material of half-life greater than 120 days and in quantities specified in 39.4(26)"d" shall either:

~~(1)~~ *1.* Submit a decommissioning funding plan as described in 39.4(26)"e"; or

~~(2)~~ *2.* Submit a certification that financial assurance for decommissioning has been provided in the amount prescribed by 39.4(26)"d" using one of the methods described in 39.4(26)"f." For an applicant, this certification may state that the appropriate assurance will be obtained after the application has been approved and the license issued but prior to the receipt of licensed material. *If the applicant defers execution of the financial instrument until after the license has been issued, a signed original of the financial instrument obtained to satisfy the requirements of 39.4(26)"f" must be submitted before receipt of licensed material. If the applicant does not defer execution of the financial instrument, the applicant shall submit,* ~~As~~ *as* part of the certification, a ~~copy~~ *signed original* of the financial instrument obtained to satisfy the requirements of 39.4(26)"f." ~~is submitted to the agency.~~

ITEM 13. Amend subrule **39.4(26)**, paragraph **"c,"** subparagraph (**2**), as follows:

(2) Each holder of a specific license issued before July 1, 1993, and of a type described in 39.4(26)"a," shall submit, on or before ~~July 1, 1993~~ *January 1, 2007,* a decommissioning funding plan or a certification of financial assurance for decommissioning in an amount at least equal to ~~$750,000~~ *$1,125,000* in accordance with the criteria set forth in this subrule. If the licensee submits the certification of financial assurance rather than a decommissioning funding plan at this

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time, the licensee shall include a decommissioning funding plan in any application for license renewal.

ITEM 14. Amend subrule **39.4(26)**, paragraph **"c,"** by adopting **new** subparagraphs (**4**) and (**5**) as follows:

(4) Any licensee who submitted an application before July 1, 2003, for renewal of license shall provide financial assurance for decommissioning in accordance with 39.4(26)"a" and "b."

(5) Waste collectors and waste processors must provide financial assurance in an amount based on a decommissioning funding plan as described in 39.4(26)"e." The decommissioning funding plan must include the cost of disposal of the maximum amount (curies) of radioactive material permitted by license, and the cost of disposal of the maximum quantity, by volume, of radioactive material which could be present at the licensee's facility at any time, in addition to the cost to remediate the licensee's site to meet the license termination criteria of 641—Chapters 39 and 40.

ITEM 15. Amend subrule **39.4(26)**, paragraph **"d,"** as follows:

d. Table of required amounts of financial assurance for decommissioning by quantity of material.

Greater than 10^4 but less than or equal to 10^5 times the applicable quantities of Appendix F of 641—Chapter 40 in unsealed form. (For a combination of isotopes, if R, as defined in 39.4(26)"a," divided by 10^4 is greater than 1, but R divided by 10^5 is less than or equal to 1.)	~~750,000~~ *1,125,000*
Greater than 10^3 but less than or equal to 10^4 times the applicable quantities of Appendix F of 641—Chapter 40 in unsealed form. (For a combination of isotopes, if R, as defined in 39.4(26)"a," divided by 10^3 is greater than 1, but R divided by 10^4 is less than or equal to 1.)	~~150,000~~ *225,000*
Greater than 10^{10} *but less than or equal to 10^{12}* times the applicable quantities of Appendix F or 641—Chapter 40 in sealed sources or plated foils. (For a combination of isotopes, if R, as defined in 39.4(26)"a," divided by 10^{10} is greater than 1, *but R divided by 10^{12} is less than or equal to 1.*)	~~75,000~~ *113,000*

Licensees having possession limits exceeding the upper bounds of this table must base financial assurance on a decommissioning funding plan.

ITEM 16. Amend subrule **39.4(26)**, paragraph **"e,"** as follows:

e. Each decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method of assuring funds for decommissioning from 39.4(26)"f," including means of adjusting cost estimates and associated funding levels periodically over the life of the facility. *Cost estimates must be adjusted at intervals not to exceed three years.* The decommissioning funding plan must also contain a certification by the licensee that financial assurance for decommissioning has been provided in the amount of the cost estimate and a signed original of the financial instrument obtained to satisfy the requirements of 39.4(26)"f."

ITEM 17. Amend rule 641—39.5(136C) as follows:

641—39.5(136C) Transportation of radioactive material. All persons who transport radioactive material or deliver radioactive material to a carrier for transport must comply with the applicable provisions contained in 10 CFR Part 71 and 49 CFR Parts 170 through 189. *The regulations in 10 CFR Part 71 apply to any licensee authorized by specific or general license to receive, possess, use, or transfer licensed material, if the licensee delivers that material to a carrier for transport, transports the material outside the site of usage, or transports that material on public highways. No provision of 10 CFR Part 71 authorizes possession of licensed material.*

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 ~~May 4, 2005~~ *May 3, 2006*.

ITEM 19. Adopt **new** rule 641—40.54(136C) as follows:

641—40.54(136C) Security and control of licensed radioactive material in quantities of concern.

40.54(1) The following increased controls apply to licensees that, at any given time, possess radioactive sources greater than or equal to the quantities of concern of radioactive material defined in Appendix G.

40.54(2) In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall control access at all times to radioactive material quantities of concern and devices containing such radioactive material (devices), and limit access to such radioactive material and devices to only approved individuals who require access to perform their duties.

a. The licensee shall allow only trustworthy and reliable individuals, approved in writing by the licensee, to have unescorted access to radioactive material quantities of concern and devices. The licensee shall approve for unescorted access only those individuals with job duties that require access to such radioactive material and devices. Personnel who require access to such radioactive material and devices to perform a job duty, but who are not approved by the licensee for unescorted access, must be escorted by an approved individual.

b. For individuals employed by the licensee for three years or less, and for nonlicensee personnel, such as physicians, physicists, housekeeping personnel, and security personnel under contract, trustworthiness and reliability shall be determined, at a minimum, by verifying employment history, education, and personal references. The licensee shall also, to the extent possible, obtain independent information to corroborate that information provided by the employee (i.e., seek references not supplied by the individual). For individuals employed by the licensee for longer than three years, trustworthiness and reliability shall be determined, at a minimum, by a review of the employees' employment history with the licensee.

c. Service providers shall be escorted unless determined to be trustworthy and reliable by an NRC-required background investigation as an employee of a manufacturing and distribution (M&D) licensee. Written verification attesting to or certifying the person's trustworthiness and reliability shall be obtained from the manufacturing and distribution licensee providing the service.

d. The licensee shall document the basis for concluding that there is reasonable assurance that an individual granted unescorted access is trustworthy and reliable, and does not constitute an unreasonable risk for unauthorized use of radio-

active material quantities of concern. The licensee shall maintain a list of persons approved by the licensee for unescorted access to such radioactive material and devices.

40.54(3) In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee shall have a documented program to monitor and immediately detect, assess, and respond to unauthorized access to radioactive material quantities of concern and devices. Enhanced monitoring shall be provided during periods of source delivery or shipment, when the delivery or shipment exceeds 100 times the Appendix G values.

a. The licensee shall respond immediately to any actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices. The response shall include requesting assistance from a local law enforcement agency (LLEA).

b. The licensee shall have a prearranged plan with the LLEA for assistance in response to an actual or attempted theft, sabotage, or diversion of such radioactive material or of the devices which is consistent in scope and timing with realistic potential vulnerability of the sources containing such radioactive material. The prearranged plan shall be updated when changes to the facility design or operation affect the potential vulnerability of the sources. Prearranged LLEA coordination is not required for temporary job sites.

c. The licensee shall have a dependable means to transmit information between and among the various components used to detect and identify an unauthorized intrusion, to inform the assessor, and to summon the appropriate responder.

d. After initiating an appropriate response to any actual or attempted theft, sabotage, or diversion of radioactive material or of the devices, the licensee shall, as promptly as possible, notify the bureau of radiological health at (515)281-3478 during normal working hours of 7:30 a.m. to 4:30 p.m., Monday through Friday. After hours and on holidays, the licensee shall call (515)323-4360 and request the homeland security and emergency management duty officer.

e. The licensee shall maintain documentation describing each instance of unauthorized access and any necessary corrective actions to prevent future instances of unauthorized access.

40.54(4) In order to ensure the safe handling, use, and control of licensed material in transportation for domestic highway and rail shipments by a carrier other than the licensee for quantities that equal or exceed those in Appendix G but are less than 100 times Appendix G quantities, per consignment, the licensee shall:

a. Use carriers that:

(1) Use package tracking systems;

(2) Implement methods to ensure trustworthiness and reliability of drivers;

(3) Maintain either constant control or surveillance during transit;

(4) Have the capability for immediate communication to summon appropriate response or assistance;

b. Verify and document that the carrier employs the measures listed in paragraph "a";

c. Contact the recipient to coordinate the expected arrival time of the shipment;

d. Confirm receipt of the shipment; and

e. Initiate an investigation to determine the location of the licensed material if the shipment does not arrive on or about the expected arrival time. When, through the course of the investigation, it is determined that the shipment has become lost, stolen, or missing, the licensee shall immediately notify the bureau of radiological health at (515)281-3478 during normal working hours of 7:30 a.m. to 4:30 p.m., Monday through Friday. After hours and on holidays, the licensee shall call (515)323-4360 and request the homeland security and emergency management duty officer. If, after 24 hours of investigating, the location of the material still cannot be determined, the radioactive material shall be deemed missing and the licensee shall immediately notify the bureau of radiological health.

40.54(5) For domestic highway and rail shipments, prior to shipping licensed radioactive material that exceeds 100 times the quantities in Appendix G per consignment, the licensee shall:

a. Notify the NRC (Director, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555) in writing, at least 90 days prior to the anticipated date of shipment. The NRC will issue the Order to implement the Additional Security Measures (ASMs) for the transportation of Radioactive Material Quantities of Concern (RAM QC). The licensee shall not ship the material until the ASMs for the transportation of RAM QC are implemented or the licensee is notified otherwise, in writing, by the NRC.

b. Once the licensee has implemented the ASMs for the transportation of RAM QC, the notification requirements of 40.54(5)"a" shall not apply to future shipments of licensed radioactive material that exceed 100 times the Appendix G quantities. The licensee shall implement the ASMs for the transportation of RAM QC.

40.54(6) If a licensee employs an M&D licensee to take possession of the licensed radioactive material and ship it under the M&D licensee's M&D license, the requirements of 40.54(4) and 40.54(5) above shall not apply.

40.54(7) If the licensee is to receive radioactive material greater than or equal to the Appendix G quantities, per consignment, the licensee shall coordinate with the originating licensee to:

a. Establish an expected time of delivery; and

b. Confirm receipt of transferred radioactive material. If the material is not received at the expected time of delivery, notify the originating licensee and assist in any investigation.

40.54(8) In order to ensure the safe handling, use, and control of licensed material in use and in storage, each licensee that possesses mobile or portable devices containing radioactive material in quantities greater than or equal to Appendix G values shall:

a. For portable devices, have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

b. For mobile devices:

(1) That are only moved outside of the facility (e.g., on a trailer), have two independent physical controls that form tangible barriers to secure the material from unauthorized removal when the device is not under direct control and constant surveillance by the licensee.

(2) That are only moved inside a facility, have a physical control that forms a tangible barrier to secure the material from unauthorized movement or removal when the device is not under direct control and constant surveillance by the licensee.

c. For devices in or on a vehicle or trailer, have a method to disable the vehicle or trailer when not under direct control and constant surveillance by the licensee.

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40.54(9) The licensee shall retain documentation required by the increased controls for three years after the increased controls are no longer effective.

a. The licensee shall retain documentation regarding the trustworthiness and reliability of individual employees for three years after an individual's employment ends.

b. Each time the licensee revises the list of approved persons required by 40.54(2)"d," or the documented program required by 40.54(3), the licensee shall retain the previous documentation for three years after the revision.

c. The licensee shall retain documentation on each radioactive material carrier for three years after the licensee discontinues use of that particular carrier.

d. The licensee shall retain documentation on shipment coordination, notifications, and investigations for three years after the shipment or investigation is completed.

e. After the license is terminated or amended to reduce possession limits below the quantities of concern, the licensee shall retain all documentation required by these increased controls for three years.

40.54(10) Detailed information generated by the licensee that describes the physical protection of radioactive material quantities of concern is sensitive information and shall be protected from unauthorized disclosure.

a. The licensee shall control access to its physical protection information to those persons who have an established need to know the information and are considered to be trustworthy and reliable.

b. The licensee shall develop, maintain, and implement policies and procedures for controlling access to, and for proper handling and protection against unauthorized disclosure of, its physical protection information for radioactive material covered by these requirements. The policies and procedures shall include the following:

(1) General performance requirement that each person who produces, receives, or acquires the licensee's sensitive information protect the information from unauthorized disclosure;

(2) Protection of sensitive information during use, storage, and transit;

(3) Preparation, identification or marking, and transmission;

(4) Access controls;

(5) Destruction of documents;

(6) Use of automatic data processing systems; and

(7) Removal from the licensee's sensitive information category.

ITEM 20. Adopt **new 641—Chapter 40**, **Appendix G**, as follows:

APPENDIX G
RADIONUCLIDES OF CONCERN

Radionuclide	Quantity of Concern[1] (TBq)	Quantity of Concern[2] (Ci)
Am-241	0.6	16
Am-241/Be	0.6	16
Cf-252	0.2	5.4
Cm-244	0.5	14
Co-60	0.3	8.1
Cs-137	1	27
Gd-153	10	270
Ir-192	0.8	22
Pm-147	400	11,000
Pu-238	0.6	16
Pu-239/Be	0.6	16
Ra-226	0.4	11
Se-75	2	54
Sr-90 (Y-90)	10	270
Tm-170	200	5,400
Yb-169	3	81
Combinations of radioactive materials listed above[3]	See footnote below[4]	

[1] The aggregate activity of multiple, collocated sources of the same radionuclide should be included when the total activity equals or exceeds the quantity of concern.

[2] The primary values used for compliance with this Order are TBq. The curie (Ci) values are rounded to two significant figures for informational purposes only.

[3] Radioactive materials are to be considered aggregated or collocated if breaching a common physical security barrier (e.g., a locked door at the entrance to a storage room) would allow access to the radioactive material or devices containing the radioactive material.

[4] If several radionuclides are aggregated, the sum of the ratios of the activity of each source, *i* of radionuclide, *n*, $A_{(i,n)}$, to the quantity of concern for radionuclide *n*, $Q_{(n)}$, listed for that radionuclide equals or exceeds one. [(aggregated source activity for radionuclide A) ÷ (quantity of concern for radionuclide A)] + [(aggregated source activity for radionuclide B) ÷ (quantity of concern for radionuclide B)] + etc. . . . . ≥1

Use the following method to determine which sources of radioactive material require increased controls (ICs):

- Include any single source equal to or greater than the quantity of concern in Appendix G.
- Include multiple collocated sources of the same radionuclide when the combined quantity equals or exceeds the quantity of concern.
- For combinations of radionuclides, include multiple collocated sources of different radionuclides when the aggregate quantities satisfy the following unity rule: [(amount of radionuclide A) ÷ (quantity of concern of radionuclide A)] + [(amount of radionuclide B) ÷ (quantity of concern of radionuclide B)] + etc. . . . . ≥ 1

Guidance for Aggregation of Sources

NRC supports the use of the IAEA's source categorization methodology as defined in TECDOC-1344, "Categorization of Radioactive Sources," (July 2003) (see http://www-pub.iaea.org/MTCD/publications/PDF/te_1344_web.pdf) and as endorsed by the agency's Code of Conduct for the Safety and Security of Radioactive Sources, January 2004 (see http://www-pub.iaea.org/MTCD/publications/PDF/Code-2004.pdf). The Code defines a three-tiered source categorization scheme. Category 1 corresponds to the largest source strength (equal to or greater than 100 times the quantity of concern values listed in the Table in Appendix G) and Category 3 corresponds to the smallest (equal to or exceeding one-tenth the quantity of concern values listed in the Table in Appendix G). Increased controls apply to sources that are equal to or greater than the quantity of concern values listed in the Table in Appendix G, plus aggregations of smaller

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sources that are equal to or greater than the quantities in the Table in Appendix G. Aggregation only applies to sources that are collocated.

Licensees that possess sources in total quantities that equal or exceed the Table in Appendix G quantities are required to implement increased controls. Where there are many small (less than the quantity of concern values) collocated sources whose total aggregate activity equals or exceeds the Table in Appendix G values, licensees are to implement increased controls.

Some source handling or storage activities may cover several buildings or several locations within specific buildings. The question then becomes: When are sources considered collocated for purposes of aggregation? For purposes of the additional controls, sources are considered collocated if breaching a single barrier (e.g., a locked door at the entrance to a storage room) would allow access to the sources. Sources behind an outer barrier should be aggregated separately from those behind an inner barrier (e.g., a locked source safe inside the locked storage room). However, if both barriers are simultaneously open, then all sources within these two barriers are considered to be collocated. This logic should be continued for other barriers within or behind the inner barrier.

The following example illustrates the point: A lockable room has sources stored in it. Inside the lockable room, there are two shielded safes with additional sources in them. Inventories are as follows:

The room has the following sources outside the safes: Cf-252, 0.12 TBq (3.2 Ci); Co-60, 0.18 TBq (4.9 Ci); and Pu-238, 0.3 TBq (8.1 Ci). Application of the unity rule yields: $(0.12 \div 0.2) + (0.18 \div 0.3) + (0.3 \div 0.6) = 0.6 + 0.6 + 0.5 = 1.5$. Therefore, the sources would require increased controls.

Shielded safe #1 has a 1.9 TBq (51 Ci) Cs-137 source and a 0.8 TBq (22 Ci) Am-241 source. In this case, the sources would require increased controls, regardless of location, because they each exceed the quantities in the Table in Appendix G.

Shielded safe #2 has two Ir-192 sources, each having an activity of 0.3 TBq (8.1 Ci). In this case, the sources would not require increased controls while locked in the safe. The combined activity does not exceed the threshold quantity 0.8 TBq (22 Ci).

Because certain barriers may cease to exist during source handling operations (e.g., a storage location may be unlocked during periods of active source usage), licensees should, to the extent practicable, consider two modes of source usage —"operations" (active source usage) and "shutdown" (source storage mode). Whichever mode results in the greatest inventory (considering barrier status) would require increased controls for each location.

ITEM 21. Amend subrule **41.1(1)**, paragraph **"b,"** as follows:

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of ~~May 4, 2005~~ *May 3, 2006*.

ITEM 22. Amend subrule **41.1(3)**, paragraph **"a,"** subparagraph (**2**), as follows:

(2) Individuals who will be operating the X-ray systems shall be adequately instructed in safe operating procedures and be competent in the safe use of the equipment. *In addition:*

1. Operators in medical facilities shall meet the requirements of ~~in accordance with~~ 641—Chapter 42 as applicable. The individual's permit to practice shall be posted in the immediate vicinity of the general work area and visible to the public.

2. Operators in dental facilities shall meet the requirements of the Iowa dental examiners board.

ITEM 23. 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 ~~May 5, 2004~~ *May 3, 2006*.

ITEM 24. Amend subrule **41.2(2)** as follows:

Amend the following definitions:

"Authorized nuclear pharmacist" means a pharmacist who ~~has~~ *:*

a. Has met the appropriate requirements of 41.2(77) and 41.2(78), *or before May 3, 2006, meets the requirements in 10 CFR 35.980(a) and 10 CFR 35.59;* ~~and who:~~ *or*

~~a. Is practicing nuclear pharmacy as authorized by a current Iowa radioactive materials license; or~~

b. Is identified as an authorized nuclear pharmacist on:

1. A specific license issued by the *agency,* NRC or agreement state that authorizes medical use or the practice of nuclear pharmacy;

2. A permit issued by an NRC master material licensee that authorizes medical use or the practice of nuclear pharmacy;

3. A permit issued by the NRC or agreement state broad scope medical use licensee that authorizes medical use or the practice of nuclear pharmacy; or

4. A permit issued by an NRC master material license broad scope medical use permittee that authorizes medical use or the practice of nuclear pharmacy; or

c. Is identified as an authorized nuclear pharmacist by a commercial nuclear pharmacy that has been authorized to identify authorized nuclear pharmacists; or

d. Is designated as an authorized nuclear pharmacist in accordance with 641—39.4(29)"j"(2)"3."

"Authorized user" means a physician, dentist, or podiatrist who has met the appropriate requirements of 41.2(67)*"a,"* 41.2(68)*"a," 41.2(69)"a,"* 41.2(70)*"a,"* ~~41.2(71),~~ 41.2(72)*"a,"* ~~or~~ 41.2(73)*"a," 41.2(81)"a," or 41.2(82)"a," or before May 3, 2006, meets the requirements in 10 CFR 35.910(a), 35.920(a), 35.930(c), 35.940(a), 35.950(a), or 35.960(a) and 10 CFR 35.59;* ~~and~~ *or* who is identified on:

1. A current Iowa, NRC, or agreement state license that authorizes the medical use of radioactive material;

2. A permit issued by an NRC master material licensee that is authorized to permit the medical use of radioactive material;

3. A permit issued by an NRC, agreement state, or Iowa-specific licensee of broad scope that is authorized to permit medical use of radioactive material; or

4. A permit issued by an NRC master material license broad scope permittee that is authorized to permit medical use of radioactive material.

"Radiation safety officer" means an individual who, in addition to the definition in 641—38.2(136C), meets the requirements of *41.2(77) and* 41.2(65)*"a,"* ~~41.2(66) and 41.2(77) and~~ *or 41.2(65)"c"(1), or before May 3, 2006, meets the requirements in 10 CFR 35.900(a) and 10 CFR 35.59; or* is identified as a radiation safety officer on a specific medical use license issued by Iowa, the NRC, or agreement state or a medical use permit issued by an NRC master material licensee.

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ITEM 25. Amend subrule **41.2(10)**, paragraph **"c,"** as follows:

c. For up to 60 days each year, a licensee may permit an authorized user or an individual qualified to be a radiation safety officer under 41.2(65) or ~~41.2(66)~~ *41.2(75)* to function as a temporary radiation safety officer to perform the functions of radiation safety officer, as provided in 41.2(10)"g," if the licensee takes the actions required in 41.2(10)"b," "e," "g," and "h" and notifies this agency in accordance with 41.2(5).

ITEM 26. Amend subrule **41.2(11)**, paragraph **"a,"** introductory paragraph and subparagraph (**1**), as follows:

a. A licensee ~~who~~ *that* permits the receipt, possession, use, or transfer of radioactive material by an individual under the supervision of an authorized user as allowed by 41.2(3) shall, *in addition to the requirements in 641—40.111(136C)*:

(1) Instruct the supervised individual in the ~~principles of radiation safety~~ *licensee's written radiation protection procedures*, written directive procedures, rules of this chapter, and license conditions appropriate to that individual's use of radioactive material;

ITEM 27. Amend subrule **41.2(11)**, paragraph **"b,"** subparagraphs (**1**) and (**2**), as follows:

(1) Follow the instructions of the supervising authorized user *for the medical uses of by-product material*;

(2) Follow the *written radiation protection and written directive* procedures established by the radiation safety officer; and

ITEM 28. Amend subrule **41.2(11)**, paragraph **"c,"** introductory paragraph and subparagraph (**2**), as follows:

c. A licensee that permits the preparation of radioactive material for medical use by an individual under the supervision of an authorized nuclear pharmacist or physician who is an authorized user, as allowed by 41.2(3)"c," shall, *in addition to the requirements in 641—40.111(136C)*:

(2) Require the supervised individual to follow the instructions ~~given pursuant to 41.2(11)"c" and to comply with~~ *of the supervising authorized user or authorized nuclear pharmacist regarding the preparation of by-product material for medical use, written radiation protection procedures established by the licensee,* the regulations of this chapter and license conditions; and

ITEM 29. Amend subrule **41.2(27)**, paragraph **"a,"** as follows:

a. The licensee may authorize the release from its control of any individual who has been administered radiopharmaceuticals or permanent implants containing radioactive material if the total effective dose equivalent to any other individual from exposure to the released individual is not likely to exceed 0.5 rem (5 mSv). *(NUREG-1556, Vol. 9, "Consolidated Guidance About Materials Licenses: Program-Specific Guidance About Medical Licenses," describes methods for calculating doses to other individuals and contains tables of activities not likely to cause doses exceeding 0.5 rem (5 mSv)).*

ITEM 30. Amend subrule 41.2(31), introductory paragraph and paragraph **"b,"** as follows:

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

b. Prepared by*:*

(1) An ~~an~~ authorized nuclear pharmacist,

(2) A ~~a~~ physician who is an authorized user and who meets the requirements specified in ~~41.2(67),~~ *41.2(68)* or *41.2(69) and has work experience in eluting generator systems appropriate for preparation of radioactive drugs for imaging and localization studies, measuring and testing the eluate for radionuclidic purity, and processing the eluate with reagent kits to prepare labeled radioactive drugs; or before May 3, 2006, who meets the requirements in 10 CFR 35.920; or*

(3) An ~~an~~ individual under the supervision ~~of either as specified in 41.2(11)~~*, as specified in 41.2(11), of the authorized nuclear pharmacist in 41.2(31)"b"(1) or the physician who is an authorized user in 41.2(31)"b"(2)*; or

ITEM 31. Amend subrule **41.2(53)**, paragraph **"f,"** subparagraph (**3**), as follows:

(3) For gamma stereotactic radiosurgery units, require an authorized user and an authorized medical physicist *to* be physically present throughout all patient treatments involving the unit. *As used in this subparagraph, "physically present" means to be within hearing distance of normal voice.*

ITEM 32. Rescind subrule 41.2(65) and adopt the following **new** subrule in lieu thereof:

41.2(65) Training for radiation safety officer. Except as provided in 41.2(66), the licensee shall require an individual fulfilling the responsibilities of the radiation safety officer as provided in 41.2(8) to be an individual who:

a. Is certified by a specialty board whose certification process has been recognized by this agency, NRC, or an agreement state and who meets the requirements in 41.2(65)"d" and "e." (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall:

(1) Require all candidates for certification to:

1. Hold a bachelor's or graduate degree from an accredited college or university in physical science or engineering or biological science with a minimum of 20 college credits in physical science;

2. Have five or more years of professional experience in health physics (graduate training may be substituted for no more than two years of the required experience) including at least three years in applied health physics; and

3. Pass an examination administered by diplomats of the specialty board, which evaluates knowledge and competence in radiation physics and instrumentation, radiation protection, mathematics pertaining to the use and measurement of radioactivity, radiation biology, and radiation dosimetry; or

(2) Require all candidates for certification to:

1. Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

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

3. Pass an examination administered by diplomats of the specialty board that assesses knowledge and competence in clinical diagnostic radiological or nuclear medicine physics and in radiation safety; or

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b. Has completed a structured educational program consisting of both:

(1) 200 hours of classroom and laboratory training in the following areas:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Radiation biology; and
5. Radiation dosimetry; and

(2) One year of full-time radiation safety experience under the supervision of the individual identified as the radiation safety officer on an agency, NRC, or agreement state license or permit issued by the NRC master material licensee that authorizes similar types of use of radioactive material involving the following:

1. Shipping, receiving, and performing related radiation surveys;
2. Using and performing checks for proper operation of instruments used to determine the activity of dosages, survey meters, and instruments used to measure radionuclides;
3. Securing and controlling radioactive material;
4. Using administrative controls to avoid mistakes in the administration of radioactive material;
5. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures;
6. Using emergency procedures to control radioactive material; and
7. Disposing of radioactive material; or

c. (1) Is a medical physicist who has been certified by a specialty board whose certification process has been recognized by the agency, NRC, or an agreement state under 41.2(74) and has experience in radiation safety for similar types of use of radioactive material for which the licensee is seeking the approval of the individual as a radiation safety officer and who meets the requirements in 41.2(65)"d" and "e"; or

(2) Is an authorized user, authorized medical physicist, or authorized nuclear pharmacist identified on the licensee's license and has experience with the radiation safety aspects of similar types of use of radioactive material for which the individual has radiation safety officer responsibilities; and

d. Has obtained written attestation, signed by a preceptor radiation safety officer, that the individual has satisfactorily completed the requirements in 41.2(65)"e" and 41.2(65)"a"(1)"1" and "2" or 41.2(65)"a"(2)"1" and "2" or 41.2(65)"b"(1) or 41.2(65)"c"(1), and has achieved a level of radiation safety knowledge sufficient to function independently as a radiation safety officer for a medical use licensee; and

e. Has training in the radiation safety, regulatory issues, and emergency procedures for the types of use for which the licensee is seeking approval. This training requirement may be satisfied by completing training that is supervised by a radiation safety officer, authorized medical physicist, authorized nuclear pharmacist, or authorized user, as appropriate, who is authorized for the type of use for which the licensee is seeking approval.

ITEM 33. Rescind and reserve subrule **41.2(66)**.

ITEM 34. Rescind subrule 41.2(67) and adopt the following **new** subrule in lieu thereof:

41.2(67) Training for uptake, dilution, and excretion studies. Except as provided in 41.2(75), the licensee shall require an authorized user of unsealed by-product material for the uses authorized under 41.2(31) to be a physician who:

a. Is certified by a medical specialty board whose certification process has been recognized by the agency, NRC, or an agreement state and who meets the requirements in 41.2(67)"c." (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Complete 60 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed by-product material for uptake, dilution, and excretion studies, which include the topics listed in 41.2(67)"c"(1)"1" and "2"; and

(2) Pass an examination administered by diplomats of the specialty board that assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

b. Is an authorized user under 41.2(68) or 41.2(69), or before May 3, 2006, meets the requirements in 10 CFR 35.910, 35.920, or 35.930, or meets equivalent agreement state requirements; or

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

1. Classroom and laboratory training in radiation physics and instrumentation; radiation protection; mathematics pertaining to the use and measurement of radioactivity, chemistry of by-product material for medical use, and radiation biology; and
2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(67), 41.2(68), or 41.2(69), or before May 3, 2006, the requirements in 10 CFR 35.910, 35.920, or 35.930, or equivalent agreement state requirements, involving:

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

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(67), 41.2(68), or 41.2(69), or before May 3, 2006, the requirements in 10 CFR 35.910, 35.920, or 35.930, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(67)"a"(1) or 41.2(67)"c"(1) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized in 41.2(31).

ITEM 35. Amend subrule 41.2(68) as follows:

41.2(68) Training for imaging and localization studies. Except as provided in 41.2(76), the licensee shall require the authorized user of ~~a radiopharmaceutical, generator, or re-~~

~~agent kit~~ *unsealed by-product material* specified in 41.2(33) to be a physician who:

~~a. Is certified in:~~

~~(1) Nuclear medicine by the American Board of Nuclear Medicine;~~

~~(2) Diagnostic radiology by the American Board of Radiology;~~

~~(3) Diagnostic radiology or radiology within the previous five years by the American Osteopathic Board of Radiology; or~~

~~(4) Nuclear medicine by the American Osteopathic Board of Nuclear Medicine; or~~

~~(5) Nuclear medicine by the Royal College of Physicians and Surgeons of Canada; or~~

a. Is certified by a medical specialty board whose certification process has been recognized by the agency, NRC, or an agreement state and who meets the requirements in 41.2(68)"c." (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Complete 700 hours of training and experience in basic radionuclide handling techniques and radiation safety applicable to the medical use of unsealed by-product material for uptake, dilution, and excretion studies that include the topics listed in 41.2(68)"c"(1)"1" and "2"; and

(2) Pass an examination administered by diplomats of the specialty board, which assesses knowledge and competence in radiation safety, radionuclide handling, and quality control; or

b. Is an authorized user under 41.2(69) and meets the requirements in 41.2(68)"c"(1)"2," seventh bulleted paragraph, or before May 3, 2006, the requirements in 10 CFR 35.920, or equivalent agreement state requirements; or

~~b. Has completed 200 hours of instruction in basic radionuclide handling techniques applicable to the use of prepared radiopharmaceuticals, generators, and reagent kits, 500 hours of supervised work experience, and 500 hours of supervised clinical experience.~~

~~(1) To satisfy the basic instruction requirement, 200 hours of classroom and laboratory training shall include:~~

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

1. Classroom and laboratory training in the following areas:

~~1.~~ • Radiation physics and instrumentation;

~~2.~~ • Radiation protection;

~~3.~~ • Mathematics pertaining to the use and measurement of radioactivity;

~~4.~~ • ~~Radiopharmaceutical chemistry~~ *Chemistry of by-product material for medical use*; ~~and~~

~~5.~~ • Radiation biology~~.~~*; and*

~~(2) To satisfy the requirement for 500 hours of supervised work experience, training shall be under the supervision of an authorized user at a medical institution and shall include:~~

2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(68) or 41.2(68)"c"(1)"2," seventh bulleted paragraph, and 41.2(69), or before May 3, 2006, the requirements in 10 CFR 35.920, or equivalent agreement state requirements, involving:

~~1.~~ • Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;

~~2.~~ • ~~Calibrating dose calibrators and diagnostic instruments~~ *Performing quality control procedures on instruments used to determine the activity of dosages* and performing checks for proper operation of survey meters;

~~3.~~ • Calculating, *measuring,* and safely preparing patient or human research subject dosages;

~~4.~~ • Using administrative controls to prevent ~~the misadministration of radioactive material~~ *a medical event involving the use of unsealed by-product material*;

~~5.~~ • Using ~~emergency~~ procedures to contain spilled radioactive material safely and using proper decontamination procedures; ~~and~~

• *Administering dosages of radioactive drugs to patients or human research subjects; and*

~~6.~~ • Eluting ~~technetium-99m from~~ generator systems~~, assaying~~ *appropriate for preparation of radioactive drugs for imaging and localization studies, measuring* and testing the eluate for ~~molybdenum-99 and alumina contamination~~ *radionuclidic purity,* and processing the eluate with reagent kits to prepare ~~technetium-99m labeled radiopharmaceuticals~~ *labeled radioactive drugs; and*

~~(3) To satisfy the requirement for 500 hours of supervised clinical experience, training shall be under the supervision of an authorized user at a medical institution and shall include:~~

~~1. Examining patients or human research subjects and reviewing their case histories to determine their suitability for radionuclide diagnosis, limitations, or contraindications;~~

~~2. Selecting the suitable radiopharmaceuticals and calculating and measuring the dosages;~~

~~3. Administering dosages to patients or human research subjects and using syringe radiation shields;~~

~~4. Collaborating with the authorized user in the interpretation of radionuclide test results; and~~

~~5. Patient or human research subject follow-up; or~~

~~c. Has successfully completed a six-month training program in nuclear medicine that has been approved by the Accreditation Council for Graduate Medical Education and that included classroom and laboratory training, work experience, and supervised clinical experience in all the topics identified in 41.2(68)"b";~~

(2) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(68) or 41.2(69) and 41.2(68)"c"(1)"2," seventh bulleted paragraph, or before May 3, 2006, the requirements in 10 CFR 35.920, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(68)"a"(1) or 41.2(68)"c"(1) and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under 41.2(31) and 41.2(33).

d. Be identified on a current agreement state or NRC license as an authorized user for those uses listed in 41.2(33).

ITEM 36. Rescind subrule 41.2(69) and adopt the following **new** subrule in lieu thereof:

41.2(69) Training for use of unsealed by-product material for which a written directive is required. Except as provided in 41.2(75), the licensee shall require an authorized user of unsealed by-product material for the uses authorized under 41.2(37) to be a physician who:

a. Is certified by a medical specialty board whose certification process has been recognized by the agency, NRC, or an agreement state and who meets the requirements in 41.2(69)"b"(1)"2," seventh bulleted paragraph, and 41.2(69)"b"(2). (The names of the specialty boards that have

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been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.) To be recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete residency training in a radiation therapy or nuclear medicine training program or a program in a related medical specialty. These residency training programs must include 700 hours of training and experience as described in 41.2(69)"b"(1)"1" through 41.2(69)"b"(1)"2," fifth bulleted paragraph. Eligible training programs must be approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education, the Royal College of Physicians and Surgeons of Canada, or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, quality assurance, and clinical use of unsealed by-product material for which a written directive is required; or

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

1. Classroom and laboratory training in the following areas:

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity;
- Chemistry of by-product material for medical use; and
- Radiation biology; and

2. Work experience, under the supervision of an authorized user who meets the requirements in 41.2(69), or before May 3, 2006, the requirements in 10 CFR 35.930, or equivalent agreement state requirements. A supervising authorized user who meets the requirements in 41.2(69)"b," or before May 3, 2006, meets the requirements in 10 CFR 35.930(b) must also have experience in administering dosages in the same dosage category or categories (i.e., 41.2(69)"b"(1)"2," seventh bulleted paragraph) as the individual requesting authorized user status. The work experience must involve:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
- Calculating, measuring, and safely preparing patient or human research subject dosages;
- Using administrative controls to prevent a medical event involving the use of unsealed by-product material;
- Using procedures to contain spilled by-product material safely and using proper decontamination procedures;
- Reserved.
- Administering dosages of radioactive drugs to patients or human research subjects involving a minimum of three cases in each of the following categories for which the individual is requesting authorized user status:

− Oral administration of less than or equal to 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131, for which a written directive is required;

− Oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131 (experience with at least three cases in this category also satisfies the requirement in the above category);

− Parenteral administration of either any beta emitter or a photon-emitting radionuclide with a photon energy less than 150 keV for which a written directive is required; or

− Parenteral administration of any other radionuclide for which a written directive is required; and

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(69)"a"(1) and 41.2(69)"b"(1)"2," seventh bulleted paragraph, or 41.2(69)"b"(1), and has achieved a level of competency sufficient to function independently as an authorized user for the medical uses authorized under 41.2(37). The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69), or before May 3, 2006, the requirements in 10 CFR 35.930, or equivalent agreement state requirements. The preceptor authorized user who meets the requirements in 41.2(69)"b," or before May 3, 2006, meets the requirements in 10 CFR 35.930(b) must have experience in administering dosages in the same dosage category or categories (i.e., 41.2(69)"b"(1)"2," seventh bulleted paragraph) as the individual requesting authorized user status.

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

ITEM 37. Rescind subrule 41.2(70) and adopt the following **new** subrule in lieu thereof:

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

a. Is certified by a medical specialty board whose certification process has been recognized by the agency, NRC, or an agreement state, and who meets the requirements in 41.2(70)"b"(3). (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of three years of residency training in a radiation oncology program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomats of the specialty board, that tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of manual brachytherapy; or

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

1. 200 hours of classroom and laboratory training in the following areas:

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity; and
- Radiation biology; and

2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in 41.2(70), or before May 3, 2006, the requirements in 10 CFR

35.940, or equivalent agreement state requirements at a medical institution, involving:

- Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
- Checking survey meters for proper operation;
- Preparing, implanting, and removing brachytherapy sources;
- Maintaining running inventories of material on hand;
- Using administrative controls to prevent a medical event involving the use of by-product material; and
- Using emergency procedures to control by-product material; and

(2) Has completed three years of supervised clinical experience in radiation oncology under an authorized user who meets the requirements in 41.2(70), or before May 3, 2006, the requirements in 10 CFR 35.940, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required in 41.2(70)"b"(1)"2"; and

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(70), or before May 3, 2006, the requirements in 10 CFR 35.940, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(70)"a"(1) or 41.2(70)"b"(1) and (2), and has achieved a level of competency sufficient to function independently as an authorized user of manual brachytherapy sources for the medical uses in 41.2(43).

ITEM 38. Rescind subrule 41.2(71) and adopt the following **new** subrule in lieu thereof:

41.2(71) Training for ophthalmic use of strontium-90. Except as provided in 41.2(75), the licensee shall require the authorized user of strontium-90 for ophthalmic radiotherapy to be a physician who:

a. Is an authorized user under 41.2(70), or before May 3, 2006, meets the requirements in 10 CFR 35.940 or 35.941, or equivalent agreement state requirements; or

b. (1) Has completed 24 hours of classroom and laboratory training applicable to the medical use of strontium-90 for ophthalmic radiotherapy. The training must include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity; and
4. Radiation biology; and

(2) Has completed supervised clinical training in ophthalmic radiotherapy under the supervision of an authorized user at a medical institution, clinic, or private practice that includes the use of strontium-90 for the ophthalmic treatment of five individuals. This supervised clinical training must involve:

1. Examination of each individual to be treated;
2. Calculation of the dose to be administered;
3. Administration of the dose; and
4. Follow-up and review of each individual's case history; and

(3) Has obtained written attestation, signed by a preceptor authorized user who meets the requirements in 41.2(70) or 41.2(71), or before May 3, 2006, the requirements in 10 CFR 35.940 or 35.941, or equivalent agreement state requirements, that the individual has satisfactorily completed the requirements in 41.2(71)"a" and "b" and has achieved a level of competency sufficient to function independently as an authorized user of strontium-90 for ophthalmic use.

ITEM 39. Rescind subrule 41.2(72) and adopt the following **new** subrule in lieu thereof:

41.2(72) Training for use of sealed sources for diagnosis. Except as provided in 41.2(75), the licensee shall require the authorized user of a diagnostic sealed source for use in a device authorized under 41.2(41) to be a physician, dentist, or podiatrist who:

a. Is certified by a specialty board whose certification process includes all of the requirements in 41.2(72)"b" and "c" and whose certification has been recognized by the agency, NRC, or an agreement state. (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.); or

b. Has completed eight hours of classroom and laboratory training in basic radionuclide handling techniques specifically applicable to the use of the device. The training must include:

(1) Radiation physics and instrumentation;
(2) Radiation protection;
(3) Mathematics pertaining to the use and measurement of radioactivity; and
(4) Radiation biology; and

c. Has completed training in the use of the device for the uses requested.

ITEM 40. Rescind subrule 41.2(73) and adopt the following **new** subrule in lieu thereof:

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

a. Is certified by a medical specialty board whose certification process has been recognized by the agency, NRC, or an agreement state, and who meets the requirements in 41.2(73)"b"(3) and 41.2(73)"c." (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Successfully complete a minimum of three years of residency training in a radiation therapy program approved by the Residency Review Committee of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Post-Graduate Training of the American Osteopathic Association; and

(2) Pass an examination, administered by diplomats of the specialty board, which tests knowledge and competence in radiation safety, radionuclide handling, treatment planning, quality assurance, and clinical use of stereotactic radiosurgery, remote afterloaders, and external beam therapy; or

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

1. 200 hours of classroom and laboratory training in the following areas:

- Radiation physics and instrumentation;
- Radiation protection;
- Mathematics pertaining to the use and measurement of radioactivity; and
- Radiation biology; and

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2. 500 hours of work experience, under the supervision of an authorized user who meets the requirements in 41.2(73), or before May 3, 2006, the requirements in 10 CFR 35.960, or equivalent agreement state requirements at a medical institution, involving:

- Reviewing full calibration measurements and periodic spot checks;
- Preparing treatment plans and calculating treatment doses and times;
- Using administrative controls to prevent a medical event involving the use of by-product material;
- Implementing emergency procedures to be followed in the event of the abnormal operation of the medical unit or console;
- Checking and using survey meters; and
- Selecting the proper dose and how it is to be administered; and

(2) Has completed three years of supervised clinical experience in radiation therapy under an authorized user who meets the requirements in 41.2(73), or before May 3, 2006, the requirements in 10 CFR 35.960, or equivalent agreement state requirements, as part of a formal training program approved by the Residency Review Committee for Radiation Oncology of the Accreditation Council for Graduate Medical Education or the Royal College of Physicians and Surgeons of Canada or the Committee on Postdoctoral Training of the American Osteopathic Association. This experience may be obtained concurrently with the supervised work experience required by 41.2(73)"b"(1)"2"; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(73)"a"(1) or 41.2(73)"b"(1) and (2), and 41.2(73)"c," and has achieved a level of competency sufficient to function independently as an authorized user of each type of therapeutic medical unit for which the individual is requesting authorized user status. The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(73), or before May 3, 2006, the requirements in 10 CFR 35.960, or equivalent agreement state requirements for an authorized user for each type of therapeutic medical unit for which the individual is requesting authorized user status; and

c. Has received training in device operation, safety procedures, and clinical use for the type of use for which authorization is sought. This training requirement may be satisfied by satisfactory completion of a training program provided by the vendor for new users or by receiving training supervised by an authorized user or authorized medical physicist, as appropriate, who is authorized for the type of use for which the individual is seeking authorization.

ITEM 41. Rescind subrule 41.2(74) and adopt the following **new** subrule in lieu thereof:

41.2(74) Training for an authorized medical physicist. Except as provided in 41.2(75), the licensee shall require the authorized medical physicist to be an individual who:

a. Is certified by a specialty broad whose certification process has been recognized by the agency, NRC, or an agreement state and who meets the requirements in 41.2(74)"b"(2) and 41.2(74)"c." (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.) To have its certification process recognized, a specialty board shall require all candidates for certification to:

(1) Hold a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university;

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

1. Under the supervision of a medical physicist who is certified in medical physics by a specialty board recognized by the agency, NRC, or an agreement state; or
2. In clinical radiation facilities providing high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services under the direction of physicians who meet the requirements for authorized users in 41.2(70) or 41.2(73); and

(3) Pass an examination, administered by diplomats of the specialty board, that assesses knowledge and competence in clinical radiation therapy, radiation safety, calibration, quality assurance, and treatment planning for external beam therapy, brachytherapy, and stereotactic radiosurgery; or

b. (1) Holds a master's or doctor's degree in physics, medical physics, other physical science, engineering, or applied mathematics from an accredited college or university; and has completed one year of full-time training in medical physics and an additional year of full-time work experience under the supervision of an individual who meets the requirements for an authorized medical physicist for the type of use for which the individual is seeking authorization. This training and work experience must be conducted in clinical radiation facilities that provide high-energy, external beam therapy (photons and electrons with energies greater than or equal to 1 million electron volts) and brachytherapy services and must include:

1. Performing sealed source leak tests and inventories;
2. Performing decay corrections;
3. Performing full calibration and periodic spot checks of external beam treatment units, stereotactic radiosurgery units, and remote afterloading units, as applicable; and
4. Conducting radiation surveys around external beam treatment units, stereotactic radiosurgery units, and remote afterloading units, as applicable; and

(2) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(74)"a"(1) and (2) and 41.2(74)"c" or 41.2(74)"b"(1) and 41.2(74)"c," and has achieved a level of competency sufficient to function independently as an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status. The written attestation must be signed by a preceptor authorized medical physicist who meets the requirements in 41.2(74), or before May 3, 2006, the requirements in 10 CFR 35.961, or equivalent agreement state requirements for an authorized medical physicist for each type of therapeutic medical unit for which the individual is requesting authorized medical physicist status; and

c. Has training for the type of use for which authorization is sought that includes hands-on device operation, safety procedures, clinical use, and the operation of a treatment planning system. This training requirement may be satisfied by satisfactorily completing either a training program provided by the vendor or by training supervised by an authorized medical physicist who is authorized for the type of use for which the individual is seeking authorization.

ITEM 42. Amend subrule 41.2(75) as follows:

41.2(75) Training for experienced *radiation safety officer, authorized medical physicist, nuclear pharmacist, authorized nuclear pharmacist,* authorized users and teletherapy or medical physicists.

a. *(1)* An individual identified as a *radiation safety officer,* teletherapy or medical physicist, *or nuclear pharmacist*

on an *agency,* NRC or agreement state license or a permit issued by an NRC or agreement state broad scope licensee or master material license permit or by a master material license permittee of broad scope before January 1, 2003, does not need to comply with the training requirements of ~~41.2(73)~~ *41.2(65), 41.2(74), or 41.2(78).*

(2) An individual identified as a radiation safety officer, an authorized medical physicist, or an authorized nuclear pharmacist on the agency, NRC, or agreement state license or permit issued by the agency, NRC, or agreement state broad scope licensee or master material license permit or issued by a master material license permittee of broad scope between January 1, 2003, and May 3, 2006, need not comply with the training requirements of 41.2(65), 41.2(74), or 41.2(78).

b. *(1)* Physicians, dentists, or podiatrists identified as authorized users for the medical use of by-product material *on a license* issued by ~~this~~ *the* agency, the NRC, or agreement state, a permit issued by an NRC master material licensee, a permit issued by an NRC broad scope *licensee, or a permit issued by an NRC master material license broad scope* permittee before January 1, 2003, who perform only those medical uses for which they were authorized before that date need not comply with the training requirements of *41.2(67),* 41.2(68), 41.2(69), 41.2(70), 41.2(71), 41.2(72), ~~or~~ 41.2(73), *41.2(81), 41.2(82), or 41.2(89).*

(2) Physicians, dentists, or podiatrists identified as authorized users for the medical use of by-product material issued by the agency, the NRC, or agreement state, a permit issued by an NRC master material licensee, a permit issued by an NRC broad scope licensee, or a permit issued by an NRC master material license broad scope permittee who perform only those medical uses for which they were authorized between January 1, 2003, and May 3, 2006, need not comply with the training requirements of 41.2(67), 41.2(68), 41.2(69), 41.2(70), 41.2(71), 41.2(72), 41.2(73), 41.2(81), 41.2(82), or 41.2(89).

ITEM 43. Amend subrule 41.2(77) as follows:

41.2(77) Recentness of training. The training and experience specified in 41.2(65) to 41.2(79) and 41.2(81), *41.2(82), and 41.2(89)* shall have been obtained within the seven years preceding the date of application or the individual shall have had related continuing education and continuing applicable experience since the required training and experience were completed.

ITEM 44. Amend subrule 41.2(78) as follows:

41.2(78) Training for an authorized nuclear pharmacist. Except as provided in 41.2(79), the licensee shall require the authorized nuclear pharmacist to be a pharmacist who:

a. Is certified as a nuclear pharmacist by a specialty board whose certification process includes all of the requirements of 41.2(78)"b." *(The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.)* ~~and whose certification has been recognized by the NRC or agreement state; or~~ *To have its certification process recognized, a specialty board shall require all candidates for certification to:*

(1) Have graduated from a pharmacy program accredited by the American Council on Pharmaceutical Education (ACPE) or have passed the Foreign Pharmacy Graduate Examination Committee (FPGEC) examination;

(2) Hold a current, active license to practice pharmacy;

(3) Provide evidence of having acquired at least 4,000 hours of combined training and experience in nuclear pharmacy practice. Academic training may be substituted for no more than 2,000 hours of the required training and experience; and

(4) Pass an examination in nuclear pharmacy administered by diplomats of the specialty board that assesses knowledge and competency in procurement, compounding, quality assurance, dispensing, distribution, health and safety, radiation safety, provision of information and consultation, monitoring patient outcomes, research and development; or

b. Has completed 700 hours in a structured education program consisting of both:

(1) ~~Didactic~~ *200 hours of classroom and laboratory* training in the following areas:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of by-product material for medical use; and
5. Radiation biology; and

(2) Supervised practical experience in a nuclear pharmacy involving:

1. to 5. No change.

c. Has obtained written ~~certification~~ *attestation,* signed by a preceptor authorized nuclear pharmacist, that the individual satisfactorily completed the requirements in *41.2(78)"a"(1), (2), and (3), or* 41.2(78)"b"*(1)* and has achieved a level of competency sufficient to function independently as an authorized nuclear pharmacist.

ITEM 45. Adopt **new** subrules 41.2(81), 41.2(82), and 41.2(89) as follows:

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

a. Is certified by a medical specialty board whose certification process includes all of the requirements in 41.2(81)"c"(1) and (2) and whose certification process has been recognized by the agency, NRC, or an agreement state and who meets the requirements in 41.2(81)"c"(3). (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.); or

b. Is an authorized user under 41.2(69)"a" or "b" for uses in the oral administration of less than or equal to 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131 for which a written directive is required, or oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131, or before May 3, 2006, who meets the requirements in 10 CFR 35.930, 35.932, or 35.934, or meets equivalent agreement state requirements; or

c. (1) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of by-product material for medical use; and
5. Radiation biology; and

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69)"a" or "b," or 41.2(82), or before May 3, 2006, the requirements in 10 CFR 35.930, 35.932, or 35.934, or equivalent agreement

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state requirements. A supervising authorized user who meets the requirements in 41.2(69)"b" must also have experience in administering dosages as follows: oral administration of less than or equal to 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131, for which a written directive is required; or oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131. The work experience must involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of by-product material;
5. Using procedures to contain spilled by-product material safely and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects that include at least three cases involving the oral administration of less than or equal to 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(81)"c"(1) and (2), and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized under 41.2(37). The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69), 41.2(81), or 41.2(82), or before May 3, 2006, the requirements in 10 CFR 35.930, 35.932, or 35.934, or equivalent agreement state requirements. A preceptor authorized user who meets the requirements in 41.2(69)"b" must also have experience in administering dosages as follows: oral administration of less than or equal to 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131, for which a written directive is required; or oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131.

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

a. Is certified by a medical specialty board whose certification process includes all of the requirements in 41.2(82)"c"(1) and (2), and whose certification has been recognized by the agency, NRC, or agreement state, and who meets the requirements in 41.2(82)"c"(3). (The names of the specialty boards that have been recognized by the agency, NRC, or agreement state must be posted on the NRC's Web page.); or

b. Is an authorized user under 41.2(69)"a" or "b" for oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131, or before May 3, 2006, meets the requirements in 10 CFR 35.930 or 35.934, or meets equivalent agreement state requirements; or

c. (1) Has successfully completed 80 hours of classroom and laboratory training, applicable to the medical use of sodium iodide I-131 for procedures requiring a written directive. The training must include:

1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity;
4. Chemistry of by-product material for medical use; and
5. Radiation biology; and

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69)"a" or "b," or 41.2(82), or before May 3, 2006, the requirements in 10 CFR 35.930 or 35.934, or equivalent agreement state requirements. A supervising authorized user who meets the requirements in 41.2(69)"b" must also have experience in oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131. The work experience must involve:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages and performing checks for proper operation of survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of by-product material;
5. Using procedures to contain spilled by-product material safely and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects that include at least three cases involving the oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(82)"c"(1) and (2), and has achieved a level of competency sufficient to function independently as an authorized user for medical uses authorized in 41.2(37). The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69) or 41.2(82), or before May 3, 2006, the requirements in 10 CFR 35.930 or 35.934, or equivalent agreement state requirements. A preceptor authorized user who meets the requirements in 41.1(69)"b" must also have experience in oral administration of greater than 33 millicuries (1.22 Gigabecquerels) of sodium iodide I-131.

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

a. Is an authorized user under 41.2(69), or before May 3, 2006, meets the requirements in 10 CFR 35.930, for uses listed in 41.2(89), or meets equivalent agreement state requirements; or

b. Is an authorized user under 41.2(70) or 41.2(73), or before May 3, 2006, meets the requirements in 10 CFR 35.940 or 35.960, or meets equivalent agreement state requirements, and who meets the requirements in 41.2(89)"d"; or

c. Is certified by a medical specialty board whose certification process has been recognized by the NRC or an agreement state under 41.2(70) or 41.2(73), or before May 3, 2006, meets the requirements in 10 CFR 35.940 or 35.960, and who meets the requirements in 41.2(89)"d"; or

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

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1. Radiation physics and instrumentation;
2. Radiation protection;
3. Mathematics pertaining to the use and measurement of radioactivity:
4. Chemistry of by-product material for medical use; and
5. Radiation biology; and

(2) Has work experience, under the supervision of an authorized user who meets the requirements in 41.2(69) or 41.2(89), or before May 3, 2006, the requirements in 10 CFR 35.930, or equivalent agreement state requirements, in the parenteral administration for which a written directive is required, of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required. A supervising authorized user who meets the requirements in 41.2(69) or before May 3, 2006, meets the requirements in 10 CFR 35.930 must have experience in administering dosages of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or parenteral administration of any other radionuclide for which a written directive is required. The work experience must involve:

1. Ordering, receiving, and unpacking radioactive materials safely, and performing the related radiation surveys;
2. Performing quality control procedures on instruments used to determine the activity of dosages, and performing checks for proper operation of survey meters;
3. Calculating, measuring, and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent a medical event involving the use of unsealed by-product material;
5. Using procedures to contain spilled by-product material safely, and using proper decontamination procedures; and
6. Administering dosages to patients or human research subjects, that include at least three cases involving the parenteral administration for which a written directive is required, of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or at least three cases involving the parenteral administration of any other radionuclide for which a written directive is required; and

(3) Has obtained written attestation that the individual has satisfactorily completed the requirements in 41.2(89)"b" or "c," and has achieved a level of competency sufficient to function independently as an authorized user for the parenteral administration of unsealed by-product material requiring a written directive. The written attestation must be signed by a preceptor authorized user who meets the requirements in 41.2(69) or 41.2(89), or before May 3, 2006, the requirements in 10 CFR 35.930, or equivalent agreement state requirements. A preceptor authorized user who meets the requirements in 41.2(69), or before May 3, 2006, meets the requirements in 10 CFR 35.930, must have experience in administering dosages of either any beta emitter or any photon-emitting radionuclide with a photon energy less than 150 keV or at least three cases involving the parenteral administration of any other radionuclide for which a written directive is required.

ITEM 46. Amend subrule **41.6(3)**, paragraph **"a,"** subparagraph (**2**), numbered paragraph **"2,"** as follows:

2. Following the third 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 taught or completed at least 15 category I continuing education units in mammography during the 36 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 36-month period~~. This training shall include at least six category I continuing medical education credits in each mammographic modality used by the interpreting physician in the interpreting physician's practice~~; and

ITEM 47. Amend subrule **41.6(3)**, paragraph **"b,"** subparagraph (**3**), as follows:

Rescind numbered paragraph **"3"** a**s** follows:

~~3. At least 6 of the continuing education units required in this subrule shall be related to each mammographic modality used by the technologist.~~

Renumber numbered paragraphs **"4"** and **"5"** as **"3"** and **"4."**

Amend renumbered paragraph **"3"** as follows:

3. Requalification. ~~Radiologic technologists~~ *A radiologic technologist* who ~~fail~~ *fails* to meet the continuing education requirements of 41.6(3)"b"(3)"1" shall obtain a sufficient number of continuing education units in mammography to bring ~~their~~ *the* total up to at least 15 in the previous three years~~, at least 6 of which shall be related to each modality used by the technologist in mammography~~. The technologist may not resume performing unsupervised mammography examinations until the continuing education requirements are completed.

ITEM 48. Amend subrule **41.6(3)**, paragraph **"c,"** subparagraph (**3**), numbered paragraph **"1,"** as follows:

1. Continuing education. Following the third anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"c"(1) or (2) were completed, the medical physicist shall have taught or completed at least 15 continuing education units in mammography during the 36 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 in between the two. The facility shall choose one of these dates to determine the 36-month period. ~~This continuing education shall include hours of training appropriate to each mammographic modality evaluated by the medical physicist during the physicist's surveys or oversight of quality assurance programs.~~ Units earned through teaching a specific course can be counted only once towards the required 15 units in a 36-month period, even if the course is taught multiple times during the 36 months.

ITEM 49. Amend subrule **41.7(3)**, paragraph **"b,"** subparagraph (**1**), by renumbering paragraphs **"1"** to **"3"** as **"2"** to **"4"** and adopting **new** numbered paragraph **"1"** as follows:

1. Be licensed to practice medicine in Iowa;

ITEM 50. Amend subrule **41.7(3)**, paragraph **"d,"** subparagraph (**1**), by renumbering paragraphs **"1"** to **"9"** as **"2"** to **"10"** and adopting **new** numbered paragraph **"1"** as follows:

1. Be licensed to practice medicine in Iowa;

ITEM 51. Amend subrule **42.1(2)**, definitions, as follows:

Amend the following definitions:

"Diagnostic radiographer" means an individual, other than a licensed practitioner or podiatric or dental assistant with radiography qualification, 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~~

PUBLIC HEALTH DEPARTMENT[641](cont'd)

~~Iowa Code chapter 152~~ *under 641—41.1(3)"a"(7).* 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~~ *only* the following body parts: chest, extremities (upper and lower), spine, or sinus. This individual is restricted to performing radiography in 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."

"Special category course" means those programs still related to health care but indirectly related to diagnostic radiography, nuclear medicine technology, or radiation therapy. Such programs are: ~~venipuncture,~~ CPR, educator's programs, management programs, personal improvement, for example.

Rescind the definitions of "radionuclide," "radiopharmaceutical," and "X-radiation."

ITEM 52. Amend subrule **42.2(3)**, paragraph **"b,"** subparagraph **(5)**, as follows:

(5) No continuing education credit is approved for passing a certification examination, hands-on practice, or mandatory *abuse* reporting, ultrasound or MRI courses that are less than 50 percent directly related to radiography.

ITEM 53. Amend subrule **42.2(6)** by adopting **new** paragraph **"c"** as follows:

c. Additional training for limited radiographers wishing to perform pediatric radiography. Training requires a general radiographer to submit to the agency a training program that includes the additional anatomy and physiology, positioning, radiation protection, technique, and film critique necessary for pediatrics. The training must include both chest and extremities but no spinal radiography. The program must include didactic instruction plus film critique time. Upon completion of training, the general radiographer must submit a letter of competency to the agency. No additional testing will be required.

ITEM 54. Amend subrule 42.2(7) as follows:

42.2(7) Requirements for operators of dual imaging devices.

a. When a unit is operated as a *stand-alone* nuclear medicine imaging device, the operator must have a permit to practice as a nuclear medicine technologist and meet the requirements of 641—42.4(136C). When the unit is operated as a *stand-alone* 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 *as a nuclear medicine and radiographic imaging device*, the operator must have a permit to practice as a nuclear medicine technologist.

b. In order to operate a SPECT/PET/CT unit as a stand-alone CT unit, the individual must:

(1) Be certified as a nuclear medicine technologist;

(2) Complete a training program approved by the agency;

(3) Successfully complete the ARRT specialty examination for PET/CT; and

(4) Restrict performance of CT procedures to the SPECT/PET/CT unit.

ITEM 55. Amend subrule **42.6(1)**, paragraph **"c,"** as follows:

c. Satisfactorily complete an advanced academic program approved by this agency. Approved training shall include appropriate coursework, training, and experience in performing procedures, including but not limited to fluoroscopy, ~~modified~~ barium swallow, needle localization, needle aspiration, thoracentesis, arthography, ~~myelography~~ *myelography*, venography, angiography, and biopsy.

ITEM 56. Amend subrule **42.6(1)** by adopting **new** paragraph **"f"** as follows:

f. Have a delegation agreement on file at the place of employment that:

(1) Outlines all procedures the radiologist assistant will be allowed to perform at the place of employment; and

(2) Is signed by all supervising physicians.

ITEM 57. 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 ~~May 4, 2005~~ *May 3, 2006*.

ITEM 58. Amend subrule **45.1(10)**, paragraph **"a,"** subparagraph (**1**), numbered paragraph **"1,"** as follows:

1. The subjects outlined in Appendix A, presented in a *40-hour* course approved by the agency, another agreement state, or the U.S. Nuclear Regulatory Commission;

ITEM 59. Amend subrule **45.6(6)**, paragraph **"a,"** as follows:

a. Each source of radiation~~, except accelerators,~~ shall be provided with a storage or transport container. The container shall be provided with a lock, or tamper seal for calibration sources, to prevent unauthorized removal of, or exposure to, the source of radiation.

ITEM 60. Amend **641—Chapter 46**, **Appendix 2**, as follows:

Appendix 2
SUN-REACTIVE SKIN TYPES
USED IN CLINICAL PRACTICE

SKIN TYPE	SKIN REACTIONS TO SOLAR RADIATION[a]	EXAMPLES
I	Always burns easily and severely (painful burn). Tans little or none and peels.	~~(b)~~ People most often with fair skin, blue eyes, freckles. Unexposed skin is white.
II	Usually burns easily and severely (painful burn). Tans minimally or lightly, also peels.	~~(b)~~ People most often with fair skin; red or blonde hair; blue, hazel or even brown eyes. Unexposed skin is white.
III	Burns moderately and tans about average.	Normal average Caucasoid. Unexposed skin is white.
IV	Burns minimally, tans easily, and above average with each exposure. Exhibits IPD (immediate pigment darkening) reaction.	People with white or light brown skin, dark skin, dark brown hair, dark eyes ~~(e.g., Mediterraneans, Orientals, Hispanics, etc.)~~. Unexposed skin is brown.

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SKIN TYPE	SKIN REACTIONS TO SOLAR RADIATION[a]	EXAMPLES
V	Rarely burns, tans easily and substantially. Always exhibits IPD reaction.	Brown-skinned person ~~(e.g., Amerindians, East Indians, Hispanics, etc.)~~. Unexposed skin is brown.
VI	Never burns and tans profusely; exhibits IPD reaction.	~~Blacks (e.g., African and American Blacks, Australian and South Indian Aborigines); unexposed~~ *Unexposed* skin is black.

(a) Based in the first 45-60 minutes (= 2-3 minimum erythema dose) exposure of the summer sun (early June) at sea level

~~(b) They may be of Celtic background (Irish or Scottish); others may even have dark hair or brown eyes~~

ARC 4847B

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 691.6(6), the Iowa Department of Public Health hereby gives Notice of Intended Action to amend Chapter 127, "County Medical Examiners," Iowa Administrative Code.

The proposed amendments clarify the existing rules and propose additional rules governing the types of deaths for which autopsies are required. In addition, an amendment to clarify the appropriate professional board overseeing medicolegal death investigation is included.

Any interested person may make written comments or suggestions on the proposed amendments on or before February 21, 2006. Such written comments should be directed to Jerri McLemore, M.D., Associate State Medical Examiner, Iowa Office of the State Medical Examiner, 2250 S. Ankeny Blvd., Ankeny, Iowa 50023-9093. E-mail may be sent to jmclemor@idph.state.ia.us.

These proposed amendments were presented to the State Medical Examiner Advisory Council and approved on August 23, 2005.

These amendments are intended to implement Iowa Code section 691.6.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Amend subrule **127.3(1)** by adding **new** paragraph **"k"** as follows.

k. Deaths in a prison, jail or correctional institution or under police custody, where there is not a natural disease process that accounts for the death.

ITEM 2. Amend subrule **127.3(2)** by rescinding and reserving paragraph **"c."**

ITEM 3. Amend subrule **127.3(4)**, paragraph **"b,"** as follows:

Rescind subparagraphs **(1)** and **(2)** and adopt the following **new** subparagraphs in lieu thereof:

(1) Deaths of adolescents through 18 years of age when there is not a known or preexisting natural cause of death.

(2) All cases of homicide or suspected homicide, irrespective of the period of survival following injury.

Adopt the following **new** subparagraphs **(3)** to **(6)**:

(3) Deaths of children under the age of 2 years if death results from an unknown cause or if the circumstances surrounding the death indicate that Sudden Infant Death Syndrome may be the cause of death.

(4) All suspicious suicides.

(5) All high-profile deaths including, but not limited to, deaths of elected officials in municipal, state or federal government.

(6) All deaths of inmates within the department of corrections, excluding those deaths that result from a preexisting medical condition.

ITEM 4. Amend subrule **127.7(2)**, paragraph **"b,"** subparagraph **(2)**, as follows:

(2) Obtain and maintain certification as a death investigator by the ~~National Association of Medical Examiners~~ *American Board of Medicolegal Death Investigators*.

ARC 4846B

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 135.11 and 2005 Iowa Acts, chapter 175, the Department of Public Health hereby gives Notice of Intended Action to rescind 643—Chapters 1, 2, 4, 5, 7 and 10 and to transfer and amend 643—Chapters 3, 6, 8 and 9 to 641—Chapters 155 to 158, Iowa Administrative Code.

The 81st Iowa General Assembly passed 2005 Iowa Acts, chapter 175, eliminating the Commission on Substance Abuse and transferring the duties of the Commission to the State Board of Health. The information contained in the six chapters that are proposed to be rescinded duplicates information found in existing chapters under [641] Public Health Department. The remaining four chapters under [643] Substance Abuse Commission are proposed to be transferred and amended to reflect the changes in 2005 Iowa Acts, chapter 175. Additional amendments being proposed at this time include the change in the name of one of the Department's divisions, change in the name of two of the transferred chapters to better reflect the information contained therein and a change in smoking policy in Item 9.

Any interested person may make written comments or suggestions on the proposed amendments on or before Feb-

PUBLIC HEALTH DEPARTMENT[641](cont'd)

ruary 21, 2006. Such written comments should be directed to G. Dean Austin, Department of Public Health, Lucas State Office Building, 321 E. 12th Street, Des Moines, Iowa 50319.

These amendments are intended to implement Iowa Code chapter 17A and chapters 125 and 136 as amended by 2005 Iowa Acts, chapter 175.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendments are proposed.

ITEM 1. Rescind **643—Chapter 1**.

ITEM 2. Rescind **643—Chapter 2**.

ITEM 3. Transfer **643—Chapter 3** to **641—Chapter 155**.

ITEM 4. Replace the word "commission," when referring to the substance abuse commission, with the word "board" wherever it appears in **641—Chapter 155**.

ITEM 5. Replace "division of substance abuse and health promotion" with "division of behavioral health and professional licensure" wherever it appears in **641—Chapter 155**.

ITEM 6. Amend transferred rule **641—155.1(125)** as follows:

Rescind the definition of "commission."

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

"Board" means the state board of health created pursuant to Iowa Code chapter 136.

ITEM 7. Amend transferred subrule 155.11(4) as follows:

155.11(4) Decision of board. Following receipt of a written plan of corrections and expiration of the 60-day time period, or following receipt of written objections, or when objections or notice of corrections have not been received within the 20-day time period, the board may meet to determine whether to proceed with the disciplinary action. The licensee shall receive notice of this meeting in the same manner as provided by ~~3.1(1)"a."~~ *155.8(1)"a."*

ITEM 8. Amend transferred subrule 155.16(1) as follows:

155.16(1) Complaints. Any person may file a complaint with the department against any program licensed pursuant to this chapter. The complaint shall be made in writing and shall be mailed or delivered to the division director at the ~~Commission on Substance Abuse~~ *Division of Behavioral Health and Professional Licensure*, Lucas State Office Building, *321 East 12th Street*, Des Moines, Iowa 50319. The complaint shall include the name and address of the complainant, the name of the program, and a concise statement of the allegations against the program, including the specific alleged violations of Iowa Code chapter 125 or this chapter, if known. A complaint may also be initiated upon the board's own motion pursuant to evidence received by the department. Timely filing of complaints is required in order to ensure the availability of witnesses and to avoid initiation of an investigation under conditions which may have been significantly altered during the period of delay.

ITEM 9. Amend transferred subrule **155.21(23)**, paragraphs **"e"** and **"f,"** as follows:

e. Smoking shall be prohibited ~~except in designated areas~~.

f. A program or person shall not sell, give, or otherwise supply any tobacco, tobacco products, or cigarettes to any person ~~under 18 years of age, and a person under 18 years of age~~ *and* shall not smoke, use, purchase, or attempt to purchase~~,~~ any tobacco, tobacco products, or cigarettes.

ITEM 10. Rescind **643—Chapter 4**.

ITEM 11. Rescind **643—Chapter 5**.

ITEM 12. Transfer **643—Chapter 6** to **641—Chapter 156**.

ITEM 13. Amend the title of transferred **641—Chapter 156** as follows:

LICENSE STANDARDS FOR *SUBSTANCE ABUSE TREATMENT PROGRAMS IN* CORRECTIONAL FACILITIES

ITEM 14. Replace the word "commission," when referring to the substance abuse commission, with the word "board" wherever it appears in **641—Chapter 156**.

ITEM 15. Amend transferred rule **641—156.1(125)** as follows:

Amend the following definition:

"Division" means the division of ~~health promotion, prevention and addictive behaviors~~ *behavioral health and professional licensure*.

Rescind the definition of "commission."

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

"Board" means the state board of health created pursuant to Iowa Code chapter 136.

ITEM 16. Rescind **643—Chapter 7**.

ITEM 17. Transfer **643—Chapter 8** to **641—Chapter 157**.

ITEM 18. Amend the title of transferred **641—Chapter 157** as follows:

STANDARDS FOR *SUBSTANCE ABUSE TREATMENT AND ASSESSMENT* PROGRAMS AND THE OPERATING A MOTOR VEHICLE WHILE INTOXICATED (OWI) LAW

ITEM 19. Amend transferred rule **641—157.1(125)** as follows:

Amend the following definition:

"Licensed" means issuance of a license by the department and the ~~commission on substance abuse~~ *state board of health*, which validates the licensee's compliance with substance abuse program standards and authorizes the licensee to operate a substance abuse program in the state of Iowa.

ITEM 20. Transfer **643—Chapter 9** to **641—Chapter 158**.

ITEM 21. Amend transferred rule 641—158.1(125) as follows:

PUBLIC HEALTH DEPARTMENT[641](cont'd)

641—158.1(125) Service areas established. The department of public health~~, with the consent of the commission on substance abuse,~~ has established regions for substance abuse prevention and treatment service areas. Substance abuse assessment, prevention and education, and outpatient and follow-up treatment and rehabilitation shall be available in each service area. Emergency treatment provided by a facility affiliated with or part of the medical service of a general hospital, inpatient treatment, residential treatment, and halfway house treatment shall be available within reasonable driving distance of the service area.

ITEM 22. Amend transferred rule 641—158.8(125) as follows:

641—158.8(125) ~~Commission~~ *State board of health* review. The director's proposed decision shall be reviewed by the ~~commission~~ *board* at its next regularly scheduled meeting. The ~~commission~~ *board* shall review all of the materials considered by the director, as described in rule ~~9.6(125)~~ *158.6(125)*, and the proposed decision and vote to approve or reject the director's proposed decision.

ITEM 23. Amend transferred rule 641—158.9(125) as follows:

641—158.9(125) ~~Commission~~ *State board of health* decision. The ~~commission's~~ *board's* decision shall be issued in writing and shall be final agency action for the purposes of Iowa Code chapter 17A.

ITEM 24. Rescind **643—Chapter 10**.

NOTICE—USURY

In accordance with the provisions of Iowa Code section 535.2, subsection 3, paragraph "a," the Superintendent of Banking has determined that the maximum lawful rate of interest shall be:

February 1, 2005 — February 28, 2005	6.25%
March 1, 2005 — March 31, 2005	6.25%
April 1, 2005 — April 30, 2005	6.25%
May 1, 2005 — May 31, 2005	6.50%
June 1, 2005 — June 30, 2005	6.25%
July 1, 2005 — July 31, 2005	6.25%
August 1, 2005 — August 31, 2005	6.00%
September 1, 2005 — September 30, 2005	6.25%
October 1, 2005 — October 31, 2005	6.00%
November 1, 2005 — November 30, 2005	6.25%
December 1, 2005 — December 31, 2005	6.50%
January 1, 2006 — January 31, 2006	6.50%
February 1, 2006 — February 28, 2006	6.50%

ARC 4840B

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 Medicaid requirements for verification of pregnancy to allow the Department to accept a woman's declaration of pregnancy and the probable date of conception, instead of requiring written verification by a health professional. Written verification continues to be required in multiple pregnancies if more than one fetus is to be considered in the household size.

Obtaining written verification may pose a barrier to a pregnant woman's access to prenatal care, since it can be difficult for an uninsured woman to schedule an appointment for the necessary examination. Because early access to prenatal care is related to positive birth outcomes, it is in the public interest to encourage early access, both in terms of public health and in reduction of public expenditures associated with poor birth outcomes.

These amendments make the following technical changes:

- Clarify that a woman who withdraws her Medicaid application is still eligible for services provided during the presumptive period (the initial month and the following month).
- Remove unnecessary wording in rules on how income is counted in the Family Medical Assistance Program.

Notice of Intended Action on these amendments was published in the Iowa Administrative Bulletin on November 23, 2005, as **ARC 4658B**. The Department received no comments on the Notice of Intended Action.

The Department has added technical changes to these amendments to correct references in subrule 75.1(35) that were inadvertently omitted from previous rule making that updated citations to forms used in the Medicaid program. These changes clarify that:

- Form 470-3118 or 470-3118(S), Medicaid Review, is used for reviews and recertifications for all members in the Medically Needy coverage group, instead of Form 470-2927 or 470-2927(S), Health Services Application.
- Either the Health Services Application, Form 470-2927 or 470-2927(S), or the Health and Financial Support Application, Form 470-0462 or 470-0466, may be used to redetermine eligibility for a Medically Needy member who has lost SSI eligibility.

These amendments do not provide for waivers in specified situations because they remove a restriction on applicants or make technical changes.

The Department finds that these amendments remove a restriction on pregnant women by allowing them to establish eligibility and access medical services without a medical verification of the pregnancy. Therefore, these amendments are filed pursuant to Iowa Code section 17A.5(2)"b"(2), and the normal effective date of these amendments is waived.

These amendments shall become effective on February 1, 2006.

These amendments are intended to implement Iowa Code section 249A.3.

The following amendments are adopted.

ITEM 1. Amend subrule 75.1(30), introductory paragraph and first unnumbered paragraph, as follows:

75.1(30) Presumptive eligibility for pregnant women. A pregnant woman who is determined by a qualified provider to be presumptively eligible for Medicaid, based only on her statements regarding family income, shall be eligible for ambulatory prenatal care. *Eligibility shall continue until* the last day of the month following the month of the presumptive eligibility determination unless the pregnant woman is determined to be ineligible for Medicaid during this period based on a Medicaid application filed either ~~prior to~~ *before* the presumptive eligibility determination or during this period. In this case, presumptive eligibility shall end on the date Medicaid ineligibility is determined. *A pregnant woman who files a Medicaid application but withdraws that application before eligibility is determined has not been determined ineligible for Medicaid.* The pregnant woman shall complete Form 470-2927 *or 470-2927(S)*, Health Services Application, in order for the qualified provider to make the presumptive eligibility determination. The qualified provider shall complete Form 470-2629, *Presumptive Medicaid* Income Calculation ~~Worksheet for Presumptive Medicaid Eligibility Determinations~~, in order to establish that the pregnant woman's family income is within the prescribed limits of the Medicaid program.

If the pregnant woman files a Medicaid application in accordance with rule 441—76.1(249A) by the last day of the month following the month of the presumptive eligibility determination, Medicaid shall continue until a decision *of ineligibility* is made on the application. Payment of claims for ambulatory prenatal care services provided to a pregnant woman under this subrule is not dependent upon a finding of Medicaid eligibility for the pregnant woman.

ITEM 2. Amend subrule **75.1(35)** as follows:

Amend paragraph **"i,"** first unnumbered paragraph, as follows:

SSI-related, CMAP-related, and FMAP-related medically needy persons shall complete Form ~~470-2927 or 470-2927(S), Health Services Application~~ *470-3118 or 470-3118(S), Medicaid Review*, as part of the review process when requested to do so by the county office.

Amend paragraph **"j,"** subparagraph **(1)**, as follows:

(1) The Health Services Application, Form 470-2927 or 470-2927(S), *or the Health and Financial Support Application, Form 470-0462 or Form 470-0466 (Spanish),* shall be used to determine eligibility for SSI-related medically needy when an SSI recipient has been determined to be ineligible for SSI due to excess income or resources in one or more of the months after the effective date of the SSI eligibility decision.

Amend paragraph **"k"** as follows:

k. Recertifications. A new application shall be made when the certification period has expired and there has been a break in assistance as defined at rule 441—75.25(249A). When the certification period has expired and there has not been a break in assistance, the person shall use the ~~Health Services Application~~ *Medicaid Review,* Form ~~470-2927~~ *470-3118* or ~~470-2927(S)~~ *470-3118(S),* to be recertified.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 3. Amend rule 441—75.17(249A) as follows:

441—75.17(249A) Verification of pregnancy. For the purpose of establishing Medicaid eligibility for pregnant women under this chapter, ~~a signed statement from a maternal health center, family planning agency, physician's office, physician-directed qualifying provider, or advanced registered nurse practitioner~~ *the applicant's self-declaration of the pregnancy and the date of conception* shall serve as verification of pregnancy, *unless questionable*. ~~Additionally, the number of fetuses shall be verified if more than one exists, and the probable date of conception shall be established when necessary to determine eligibility.~~

75.17(1) *Multiple pregnancy. If the pregnant woman claims to be carrying more than one fetus, a medical professional who has examined the woman must verify the number of fetuses in order for more than one to be considered in the household size.*

75.17(2) *Cost of examination.* When an examination is required and other medical resources are not available to meet the expense of the examination, the provider shall be authorized to make the examination and submit the claim for payment.

This rule is intended to implement Iowa Code section 249A.3.

ITEM 4. Amend rule 441—75.57(249A) as follows:

Amend subrule **75.57(2)**, paragraph **"b,"** by adopting **new** subparagraph **(2)** as follows:

(2) If both parents are in the home, adult or child care expenses shall not be allowed when one parent is unemployed and is physically and mentally able to provide the care.

Amend subrule **75.57(6)**, paragraph **"t,"** as follows:

t. Any income restricted by law or regulation which is paid to a representative payee~~,~~ living outside the home~~, other than a parent who is the applicant or recipient~~, unless the income is actually made available to the applicant or recipient by the representative payee.

Amend subrule **75.57(7)** by rescinding the unnumbered paragraph following paragraph **"aa."**

[Filed Emergency After Notice 1/12/06, effective 2/1/06]
[Published 2/1/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/06.

ARC 4839B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed Emergency

Pursuant to the authority of Iowa Code section 139A.8(8), the Department of Public Health hereby amends Chapter 7, "Immunization and Immunization Education: Persons Attending Elementary or Secondary Schools, Licensed Child Care Centers or Institutions of Higher Education," Iowa Administrative Code.

The rules in Chapter 7 describe immunization requirements for attendance at elementary or secondary schools or licensed child care centers and immunization education for institutions of higher education.

This amendment corrects an error in a date that establishes the number of DTaP doses required for applicants enrolled or attempting to enroll in an elementary school.

In compliance with Iowa Code section 17A.4(2), the Department finds that notice and public participation are unnecessary because, when the original changes were made in 2005, the intent was for the four-dose DTaP requirement to be effective for those children entering kindergarten in the 2006/07 school year. The Immunization Program has been providing training to school nurses and other local partners informing them that four doses of DTaP will be required for those children starting kindergarten in the 2006/07 school year.

The Department also finds, pursuant to Iowa Code section 17A.5(2)"b"(2), that the normal effective date of the amendment should be waived and this amendment should be made effective upon filing, as it confers a benefit to school administrators, school nurses, and local public health agencies that complete school immunization audits, as well as to those individuals who will be starting kindergarten in the fall.

The State Board of Health adopted this amendment on January 11, 2006.

This amendment became effective January 11, 2006.

This amendment is intended to implement Iowa Code sections 139A.8 and 139A.26.

A fiscal impact summary prepared by the Legislative Services Agency pursuant to Iowa Code § 17A.4(3) will be available at http://www.legis.state.ia.us/IAC.html or at (515) 281-5279 prior to the Administrative Rules Review Committee's review of this rule making.

The following amendment is adopted.

PUBLIC HEALTH DEPARTMENT[641](cont'd)

Amend subrule **7.4(1)**, table, entry for elementary school/secondary school, diphtheria/tetanus/pertussis vaccine, as follows:

Institution	Age	Vaccine	Total Doses Required
Elementary school/Secondary school	4 years of age and older	Diphtheria/ Tetanus/ Pertussis[1,3]	3 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received after the applicant's fourth birthday if the applicant was born *on or* before September 15, ~~2001~~ *2000*; or 4 doses, with at least 1 dose of diphtheria/tetanus/pertussis-containing vaccine received after the applicant's fourth birthday if the applicant was born ~~on or~~ after September 15, ~~2001~~ *2000*. Applicants ≥ 7 years of age are exempt from receiving further doses of pertussis-containing vaccine; therefore, tetanus and diphtheria-containing vaccine should be used.

[1] Pediatric diphtheria and tetanus vaccine may be substituted for the pertussis-containing vaccine, without a medical exemption, when pertussis vaccine is contraindicated for the child < 7 years of age.
[2] Mumps vaccine may be included in measles/rubella-containing vaccine.
[3] If a child received the first dose of tetanus/diphtheria-containing product when the child was < 12 months of age, 4 doses are required, with 1 dose on or after the child's fourth birthday. If a child received the first dose of tetanus/diphtheria-containing product when the child was ≥ 12 months of age, 3 doses are required, with 1 dose on or after the child's fourth birthday.

[Filed Emergency 1/11/06, effective 1/11/06]
[Published 2/1/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/06.

ARC 4848B

ARTS DIVISION[222]

Adopted and Filed

Pursuant to the authority of Iowa Code section 303.1A, the Director of the Department of Cultural Affairs hereby rescinds Chapter 1, "Organization and Operation," Chapter 2, "Operating and Granting Policies," Chapter 5, "Traditional Arts Apprenticeship Program," Chapter 6, "Operational Support Grants to Major and Midsize Arts Organizations," Chapter 7, "Arts in Education Artists Roster," Chapter 8, "Minigrant Program," Chapter 9, "William H. Jackson Scholarship for the Arts," Chapter 10, "Project Support Grants for Organizations," Chapter 11, "Project Support Grants for Artists," Chapter 12, "Arts in Education Project Support Grants," Chapter 13, "Artists in Schools/Communities Residency Program," Chapter 18, "Artist Directory," Chapter 20, "Artsafe Program," and Chapter 23, "Art in State Buildings Program"; and adopts Chapter 1, "Organization and Operation," Chapter 2, "Operating and Granting Policies," Chapter 3, "Operational Support Partnership Program for Major Arts Organizations," Chapter 4, "Artist Directories and Rosters," Chapter 5, "Project Grant Programs," Chapter 9, "Iowa Arts Council Scholarship for the Arts," Chapter 12, "Artsafe Program," and Chapter 13, "Art in State Buildings Program," Iowa Administrative Code.

These rules clarify the duties and responsibilities of the Iowa Arts Council regarding the implementation of Iowa Code chapter 303, subchapter VI, and chapter 304A. These rules establish the processes by which the public accesses the programs of the Council.

Notice of Intended Action was published in the Iowa Administrative Bulletin on November 23, 2005, as **ARC 4696B**.

The Department sought input about the rules by holding a public hearing. No members of the public provided comments. These rules are identical to those published under Notice.

These rules are intended to implement Iowa Code chapter 303, subchapter VI, and chapter 304A.

The Department Director adopted these rules on January 9, 2006.

These rules will become effective March 8, 2006.

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 [rescind Chs 1, 2, 5 to 13, 18, 20, 23; adopt Chs 1 to 5, 9, 12, 13] is being omitted. These rules are identical to those published under Notice as **ARC 4696B**, IAB 11/23/05.

[Filed 1/13/06, effective 3/8/06]
[Published 2/1/06]

[For replacement pages for IAC, see IAC Supplement 2/1/06.]

ARC 4841B

HUMAN SERVICES DEPARTMENT[441]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 239B.4(4), 239B.8(2), and 249A.4, the Department of Human Services amends Chapter 78, "Amount, Duration, and Scope of Medical and Remedial Services," and Chapter 93, "PROMISE JOBS Program," Iowa Administrative Code.

These amendments temporarily increase Medicaid reimbursement for nonemergency transportation and the transportation allowance for participation in PROMISE JOBS activities to $0.30 per mile.

The Medicaid program reimbursed mileage at the rate payable to state employees until December 1, 2002, when reimbursement was lowered from $0.29 per mile (the state employee rate at that time) to $0.20 per mile as a cost-saving measure. PROMISE JOBS transportation reimbursement was increased from $0.16 per mile to $0.21 per mile on July 1, 2001. Fuel prices have risen dramatically since these rates were established. For comparison, the reimbursement rate for state employees is now $0.34 per mile, and the federal employee rate and Internal Revenue Service mileage deduction are set at $0.485 per mile.

The low reimbursement rates are a disincentive to Medicaid members' receiving needed medical care, especially in rural areas, and a barrier to their finding volunteers to provide transportation. The rates are a barrier to Family Investment Program participants' carrying out education, training, and work activities under the PROMISE JOBS program.

The Department believes that it has sufficient funds within the State Fiscal Year 2006 Family Investment Program appropriation to pay for the increased PROMISE JOBS allowances. Continuation of the $0.30 rate beyond this fiscal year depends on legislative appropriations. Funding for the Medicaid increase will be included in the request for supplemental appropriations for State Fiscal Year 2006.

The increase is temporary. The expiration date of June 30, 2006, allows the Department to reevaluate fuel prices at that time and allows the legislature to make a policy decision whether to continue the higher reimbursement rates in State Fiscal Year 2007.

These amendments do not provide for waivers in specified situations because all clients should be subject to the same limits as a matter of fairness.

These amendments were previously Adopted and Filed Emergency and were published in the November 9, 2005, Iowa Administrative Bulletin as **ARC 4626B**. Notice of Intended Action to solicit comments on that filing was published in the November 9, 2005, Iowa Administrative Bulletin as **ARC 4627B**. The Department received no comments on the Notice of Intended Action. These amendments are identical to those Adopted and Filed Emergency and published under Notice of Intended Action.

The Council on Human Services adopted these amendments on January 11, 2005.

These amendments are intended to implement Iowa Code sections 239B.19 and 249A.4.

These amendments shall become effective March 8, 2006, at which time the Adopted and Filed Emergency amendments are rescinded.

The following amendments are adopted.

HUMAN SERVICES DEPARTMENT[441](cont'd)

ITEM 1. Amend subrule **78.13(5)**, paragraph **"a,"** as follows:

a. When transportation is by car, the maximum payment that may be made will be the actual charge made by the provider for transportation to and from the source of medical care, but not in excess of 20 cents per mile. *EXCEPTION: For transportation provided from November 1, 2005, through June 30, 2006, the maximum payment shall be 30 cents per mile.*

ITEM 2. Amend subrule **93.110(6)**, paragraph **"b,"** as follows:

b. For participants who use a motor vehicle they operate themselves or who hire private transportation, the transportation allowance shall be based on a formula which uses the normally scheduled days of participation in the PROMISE JOBS activity for the period covered by the allowance times the participant's anticipated daily round-trip miles times the mileage rate of $.21 per mile. *EXCEPTION: From November 1, 2005, through June 30, 2006, the mileage rate shall be 30 cents per mile.*

[Filed 1/12/06, effective 3/8/06]
[Published 2/1/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/06.

ARC 4838B

INSPECTIONS AND APPEALS DEPARTMENT[481]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 10A.104(5) and 135B.7, the Department of Inspections and Appeals hereby amends Chapter 51, "Hospitals," Iowa Administrative Code.

The amendments clarify rules pertaining to the determination of death for purposes of organ and tissue requests and procurement by striking language which is inconsistent with Iowa Code section 708.2. The effect of the adopted amendment is to allow licensed physician assistants, licensed registered nurses, and licensed practical nurses to pronounce a person's death. Iowa Code section 708.2 permits these licensed health care practitioners, in addition to licensed physicians, to make such pronouncements.

The amendments were presented to the Hospital Licensing Board at its July 27, 2005, and November 30, 2005, meetings, at which times the Board approved the amendments. The State Board of Health initially reviewed the amendments at its September 14, 2005, meeting and approved the amendments at the Board's January 11, 2006, meeting.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 12, 2005, as **ARC 4579B**. Comments were received from the Iowa Medical Society (IMS), which requested further clarification in the rule to include the revised and complete definition of death. Additionally, the IMS requested clarification to paragraph 51.8(2)"d" regarding documentation of a patient's death. These changes have been included in the Department's adopted amendments.

The amendments will become effective March 8, 2006.

These amendments are intended to implement Iowa Code sections 10A.104(5) and 135B.7.

The following amendments are adopted.

Amend subrule 51.8(2) as follows:

51.8(2) Determination of death.

a. No organ or tissue shall be removed from a donor until death has been determined according to the requirements of Iowa law and generally acceptable standards of medical practice.

b. Death is defined by Iowa Code section 702.8 as a condition determined by the following standards*:*

~~A person will be considered dead if in the announced opinion of a physician, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.~~ *A person will be considered dead if in the announced opinion of a physician licensed pursuant to Iowa Code chapter 148, 150, or 150A, a physician assistant licensed pursuant to Iowa Code chapter 148C, or a registered nurse or a licensed practical nurse licensed pursuant to Iowa Code chapter 152, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous respiratory and circulatory functions. In the event that artificial means of support preclude a determination that these functions have ceased, a person will be considered dead if in the announced opinion of two physicians, based on ordinary standards of medical practice, that person has experienced an irreversible cessation of spontaneous brain functions. Death will have occurred at the time when the relevant functions ceased.*

c. The surgeon performing the organ removal shall not participate in the determination of brain death.

d. The patient's medical record shall include documentation of the date and time of death and identification of the ~~physician or physicians~~ *practitioner or practitioners* who determined death~~.~~ *, as provided in 51.8(2)"b."*

[Filed 1/11/06, effective 3/8/06]
[Published 2/1/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/06.

ARC 4855B

IOWA FINANCE AUTHORITY[265]

Adopted and Filed

Pursuant to the authority of Iowa Code sections 17A.3(1)"b" and 16.5(17), the Iowa Finance Authority hereby adopts new Chapter 26, "Water Pollution Control Works and Drinking Water Facilities Financing," Iowa Administrative Code.

This amendment adopts a new chapter concerning the water pollution control works and drinking water program (program) to be operated by the Iowa Finance Authority (authority). The program is part of the state revolving fund program operated by the Authority, pursuant to which the Authority provides financing to carry out the functions of the state revolving fund (SRF) loan programs. Under an agreement with the United States Environmental Protection Agency, the

IOWA FINANCE AUTHORITY[265](cont'd)

Iowa SRF is administered by the Iowa Department of Natural Resources in partnership with the Authority. The Authority and the Iowa Department of Natural Resources administer the SRF programs under the terms of interagency agreements entered into pursuant to Iowa Code chapter 28E.

The new chapter contains rules to guide the Authority in the financial aspects of the program, including loan programs, project funding, loan approval and loan terms.

These rules do not contain a waiver provision, as the Authority does not intend to grant waivers under this program, other than as may be allowed pursuant to Chapter 18 of the Authority's rules.

Notice of Intended Action was published in the September 28, 2005, Iowa Administrative Bulletin as **ARC 4551B**. The Authority held a public hearing on October 18, 2005, to receive public comments on these rules. The Authority received no comments at the public hearing.

The Authority adopted these rules on December 7, 2005.

These rules will become effective on March 8, 2006.

These rules are intended to implement Iowa Code sections 16.5(17) and 16.133.

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 26] is being omitted. These rules are identical to those published under Notice as **ARC 4551B**, IAB 9/28/05.

[Filed 1/13/06, effective 3/8/06]
[Published 2/1/06]

[For replacement pages for IAC, see IAC Supplement 2/1/06.]

ARC 4860B

LAW ENFORCEMENT ACADEMY[501]

Adopted and Filed

Pursuant to the authority of Iowa Code section 80B.11, the Iowa Law Enforcement Academy with approval of the Iowa Law Enforcement Academy Council hereby amends Chapter 2, "Minimum Standards for Iowa Law Enforcement Officers," Iowa Administrative Code.

Current subrule 2.1(10) requires that an individual have normal hearing in each ear. Hearing is considered normal when, tested by an audiometer, hearing sensitivity thresholds are within 25dB measured at 1000Hz, 2000Hz and 3000Hz averaged together. These amendments outline the minimum hearing standards for Iowa law enforcement officers. These amendments regarding new hearing standards expand the current range, allow for additional testing, and allow the use of hearing aids in limited circumstances.

Notice of Intended Action regarding these amendments was published in the October 26, 2005, Iowa Administrative Bulletin as **ARC 4591B**. Comments were accepted through November 17, 2005. A public hearing was held on November 17, 2005, at 10 a.m. in the conference room at the Iowa Law Enforcement Academy, Camp Dodge, Johnston, Iowa. No persons attended the public hearing. One written comment was received that supported the proposed amendments.

The information from the public hearing was presented to the Iowa Law Enforcement Academy Council on November 17, 2005, and again on December 1, 2005, at regular meetings. The Council approved adoption of the amendments as published in the Notice of Intended Action, with one minor change. The Council voted to delete the final sentence in the proposed amendments which read "Failure to wear the hearing aid(s) when assigned to field duty will mean that the hiring standard has not been met." Failure to wear the hearing aid once hired is not a hiring standard but rather a matter to be handled by the hiring agency. This change does not impact the hiring standard rule.

These amendments are intended to implement Iowa Code section 80B.11.

These amendments will become effective March 8, 2006.

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 [2.1(10)] is being omitted. With the exception of the change noted above, these amendments are identical to those published under Notice as **ARC 4591B**, IAB 10/26/05.

[Filed 1/13/06, effective 3/8/06]
[Published 2/1/06]

[For replacement pages for IAC, see IAC Supplement 2/1/06.]

ARC 4852B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby amends Chapter 180, "Licensure of Optometrists," and Chapter 181, "Continuing Education for Optometrists," Iowa Administrative Code.

The amendments amend continuing education requirements to provide for the substitution of Council on Endorsed Licensure Mobility for Optometrists (CELMO) certification in lieu of proof of attendance at a continuing education program and remove a reference to "approved sponsor."

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 26, 2005, as **ARC 4598B**. A public hearing was held on November 15, 2005, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. One comment asked if the Board intentionally left out COPE's Category D in the continuing education rules for CELMO. The Board added Category D in subparagraph 181.3(2)"c"(3). In discussing this issue, the Board also decided that endorsement candidates needed to have been licensed for at least three years to be more consistent with CELMO so the Board changed the time period in the introductory paragraph of 180.3(154) and in 180.3(7)"f."

The amendments were adopted by the Board of Optometry Examiners on January 12, 2006.

These amendments will become effective March 8, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

The following amendments are adopted.

ITEM 1. Amend rule **645—180.1(154)** by adopting the following **new** definition in alphabetical order:

"CELMO" means the Council on Endorsed Licensure Mobility for Optometrists.

ITEM 2. Rescind rule 645—180.3(154) and adopt the following **new** rule in lieu thereof:

645—180.3(154) Licensure by endorsement. An applicant who has been a licensed optometrist under laws of another jurisdiction for three years or more shall file an application for licensure by endorsement with the board office. An applicant for licensure to practice optometry in Iowa may only apply to be a therapeutically certified optometrist. The board may receive by endorsement any applicant from the District of Columbia or another state, territory, province or foreign country who:

180.3(1) Submits to the board a completed application;

180.3(2) Pays the licensure fee;

180.3(3) Provides an official copy of the transcript sent directly from the school to the board office. The transcript shall show a doctor of optometry degree from an accredited school. In the case of foreign graduates, applicants shall provide evidence of adherence to the current requirements of the NBEO to sit for the examination;

180.3(4) Shows evidence of successful completion of the examination of the NBEO that was current at the time of initial licensure or successful completion of the examination that is currently offered by the NBEO;

180.3(5) Provides verification of license(s) from every jurisdiction in which the applicant has been licensed, sent directly from the jurisdiction(s) to the board office. Web-based verification may be substituted for verification direct from the jurisdiction's board office if the verification provides:

a. Licensee's name;

b. Date of initial licensure;

c. Current licensure status; and

d. Any disciplinary action taken against the license;

180.3(6) Provides a statement disclosing and explaining the applicant's involvement in civil litigation related to the practice of optometry in any jurisdiction of the United States, other nations or territories; and

180.3(7) Provides proof of current CELMO certification. Applicants who provide proof of current CELMO certification satisfy the educational requirements for licensure by endorsement. If an applicant is not CELMO-certified, then the applicant must show evidence of the following:

a. The applicant shall supply evidence of completion of a course that has particular emphasis on the examination, diagnosis and treatment of conditions of the human eye and adnexa, provided by an institution accredited by a regional or professional accreditation organization that is recognized or approved by the Council on Postsecondary Accreditation of the United States Department of Education; and

b. The applicant shall show evidence on the transcript of:

(1) Forty hours of didactic education and 60 hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa; and

(2) An additional 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases.

c. If the transcript does not show evidence of 40 hours of didactic education; 60 hours of approved supervised clinical training in the examination, diagnosis and treatment of conditions of the human eye and adnexa; and 44 hours of education with emphasis on treatment and management of glaucoma and use of oral pharmaceutical agents for treatment and management of ocular diseases, the applicant shall show satisfactory evidence of completion of a course that includes training in the above-listed areas.

d. Any transcript that shows graduation from an approved school of optometry after January 2, 1988, meets the requirement of 180.3(7)"b."

e. Any transcript that shows graduation from an approved school of optometry after January 2, 1986, meets the requirement of 180.3(7)"b"(1) of 40 hours of didactic education and 60 hours of approved supervised clinical training in the examination, diagnosis, and treatment of conditions of the human eye and adnexa. Applicants need to also show evidence of completion of the requirement in 180.3(7)"b"(2).

f. An applicant for licensure by endorsement shall provide proof of licensure and evidence of three years of active practice in another state, territory or district of the United States immediately preceding the date of application which has a similar scope of practice to that required in Iowa as determined by the board. When the scope of practice is different, the applicant shall make available to the board evidence of completion of additional hours of training related to the area of the deficiency as prescribed by the board. The applicant may be exempt from the requirement of three years of active practice if, during the above-mentioned three-year period, the applicant was:

(1) Teaching optometry;

(2) A military optometrist;

(3) A supervisory or administrative optometrist; or

(4) A researcher in optometry.

180.3(8) Applicants for licensure by endorsement who were issued their Iowa licenses within six months prior to the renewal date shall not be required to renew their licenses until the renewal date two years later.

ITEM 3. Amend subrule **180.11(3)** as follows:

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

(2) Verification of completion of 30 hours of continuing education for a diagnostically certified optometrist or 50 hours for a therapeutically certified optometrist within two years of the application for reactivation *unless the applicant provides proof of current CELMO certification. Proof of current CELMO certification satisfies continuing education requirements for the purpose of reactivation.*

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

(2) Verification of completion of 60 hours of continuing education for a diagnostically certified optometrist or 100 hours for a therapeutically certified optometrist within two years of application for reactivation *unless the applicant provides proof of current CELMO certification. If the therapeutically certified optometrist provides proof of current CELMO certification, the applicant must also verify completion of an additional 50 hours of continuing education within two years of application for reactivation.*

ITEM 4. Amend rule **645—181.1(154)** by adopting the following **new** definition in alphabetical order:

"CELMO" means the Council on Endorsed Licensure Mobility for Optometrists.

ITEM 5. Amend subrule **181.2(1)**, paragraph **"b,"** as follows:

b. Requirements for therapeutic licensees. Each biennium, each person who is licensed to practice as a therapeutic licensee in this state shall be required to complete a minimum of 50 hours of continuing education approved by the board. ~~A minimum of 20 hours of continuing education per biennium shall be in the treatment and management of ocular disease.~~ Therapeutic licensees must comply with Iowa continuing education rules for license renewal and reinstatement regardless of the licensee's place of residence or place of practice.

PROFESSIONAL LICENSURE DIVISION[645](cont'd)

ITEM 6. Amend paragraph **181.3(2)"a"** by rescinding subparagraph **(4)** and adopting the following **new** subparagraph **(4)** in lieu thereof:

(4) Therapeutic licensees who provide proof of current CELMO certification meet continuing education requirements for that biennium.

ITEM 7. Adopt **new** paragraph **181.3(2)"c"** as follows:

c. Required continuing education hours. Therapeutic licensees who provide proof of current CELMO certification meet continuing education requirements for that biennium. If the licensee does not have current proof of CELMO certification, then the following are required to meet the continuing education requirement in paragraph 181.2(1)"b":

(1) Twenty hours required from COPE Category B (Ocular Disease and Management) with 4 of the 20 hours as continuing education with examination (CEE); and

(2) Twenty hours required from COPE Category C (Related Systemic Disease) with 4 of the 20 hours as continuing education with examination (CEE); and

(3) Ten additional hours required from any of the COPE Categories of A, B, C (Clinical Optometry) or D (Optometric Business Management). Hours obtained in Category D may not exceed 6 hours of the total continuing education hour requirement.

ITEM 8. Amend subrule 181.4(2), introductory paragraph, as follows:

181.4(2) The licensee shall provide the following information to the board for auditing purposes *or in lieu thereof provide proof of current CELMO certification*:

[Filed 1/13/06, effective 3/8/06]
[Published 2/1/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/06.

ARC 4850B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Optometry Examiners hereby amends Chapter 180, "Licensure of Optometrists," Chapter 183, "Discipline for Optometrists," and Chapter 184, "Fees," Iowa Administrative Code.

The amendments amend subrule 180.5(2) to allow a licensee who renews within six months of a new licensing cycle to wait until the subsequent renewal period to renew the license, corrects discipline rules by removing references to a lapsed license, and rescinds rule 645—184.1(147,154) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and provide other services for licensees such as on-line renewals. The Board prenoticed the rule to provide licensees and the public an opportunity to comment on the proposed rule. The Board did not receive any comments during the prenotice period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 26, 2005, as **ARC 4599B**. A public hearing was held on November 15, 2005, from 9:30 to 10 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received.

These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Optometry Examiners on January 12, 2006.

These amendments will become effective March 8, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 154 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 180.5(2) as follows:

180.5(2) An individual who was issued ~~an initial~~ *a* license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

ITEM 2. Amend subrule 183.2(25) as follows:

183.2(25) Representing oneself as an optometry practitioner when one's license has been suspended or revoked, or when one's license is ~~lapsed or has been placed~~ on inactive status.

ITEM 3. Rescind rule 645—184.1(147,154) and adopt the following **new** rule in lieu thereof:

645—184.1(147,154) License fees. All fees are nonrefundable.

184.1(1) Licensure fee for license to practice optometry, licensure by endorsement, or licensure by reciprocity is $300.

184.1(2) Biennial license renewal fee for each biennium is $144.

184.1(3) Late fee for failure to renew before expiration date is $60.

184.1(4) Reactivation fee is $204.

184.1(5) Duplicate or reissued license certificate or wallet card fee is $20.

184.1(6) Verification of license fee is $20.

184.1(7) Returned check fee is $25.

184.1(8) Disciplinary hearing fee is a maximum of $75.

This rule is intended to implement Iowa Code chapters 17A, 147, 154 and 272C.

[Filed 1/13/06, effective 3/8/06]
[Published 2/1/06]

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ARC 4853B

PROFESSIONAL LICENSURE DIVISION[645]

Adopted and Filed

Pursuant to the authority of Iowa Code section 147.76, the Board of Podiatry Examiners hereby amends Chapter 220, "Licensure of Podiatrists," Chapter 224, "Discipline for Podiatrists," and Chapter 225, "Fees," Iowa Administrative Code.

These amendments amend subrule 220.9(2) to allow a licensee who renews within six months of a new licensing cycle to wait until the subsequent renewal period to renew the license, corrects discipline rules by removing references to a lapsed license, and rescinds rule 645—225.1(147,149) and adopts a new rule in lieu thereof. The new rule raises fees to fund changes to an antiquated software system and provide

other services for licensees such as on-line renewals. The Board prenoticed these amendments to provide licensees and the public an opportunity to comment on the proposed amendments. The Board did not receive any comments during the prenotice period.

Notice of Intended Action was published in the Iowa Administrative Bulletin on October 26, 2005, as **ARC 4593B**. A public hearing was held on November 15, 2005, from 9 to 9:30 a.m. in the Fifth Floor Board Conference Room, Lucas State Office Building. No public comments were received. These amendments are identical to those published under Notice.

The amendments were adopted by the Board of Podiatry Examiners on January 13, 2006.

These amendments will become effective March 8, 2006.

These amendments are intended to implement Iowa Code chapters 21, 147, 149 and 272C.

The following amendments are adopted.

ITEM 1. Amend subrule 220.9(2) as follows:

220.9(2) An individual who was issued ~~an initial~~ *a* license within six months of the license renewal date will not be required to renew the license until the subsequent renewal two years later.

ITEM 2. Amend subrule 224.2(26) as follows:

224.2(26) Representing oneself as a podiatrist when one's license has been suspended or revoked, or when one's license is ~~lapsed or has been placed~~ on inactive status.

ITEM 3. Rescind rule 645—225.1(147,149) and adopt the following **new** rule in lieu thereof:

645—225.1(147,149) License fees. All fees are nonrefundable.

225.1(1) Licensure fee for license to practice podiatry, licensure by endorsement, licensure by reciprocity or temporary license is $120.

225.1(2) Biennial license renewal fee is $168 for each biennium.

225.1(3) Late fee for failure to renew before expiration is $60.

225.1(4) Reactivation fee is $228.

225.1(5) Duplicate or reissued license certificate or wallet card fee is $20.

225.1(6) Verification of license fee is $20.

225.1(7) Returned check fee is $25.

225.1(8) Disciplinary hearing fee is a maximum of $75.

225.1(9) Temporary license renewal fee is $84 per year.

This rule is intended to implement Iowa Code section 147.8 and Iowa Code chapters 17A, 149 and 272C.

[Filed 1/13/06, effective 3/8/06]
[Published 2/1/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/06.

ARC 4844B

PUBLIC HEALTH DEPARTMENT[641]

Adopted and Filed

Pursuant to the authority of Iowa Code section 135.24, the Department of Public Health hereby amends Chapter 88, "Volunteer Health Care Provider Program," Iowa Administrative Code.

The rules in Chapter 88 describe the eligibility of free clinics and health care providers, providing free health care services through qualified programs, to be defended and indemnified by the state of Iowa. These amendments provide eligibility to optometrists, podiatrists, physical therapists, occupational therapists, respiratory therapists, and emergency medical care providers. These amendments add the professions to definitions of "charitable organizations" and "volunteer health care provider" and to other areas of Chapter 88 listing each profession that is eligible to apply for protection through the Volunteer Health Care Provider Program. These amendments include application procedures and covered services for new professions. The amendments also provide for expansion of free clinic liability coverage to include the care provided by a health care provider who holds current professional liability insurance coverage and an active unrestricted license to practice in Iowa.

Notice of Intended Action was published in the December 7, 2005, Iowa Administrative Bulletin as **ARC 4701B**. No public comment was received on these amendments. The adopted amendments are identical to those published under Notice.

These amendments were approved by the State Board of Health on January 11, 2006.

These amendments will become effective on March 8, 2006.

These amendments are intended to implement 2005 Iowa Code Supplement section 135.24.

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 88] is being omitted. These amendments are identical to those published under Notice as **ARC 4701B**, IAB 12/7/05.

[Filed 1/12/06, effective 3/8/06]
[Published 2/1/06]

[For replacement pages for IAC, see IAC Supplement 2/1/06.]

ARC 4858B

SCHOOL BUDGET REVIEW COMMITTEE[289]

Adopted and Filed

Pursuant to the authority of Iowa Code section 256.9, the State Board of Education hereby adopts amendments to Chapter 6, "Duties and Operational Procedures," Iowa Administrative Code.

The amendments implement Iowa Code subsection 257.31(4) by requiring all school districts to implement the generally accepted accounting principles.

These amendments do not provide for waivers in specified situations. The Department has provided general procedures for requesting an exception at 289—Chapter 8.

Notice of Intended Action was published in the December 7, 2005, Iowa Administrative Bulletin as **ARC 4723B**.

A public hearing was held on January 5, 2006, at the Grimes State Office Building in Des Moines and at 44 sites over the ICN. There were no objections to the intent of the proposed amendments, which would require all districts to

SCHOOL BUDGET REVIEW COMMITTEE[289](cont'd)

budget on a Generally Accepted Accounting Principles (GAAP) basis beginning with the 2006-2007 school year. The general consensus of school district and education association representatives that commented on the proposed amendments was that this was an appropriate requirement.

Concern was expressed by a number of district representatives regarding what they termed the equity or fairness for two groups of districts that would not automatically receive modified allowable growth under these amendments. These districts are (1) those that previously converted to GAAP basis budgeting without the receipt of any modified allowable growth, and (2) those cash basis budgeting districts that have been paying all of their summer salaries in June, so have little if any accrued payables, resulting in little or no modified allowable growth under the hold-harmless provision of these rules.

Comments were expressed that, if these two groups of districts were not treated equitably compared to the cash basis budgeting districts that would receive the hold-harmless modified allowable growth, districts in the future would not be willing to lead the way in better financial practices. The majority of the public comments that were made supported the proposed amendments but expressed concern that the change may send the wrong message regarding fiscal responsibility unless the School Budget Review Committee (SBRC) also addresses these two groups of districts.

Concern was also expressed that, if a provision was not specifically included in the rules for the cash basis budgeting districts that have been paying all summer salaries in June, the SBRC members could deny some of these districts' requests.

Comments were made by district representatives that, in those districts that converted to GAAP basis budgeting in prior years or that were operating on a GAAP basis of budgeting without officially declaring it, the local board has made a conscious decision to do so. Therefore, modified allowable growth should not be automatic, since it was not necessary to convert and it would be counter to the decision made by those boards. Instead, these district representatives suggested that the Department make the determination of modified allowable growth calculations and procedures easier, but still require the local boards to make a request to the SBRC to be granted modified allowable growth.

Districts were asked to submit suggestions as to how an equitable amount of modified allowable growth could be calculated from known data held within the Department. Several districts have submitted suggestions that the Department will explore on behalf of the SBRC.

The Department believes the points, comments, and suggestions made by district representatives are valid but do not require changing or withdrawing the proposed amendments. The Department believes the comments were focused on the procedures and effort that would be necessary for districts to make a request for modified allowable growth if they were not in the group that would be granted an automatic hold-harmless amount under these rules or where that amount was not considered sufficient by the district. The Department will explore options to simplify the procedures that districts may use to request modified allowable growth relevant to converting to GAAP without disregarding the decisions of local boards.

These amendments are identical to those published under Notice.

The amendments were adopted on January 12, 2006.

These amendments will become effective on March 8, 2006.

These amendments are intended to implement Iowa Code section 257.31(4).

The following amendments are adopted.

Amend rule 289—6.5(257) by renumbering subrules **6.5(1)** to **6.5(4)** as **6.5(2)** to **6.5(5)** and adopting the following **new** subrule 6.5(1):

6.5(1) Generally accepted accounting principles. All school districts shall budget on the generally accepted accounting principles (GAAP) basis of budgeting beginning with fiscal year 2006-2007. In order to effect this change in accounting/budgeting methods, the SBRC shall direct the departments of education and management to adjust calculations from the 2004-2005 certified annual report (CAR) related to the 2004-2005 unspent balances carried forward to the 2005-2006 unspent balances in order to hold districts harmless.

a. If the net amount of actual expenditures less miscellaneous income on the GAAP basis is greater than the net amount of actual expenditures less miscellaneous income on the non-GAAP basis, the SBRC shall grant modified allowable growth in an amount equal to the excess of the net amount on the GAAP basis over the net amount on the non-GAAP basis.

b. If the net amount of actual expenditures less miscellaneous income on the GAAP basis is less than or equal to the net amount of actual expenditures less miscellaneous income on the non-GAAP basis or if the district budgeted on the GAAP basis in any previous fiscal year, the district does not qualify to receive modified allowable growth under paragraph "a."

c. Any district that determines that the amount of modified allowable growth granted for the change in accounting/budgeting methods is not adequate may make a request for additional modified allowable growth pursuant to Iowa Code section 257.31 at the May 2006 regular meeting of the SBRC.

d. Districts shall not be required to amend their 2005-2006 certified budgets for this change in accounting/budgeting methods unless the district would have had to amend its budget without regard to the change in accounting/budgeting methods.

[Filed 1/13/06, effective 3/8/06]
[Published 2/1/06]

EDITOR'S NOTE: For replacement pages for IAC, see IAC Supplement 2/1/06.

ARC 4856B

STATE PUBLIC DEFENDER[493]

Adopted and Filed

Pursuant to the authority of Iowa Code section 13B.4(8), the State Public Defender amends Chapter 7, "Definitions," Chapter 10, "Eligibility Guidelines for Court-Appointed Counsel," Chapter 12, "Claims for Indigent Defense Services," Chapter 13, "Claims for Other Professional Services," and Chapter 14, "Claims for Attorney Fees in 600A Terminations," Iowa Administrative Code.

These amendments modify definitions and rules concerning submission of claims for indigent defense services.

STATE PUBLIC DEFENDER[493](cont'd)

Notice of Intended Action to solicit public comment on these amendments was published in the October 26, 2005, Iowa Administrative Bulletin as **ARC 4595B**.

A public hearing was held and comments were received from private attorneys and a representative of the Iowa State Bar Association.

Based on comments received, modifications were made to rule 493—7.1(13B,815), definitions of "date of service" and "timely claim." The definitions now read as follows:

"'Date of service' means, for adult fee claims, the date of filing of an order indicating that the case was dismissed or the client was acquitted or sentenced, the date of mistrial, the date warrant was issued for the client, or the date of the attorney's withdrawal from a case prior to the date of a dismissal, acquittal, sentencing, mistrial or the issuance of a warrant. If a motion for reconsideration is filed, the date on which the court rules on that motion is the date of service. For interim claims, date of service means the last date on the itemization. For juvenile claims, date of service means the date of filing of an order as a result of the dispositional hearing or most recent review hearing, the date of the attorney's withdrawal from a case that was not dismissed, the date jurisdiction is waived to adult court, the date on which venue is changed, or the date of dismissal. For noncontract appellate claims, date of service means the date on which the case is disposed of or dismissed. For contract attorneys, date of service means the date of filing of the page-proof brief or final brief. For claims filed as a result of a notice of action letter, date of service means the date of the notice of action letter. For claims filed as a result of a court order after hearing for review of the fee claim, date of service means the date of the order.

"'Timely claim' means a claim submitted to the state public defender for payment within 45 days of the date of service in a case in which the attorney was appointed after June 30, 2004. A claim not submitted within 45 days of the date of service shall be deemed a timely claim if the delay in submitting the claim was due to the extended illness, hospitalization or death of the attorney. A timely claim returned to the claimant for additional information shall continue to be deemed timely only if resubmitted with the required information within 20 days of being returned by the state public defender."

The State Public Defender adopted these amendments on January 13, 2006.

These amendments will become effective March 8, 2006.

These amendments are intended to implement Iowa Code chapters 13B, 600A, and 815.

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 [7.1, 10.5(5), 10.5(6), 10.7, 12.2(1)"b," "d" and "e," 12.6(1), 12.6(5), 12.7(1), 12.8(1), 12.9(2), 13.2(2), 13.2(5), 14.3, 14.4] is being omitted. With the exception of the changes noted above, these amendments are identical to those published under Notice as **ARC 4595B**, IAB 10/26/05.

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