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The Iowa Administrative Code Supplement is published biweekly pursuant to Iowa Code section 17A.6. The Supplement contains replacement pages to be inserted in the loose-leaf Iowa Administrative Code (IAC) according to instructions included with each Supplement. The replacement pages incorporate rule changes which have been adopted by the agencies and filed with the Administrative Rules Coordinator as provided in Iowa Code sections 7.17 and 17A.4 to 17A.6. To determine the specific changes in the rules, refer to the Iowa Administrative Bulletin bearing the same publication date.

In addition to the changes adopted by agencies, the replacement pages may reflect objection to a rule or a portion of a rule filed by the Administrative Rules Review Committee (ARRC), the Governor, or the Attorney General pursuant to Iowa Code section 17A.4(4); an effective date delay imposed by the ARRC pursuant to section 17A.4(5) or 17A.8(9); rescission of a rule by the Governor pursuant to section 17A.4(6); or nullification of a rule by the General Assembly pursuant to Article III, section 40, of the Constitution of the State of Iowa.

The Supplement may also contain replacement pages for the IAC Index and for the preliminary sections of the IAC: General Information about the IAC, Chapter 17A of the Code of Iowa, Style and Format of Rules, Table of Rules Implementing Statutes, and Uniform Rules on Agency Procedure.

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IOWA ADMINISTRATIVE CODE

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CHAPTER 85
WEIGHTS AND MEASURES

[Appeared as Ch 14, 1973 IDR]
[Certain rules renumbered 5/3/78]

All tolerances and specifications for the weights and measures division were adopted from the U.S. Bureau of Standards Handbook II, 44 published September 1949.

[Prior to 7/27/88 see Agriculture Department 30—Ch 55]

WEIGHTS

21—85.1(215) "Sensibility reciprocal" defined. The term *"sensibility reciprocal"* is defined as to the weight required to move the position of equilibrium of the beam, pan, pointer or other indicating device of a scale, a definite amount.

This rule is intended to implement Iowa Code section 215.18.

21—85.2(215) "Platform scale" defined. Rescinded IAB 3/31/04, effective 5/5/04.

21—85.3(215) For vehicle, axle-load, livestock, animal, crane and railway track scales. Rescinded IAB 3/31/04, effective 5/5/04.

21—85.4 Reserved.

21—85.5(215) "Counter scale" defined. A *"counter scale"* is a scale of any type which is especially adopted on account of its compactness, light weight, moderate capacity and arrangements of parts for use upon a counter, bench, or table.

21—85.6(215) "Spring and computing scales" defined. A *"spring scale"* is a scale in which the weight indications depend upon the change of shape or dimensions of an elastic body or system of such bodies.

85.6(1) A *"computing scale"* is a scale which, in addition to indicating the weight, indicates the total price of the amount of commodity weighed for a series of unit prices and must be correct in both its weight and value indications.

85.6(2) All computing scales shall be equipped with weight indicators and charts on both the dealer's and customer's sides.

85.6(3) Tolerances for both the spring scale and the computing scale shall not be greater than that for counter scales.

This rule is intended to implement Iowa Code section 215.18.

21—85.7(215) "Automatic grain scale" defined. The *"automatic grain scale"* is one so constructed with a mechanical device that a stream of grain flowing into its hopper can be checked at any given weight, long enough to register said weight and dump the load. The garner above the scale should have at least three times the capacity of the scale to ensure a steady flow at all times.

On automatic-indicating scales. On a particular scale, the maintenance tolerances applied shall be not smaller than one-fourth the value of the minimum reading-face graduation; the acceptance tolerances applied shall be not smaller than one-eighth the value of the minimum reading-face graduation.

However, on a prepacking scale (see D.11, D.12) having graduated intervals of less than one-half ounce, the maintenance tolerances applied shall not be smaller than one-eighth ounce and the acceptance tolerances applied shall be not smaller than one-sixteenth ounce.

This rule is intended to implement Iowa Code section 215.18.

21—85.8(215) "Motor truck scales" defined. *"Motor truck scales"* are scales built by the manufacturer for the use of weighing commodities transported by motor truck.

This rule is intended to implement Iowa Code section 215.18.

21—85.9(215) "Livestock scales" defined. *"Livestock scales"* are scales which are constructed with stock racks, or scales which are being used to weigh livestock.

This rule is intended to implement Iowa Code section 215.18.

21—85.10(215) "Grain dump scales" defined. *"Grain dump scales"* are scales so constructed that the truck may be unloaded without being moved from the scale platform.

The above-mentioned scales must be approved by the department. This approval being based upon blueprints and specifications submitted for this purpose.

This rule is intended to implement Iowa Code section 215.18.

21—85.11(215) Scale pit.

85.11(1) In the construction of a scale pit, walls must be of reinforced concrete. A slab floor must be installed in the pit. The floor must be at least 12 inches thick with a minimum of grade 40 reinforcement rod running into all piers and sidewalls, installed according to the manufacturer's specifications. There shall be an approach at each end of the scale of not less than ten feet, and said approach shall be of reinforced concrete 12 inches thick on a level with the scale deck.

85.11(2) Electronic scales shall have a vertical clearance of not less than four feet from the floor line to the bottom of the I-beam of the scale bridge, thus providing adequate access for inspection and maintenance. The load-bearing supports of all scales installed in a fixed location shall be constructed to ensure the strength, rigidity and permanence required for proper scale performance.

This rule is intended to implement Iowa Code section 215.15.

21—85.12(215) Pitless scales. A person may install pitless electronic, self-contained and vehicle scales in a permanent location provided the following conditions for the construction are incorporated:

85.12(1) Scale installation applications and permits must be submitted to the department of agriculture and land stewardship the same as the pit scale installation, with specifications being furnished by the manufacturer, for approval.

85.12(2) Piers shall extend below the frost line or be set on solid bed rock; and they shall be of reinforced concrete.

85.12(3) A reinforced concrete slab the width of the scale, at least six inches thick, shall run full length under the scale. Slab and piers shall be tied together with reinforcement rod, with a minimum clearance of eight inches between floor and weighbridge.

85.12(4) Reinforced portland cement approaches at least 12 inches thick, ten feet long and as wide as the scale, shall be provided on each end in a level plane with the scale platform.

85.12(5) Scale shall be installed at an elevation to ensure adequate drainage away from scale.

85.12(6) Scale platform and indicator shall be protected from wind and other elements which could cause inaccurate operation of the scale.

This rule is intended to implement Iowa Code section 215.18.

21—85.13(215) Master weights. Master scale test weights used for checking scales after being overhauled must be sealed by the department of agriculture and land stewardship, division of weights and measures, as to their accuracy once each year. Said weights after being sealed are to be used only as master test weights.

This rule is intended to implement Iowa Code section 215.17.

21—85.14(215) Scale design. A scale shall be of such materials and construction that (1) it will support a load of its full nominal capacity without developing undue stresses or deflections, (2) it may reasonably be expected to withstand normal usage without undue impairment of accuracy or the correct functioning of parts, and (3) it will be reasonably permanent in adjustment.

85.14(1) *Stability of indications.* A scale shall be capable of repeating with reasonable precision its indications and recorded representations. This requirement shall be met irrespective of repeated manipulation of any scale element in a manner duplicating normal usage, including *(a)* displacement of the indicating elements to the full extent allowed by the construction of the scale, *(b)* repeated operation of a locking device, and *(c)* repeated application or removal of unit weights.

85.14(2) *Interchange or reversal of parts.* Parts which may readily be interchanged or reversed in the course of normal usage shall be so constructed that their interchange or reversal will not materially affect the zero-load balance or the performance of the scale. Parts which may be interchanged or reversed in normal field assembly shall be *(a)* so constructed that their interchange or reversal will not affect the performance of the scale or *(b)* so marked as to show their proper positions.

85.14(3) *Pivots.* Pivots shall be made of hardened steel, except that agate may be used in prescription scales, and shall be firmly secured in position. Pivot knife-edges shall be sharp and straight and cone-pivot points shall be sharp.

85.14(4) *Position of equipment, primary or recording indicating elements (electronic weighing elements).* A device equipped with a primary or recording element shall be so positioned that its indications may be accurately read and the weighing operations may be observed from some reasonable "customer" position; the permissible distance between the equipment and a reasonable customer position shall be determined in each case upon the basis of individual circumstances, particularly the size and character of the indicating element; a window large enough should be placed in the building, and the installation should be so arranged as to afford an unobstructed view of the platform.

This rule is intended to implement Iowa Code section 215.18.

21—85.15(215) Weighbeams. All weighbeams, dials, or other mechanical weight-indicating elements must be placed on reinforced concrete footings or metal structural members. Concrete and metal must be of sufficient strength to keep mechanical weight-indicating elements in positive alignment with the lever system.

This rule is intended to implement Iowa Code section 215.18.

21—85.16(215) Beam box. Whenever a scale is equipped with a beam box, the beam uprights, shelf and cap must be made of channel irons or I-beams. The box covering the weighbeam may be constructed of wood or other material.

This rule is intended to implement Iowa Code section 215.18.

21—85.17(215) Beam rod. Rescinded IAB 3/31/04, effective 5/5/04.

21—85.18(215) Weight capacity. The amount of weight indicated on the beam, dial or other auxiliary weighing attachments shall not exceed the factory-rated capacity of the scale, and said capacity shall be stamped on the butt of the beam (fractional bar is not included).

85.18(1) *Auxiliary attachment.* If auxiliary attachment is used, the amount of the auxiliary attachment must be blocked from the beam.

85.18(2) *Normal position.* The normal balance position of the weighbeam of a beam scale shall be horizontal.

85.18(3) *Travel.* Rescinded IAB 3/31/04, effective 5/5/04.
85.18(4) *Weighbeam.* Rescinded IAB 3/31/04, effective 5/5/04.
85.18(5) *Poise stop.* Rescinded IAB 3/31/04, effective 5/5/04.
85.18(6) *Pawl.* Rescinded IAB 3/31/04, effective 5/5/04.
85.18(7) *Nominal capacity, marking.* Rescinded IAB 3/31/04, effective 5/5/04.
85.18(8) *Uncompensated spring scales.* A small capacity uncompensated spring scale shall be conspicuously marked to show that the scale is illegal for use in the retail sale of foodstuffs other than fruits and vegetables.

This rule is intended to implement Iowa Code section 215.16.

21—85.19(215) Provision for sealing coin slot. Provision shall be made on a coin-operated scale for applying a lead and wire seal in such a way that insertion of a coin in the coin slot will be prevented.

This rule is intended to implement Iowa Code section 215.18.

21—85.20(215) Stock racks. A livestock scale shall be equipped with a suitable enclosure, fitted with gates as required, within which livestock may be held on a scale platform; this rack shall be securely mounted on the scale platform and adequate clearances shall be maintained around the outside of the rack.

This rule is intended to implement Iowa Code section 215.18.

21—85.21(215) Lengthening of platforms. The length of the platform of a vehicle scale shall not be increased beyond the manufacturer's designed dimension except when the modification has been approved by competent scale-engineering authority, preferably that of the engineering department of the manufacturer of the scale, and by the weights and measures authority having jurisdiction over the scale.

This rule is intended to implement Iowa Code section 215.18.

21—85.22(215) Accessibility for testing purposes. A large capacity scale shall be so located, or such facilities for normal access thereto shall be provided that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by the customary means; otherwise it shall be the responsibility of the scale owner or operator to supply such special facilities, including necessary labor, as may be required to transport the test weights to and from the scale, for testing purposes, as required by the weights and measures official.

This rule is intended to implement Iowa Code section 215.10.

21—85.23(215) Assistance in testing operations. If the design, construction or location of a large-capacity scale is such as to require a testing procedure involving special accessories or an abnormal amount of handling of test weights, such accessories or needed assistance in the form of labor shall be supplied by the owner or operator of the scale, as required by the weights and measures official.

This rule is intended to implement Iowa Code section 215.1.

21—85.24(215) Beam scale. One on which the weights of loads of various magnitude are indicated solely by means of one or more weighbeam bars either alone or in combination with counterpoise weights.

This rule is intended to implement Iowa Code section 215.18.

21—85.25(215) Spring scale. An automatic-indicating scale in which the counterforce is supplied by an elastic body or system of such bodies, the shape or dimensions of which are changed by applied loads. A "compensated" spring scale is one equipped with a device intended to compensate for changes in the elasticity of the spring or springs resulting from changes in temperature, or one so constructed as to be substantially independent of such changes; an "uncompensated" spring scale is one not so equipped or constructed. A "straight-face" spring scale is one in which the indicator is affixed to the spring without intervening mechanism and which indicates weight values on a straight graduated reading-face. (The use in a scale of metal bands or strips in lieu of pivots and bearings does not constitute the scale a "spring" scale.)

This rule is intended to implement Iowa Code section 215.18.

21—85.26(215) Weighbeam or beam. An element comprising one or more bars equipped with movable poises or means for applying counterpoise weights or both.

This rule is intended to implement Iowa Code section 215.18.

21—85.27(215) Livestock scale. For purposes of the application of requirements for SR tolerances and minimum graduations, a scale having a nominal capacity of 6,000 pounds or more and used primarily for weighing livestock standing on the scale platform. (An "animal scale" is a scale adapted to weighing single heads of livestock.)

This rule is intended to implement Iowa Code section 215.18.

SCALES

21—85.28(215)◊ Wheel-load weighers and axle-load scales. The requirements for wheel-load weighers and axle-load scales apply only to such scales in official use for the enforcement of traffic in highway laws or for the collection of statistical information by government agencies.

This rule is intended to implement Iowa Code 215A.3.

21—85.29(215) Highway vehicle. Rescinded IAB 3/31/04, effective 5/5/04.

21—85.30 to **85.32** Reserved.

MEASURES

21—85.33(214A,208A) Motor vehicle fuel and antifreeze tests and standards. In the interest of uniformity, the tests and standards for motor vehicle fuel, oxygenate octane enhancers, raffinate natural gasoline and motor vehicle antifreeze shall be those established by the American Society for Testing and Materials (A.S.T.M.) in effect on January 1, 2000, except that the standards for E-Grade denatured fuel ethanol shall be the American Petroleum Institute's (API) specification in use at the Iowa terminals. In addition, a retail dealer of motor vehicle fuel shall not sell or offer for sale in Iowa a motor vehicle fuel that contains more than 2 percent of methyl tertiary butyl ether (MTBE) by volume.

This rule is intended to implement Iowa Code sections 208A.5, 208A.6 and 215.18 and 1999 Iowa Acts, chapter 204.

◊Prior to 12/4/85, appeared as rules 30—55.55 and 55.56

21—85.34(215) Tolerances on petroleum products measuring devices. All pumps or meters at filling stations may have a tolerance of not over five cubic inches per five gallons, minus or plus. All pumps or measuring devices of a large capacity shall have a maintenance tolerance of 50 cubic inches, minus or plus, on a 50-gallon test. Add additional one-half cubic inch tolerance per gallon over and above a 50-gallon test. Acceptance tolerances on large capacity pumps and measuring devices shall be one-half the maintenance tolerances.

This rule is intended to implement Iowa Code sections 214.2 and 215.20.

21—85.35(215) Meter adjustment. If a meter is found to be incorrect and also capable of further adjustment, said meter shall be adjusted, rechecked and sealed. If a seal is broken for any cause other than by a state inspector, the department of agriculture and land stewardship shall be promptly notified of same.

85.35(1) Companies specializing in testing and repairing gasoline and fuel oil dispensing pumps or meters, shall be registered with the division of weights and measures, upon meeting requirements set forth by the department of agriculture and land stewardship.

85.35(2) In accordance with the contemplated revision of National Bureau of Standards Handbook 44-4th Edition, G-UR4.4 (Replacement of Security Seal), accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

85.35(3) If a meter is found to be inaccurate, "Repair and Placing in Service" card shall be left by the inspector.

85.35(4) After meter has been repaired and placed in service, the "Repair and Placing in Service" card must be returned to the Iowa Department of Agriculture and Land Stewardship, Weights and Measures Division.

This rule is intended to implement Iowa Code section 215.20.

21—85.36(215) Recording elements. All weighing or measuring devices shall be provided with appropriate recording or indicating elements, which shall be definite, accurate and easily read under any conditions of normal operation of the device. Graduations and a suitable indicator shall be provided in connection with indications and recorded representations designed to advance continuously. Graduations shall not be required in connection with indications or recorded representations designed to advance intermittently or with indications or recorded representations of the selector type.

This rule is intended to implement Iowa Code section 215.18.

21—85.37(215) Air eliminator. All gasoline or oil metering devices shall be equipped with an effective air eliminator to prevent passage of air or vapor through the meter. The vent from such eliminator shall not be closed or obstructed.

This rule is intended to implement Iowa Code section 215.18.

21—85.38(215) Delivery outlets. No means shall be provided by which any measured liquid can be diverted from the measuring chamber of the meter or the discharge line therefrom. However, two or more delivery outlets may be installed, if automatic means is provided to ensure that liquid can flow from only one such outlet at one time, and the direction of flow for which the mechanism may be set at any time is definitely and conspicuously indicated.

This rule is intended to implement Iowa Code section 215.18.

21—85.39(189,215) Weights and measures. The specifications, tolerances and regulations for commercial weighing and measuring devices, together with amendments thereto, as recommended by the National Institute of Standards and Technology and published in National Institute of Standards and Technology Handbook 44 amended or revised as of July 1, 2003, shall be the specifications, tolerances and regulations for commercial weighing and measuring devices in the state of Iowa, except as modified by state statutes, or by rules adopted and published by the Iowa department of agriculture and land stewardship and not rescinded.

The National Institute of Standards and Technology (NIST) Handbooks 130 and 133: Weights and Measures Law, Packaging and Labeling, Method of Sale, Type Evaluation and Checking the Net Contents of Packaged Goods, and all supplements, as promulgated by the National Institute of Standards and Technology amended or revised as of July 1, 2003, are adopted in their entirety by this reference.

This rule is intended to implement Iowa Code sections 189.9, 189.13, 189.17, 215.14, 215.18 and 215.23.

21—85.40(215) Inspection tag or mark. If a meter is found to be inaccurate, an appropriate "inaccurate" card and a "repair and placing in service" card shall be left with the meter.

85.40(1) The "inaccurate" card is to be retained by the LP-gas dealer after repair.

85.40(2) The "repair and placing in service" card is to be forwarded to weights and measures division of the Iowa department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.5.

21—85.41(215) Meter repair. If the meter has not been repaired within 30 days the meter will be condemned and a red condemned tag will be attached to the meter.

This rule is intended to implement Iowa Code section 215.5.

21—85.42(215) Security seal. In accordance with the contemplated revision of National Institute of Standards and Technology Handbook 44, Gur. 4.4 (Replacement of Security Seal), accredited repair and testing companies shall be authorized to affix a security seal, properly marked with the identification of such company.

This rule is intended to implement Iowa Code section 215.12.

21—85.43(215) LP-gas meter repairs. Companies specializing in testing and repairing LP-gas meters shall be registered with the division of weights and measures as accredited repair and testing agencies upon meeting the requirements set forth by the department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.20.

21—85.44(215) LP-gas delivery. In the delivery of LP-gas by commercial bulk trucks (bobtail) across state lines, it shall be mandatory for all trucks delivering products to be equipped with a meter that has been either tested by the state of Iowa or that carries the seal of an accredited meter service and proving company.

This rule is intended to implement Iowa Code section 215.20.

21—85.45(215) LP-gas meter registration. The location of all LP-gas liquid meters in retail trade shall be listed, by the owner, with the department of agriculture and land stewardship.

This rule is intended to implement Iowa Code section 215.20.

21—85.46(215) Reporting new LP-gas meters. Upon putting a new or used meter into service in the state of Iowa, the user shall report to the weights and measures division.

This rule is intended to implement Iowa Code section 215.20.

21—85.47 Rescinded, effective 11/27/85.

21—85.48(214A,215) Advertisement of the price of liquid petroleum products for retail use.

85.48(1) Nothing in this rule shall be deemed to require that the price per gallon or liter or any grade or kind of liquid petroleum product sold on the station premises be displayed or advertised except on the liquid petroleum metering distribution pumps.

85.48(2) Petroleum product retailers, if they elect to advertise the unit price of their petroleum products at or near the curb, storefront or billboard, shall display the price per gallon or liter. The advertised price shall equal the computer price settings shown on the metering pump.

85.48(3) Notwithstanding the provisions of subrule 85.48(2), cash only prices may be posted by the petroleum marketer on the following basis:

a. Cash only prices must be disclosed on the posted sign as "cash only" or similar unequivocal wording in lettering 3″ high and ¼″ in stroke when the whole number price being shown is 36″ or less in height; or in lettering at least 6″ high and ½″ in stroke when the whole number price is more than 36″ in height.

b. Cash prices posted or advertised must be available to all customers, regardless of type of service (e.g., full service or self-service); or grade of product (e.g., regular, unleaded, gasohol and diesel).

c. Cash and credit prices or discounts must be prominently displayed on the dispenser.

d. A chart showing applicable cash discounts expressed in terms of both the computed and posted price shall be available to the customer on the service station premises.

85.48(4) On all outside display signs, the whole number shall not be less than 6″ in height and not less than 3/8″ in stroke, and any fraction shall be at least one-third of the size of the whole number in both height and width.

85.48(5) The price must be complete, including taxes without any missing numerals or fractions in the price.

85.48(6) Price advertising signs shall identify the type of product (e.g., regular, unleaded, gasohol and diesel), in lettering at least 3″ high and ¼″ in stroke when the whole number price being shown is 36″ or less in height, or in lettering at least 6″ high and ½″ in stroke when the whole number price is more than 36″ in height.

85.48(7) A price advertising sign shall display, if in liters and may display if in gallons, the unit measure at least in letters of 3″ minimum.

85.48(8) Directional or informational signs for customer location of the type of service or product advertised shall be clearly and prominently displayed on the station premises in a manner not misleading to the public.

85.48(9) The advertising of other commodities or services offered for sale by petroleum retailers in such a way as to mislead the public with regard to petroleum product pricing shall be prohibited.

85.48(10) Weights and measures motor vehicle fuels decals. All motor vehicle fuel kept, offered or exposed for sale or sold at retail containing over 1 percent of a renewable fuel shall be identified with a decal located on front of the motor vehicle fuel pump and placed between 30″ and 50″ above the driveway level or in an alternative location approved by the department. The appearance of the decal shall conform to the following standards adopted by the renewable fuels and coproducts advisory committee:

a. The only two sizes of decals approved are the following:

(1) A design of 1.25″ by 4″.

(2) A design of 2″ by 6″.

b. All labels shall have the word "with" in letters a minimum of .1875″ high, and the name of the renewable fuel in letters a minimum of .5″ high.

c. The use of color, design and wording shall be approved by the renewable fuels and coproducts advisory committee. The coordinator may receive input from any party including the weights and measures bureau of the department in recommending the color, design, and wording. The advisory committee shall approve the color, design, and wording to promote the use of renewable fuels.

d. All black and white fuel pump stickers shall be replaced by approved colorful fuel pump decals effective July 1, 1995.

85.48(11) Rescinded IAB 3/31/04, effective 5/5/04.

85.48(12) Any wholesale dealer, retail dealer, pipeline, refinery, barge or bulk plant in this state that sells or holds for sale natural gasoline raffinate below the minimum 87 octane (R + M)/2 requirement of Iowa Code section 214A.2 that is intended or is to be blended with an oxygenate octane enhancer or higher gasoline components shall register with the department.

85.48(13) All retail shipments of blended natural gasoline/raffinate must be accompanied by a certificate showing the true standards and tests of such blended motor fuel that was obtained by the methods referred to in Iowa Code section 214A.2. The certificate must accompany the shipping document or bill of lading before such blended fuel can be received or unloaded.

85.48(14) Octane rating of fuel offered for sale shall be posted on the pump in a conspicuous place.

85.48(15) Any gasoline labeled as "leaded" shall be produced with the use of any lead additive or contain more than 0.05 grams of lead per gallon or more than 0.005 grams of phosphorus per gallon. As used in this subrule, "lead additive" means any substance containing lead or lead compounds.

This rule is intended to implement Iowa Code sections 214A.3, 214A.16 and 215.18.

21—85.49(214A,215) Gallonage determination for retail sales. The method of determining gallonage on gasoline or diesel motor vehicle fuel for retail sale shall be on a gross volume basis. Temperature correction or any deliberate methods of heating shall be prohibited.

This rule is intended to implement Iowa Code sections 214A.3 and 215.18.

21—85.50 and **85.51** Reserved.

MOISTURE-MEASURING DEVICES

21—85.52(215A) Testing devices. All moisture-measuring devices will be tested against a measuring device which will be furnished by the department and all moisture-measuring devices will be inspected to determine whether they are in proper operational condition and supplied with the proper accessories.

This rule is intended to implement Iowa Code section 215A.2.

21—85.53(215A) Rejecting devices. Moisture-measuring devices may be rejected for any of the following reasons:

85.53(1) The moisture-measuring device tested is found to be out of tolerance with the measuring device used by the department by one of the inspectors so assigned by more than 0.7 percent on grain moisture content.

85.53(2) The person does not have available the latest charts for type of device being used.

85.53(3) The person does not have available the proper scale or scales and thermometers for use with the type of device being used.

85.53(4) The moisture-measuring device is not free from excessive dirt, debris, cracked glass or is not kept in good operational condition at all times.

This rule is intended to implement Iowa Code section 215A.6.

21—85.54(215,215A) Specifications and standards for moisture-measuring devices. The specifications and tolerances for moisture-measuring devices are those established by the United States Department of Agriculture as of November 15, 1971, in chapter XII of GR instruction 916-6, equipment manual, used by the federal grain inspection service; and those recommended by National Bureau of Standards and published in National Bureau of Standards Handbook 44 as of July 1, 1985.

This rule is intended to implement Iowa Code section 215A.3.

21—85.55 Renumbered as 55.28(215), IAC 12/4/85.

21—85.56 Renumbered as 55.29(215), IAC 12/4/85.

21—85.57(215)* Testing high-moisture grain. When testing high-moisture grain the operator of a moisture-measuring device shall use the following procedure: Test each sample six times adding the six measurements thus obtained and dividing the total by six to obtain an average which shall be deemed to be the moisture content of such sample.

This rule is intended to implement Iowa Code section 215A.7.

21—85.58 to **85.62** Reserved.

HOPPER SCALES

21—85.63(215) Hopper scales. A "hopper scale" is a scale designed for weighing bulk commodities whose load-receiving element is a tank, box, or hopper mounted on a weighing element; and includes automatic hopper scales, grain hopper scales, and construction material hopper scales.

85.63(1) *Installation.* A hopper scale used for commercial purposes shall be so located, or such facilities for normal access thereto shall be so provided that the test weights of the weights and measures official, in the denominations customarily provided, and in the amount deemed necessary by the weights and measures official for the proper testing of the scale, may readily be brought to the scale by customary means; otherwise it shall be the responsibility of the scale owner or operator to supply such special facilities, as required by the weights and measures official. The hopper scale shall have extended angle irons with hooks 14 inches from edge to hopper, in all four corners, to allow the inspector to hook his chain and binder to 500# weight (or 1000# weight) for testing.

85.63(2) *Method of hopper scale testing.* The method to be used in testing the scale for weighing accuracy shall be by the suspension of standard test weights at each corner of the weighbridge, suspended from a point as near as possible over the center of the main bearing. A suitable permanent device to which the suspension equipment may be connected shall be properly located and placed on each corner of the weighbridge. There is to be no obstruction, such as machinery, spouting or insufficient wall clearance, etc., that will interfere with the free suspension of the weights.

85.63(3) *Approved by department.* Newly installed hopper scales must be approved by the department; this approval shall be based upon blueprints and specifications submitted for this purpose.

This rule is intended to implement Iowa Code sections 215.10 and 215.18.

[IDR 1952, p.20, 1954, 1958, 1962]
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CHAPTERS 86 to 89
Reserved

14.142(3) *Superintendent/AEA administrator.*

a. Authorization. The holder of this endorsement is authorized to serve as a superintendent from the prekindergarten level through grade twelve or as an AEA administrator.

NOTE: This authorization does not permit general teaching, school service, or administration at any level except that level or area for which the practitioner holds the specific endorsement(s).

b. Program requirements.

(1) Degree—specialist—(or its equivalent: A master's degree plus at least 30 semester hours of planned graduate study in administration beyond the master's degree).

(2) Content: Through completion of a sequence of courses and experiences which may have been part of, or in addition to, the degree requirements, the administrator has knowledge and understanding of:

1. Models, theories, and practices that provide the basis for leading educational systems toward improving student performance.
2. Federal, state and local fiscal policies related to education.
3. Human resources management, including recruitment, personnel assistance and development, evaluation and negotiations.
4. Current legal issues in general and special education.
5. Noninstructional support services management including but not limited to transportation, nutrition and facilities.

(3) Practicum in PK-12 school administration. In the coursework and the practicum, the administrator facilitates processes and engages in activities for:

1. Developing a shared vision of learning through articulation, implementation, and stewardship.
2. Advocating, nurturing, and sustaining a school culture and instructional program conducive to student learning and staff professional growth.
3. Ensuring management of the organization, operations, and resources for a safe, efficient, and effective learning environment.
4. Collaborating with school staff, families, community members and boards of directors; responding to diverse community interests and needs; and mobilizing community resources.
5. Acting with integrity, fairness, and in an ethical manner.
6. Understanding, responding to, and influencing the larger political, social, economic, legal, and cultural context.

c. Other. The applicant must have had three years of experience as a building principal or other PK-12 districtwide or area education agency administrative experience.

14.142(4) *AEA administrator license.* Rescinded IAB 3/31/04, effective 5/5/04.

282—14.143(272) Requirements for a substitute authorization. A substitute authorization allows an individual to substitute in a middle school, junior high school, or high school for no more than five consecutive days in one job assignment. An individual who holds a paraeducator certificate and completes the substitute authorization program is authorized to substitute only in the special education classroom in which the individual paraeducator is employed.

14.143(1) A substitute authorization may be issued to an individual who:

a. Has successfully completed all requirements of a board of educational examiners-approved substitute authorization program consisting of the following components and totaling a minimum of 15 clock hours:

(1) Classroom management. This component includes an understanding of individual and group motivation and behavior to create a learning environment that encourages positive social interaction, active engagement in learning, and self-motivation.

(2) Strategies for learning. This component includes understanding and using a variety of learning strategies to encourage students' development of critical thinking, problem solving, and performance skills.

(3) Diversity. This component includes understanding how students differ in their approaches to learning and creating learning opportunities that are equitable and are adaptable to diverse learners.

(4) Ethics. This component includes fostering relationships with parents, school colleagues, and organizations in the larger community to support students' learning and development and to be aware of the board's rules of professional practice and competent performance.

b. Has achieved at least one of the following:

(1) Holds a baccalaureate degree from a regionally accredited institution.

(2) Completed an approved paraeducator certification program and holds a paraeducator certificate.

c. Has attained a minimum age of 21 years.

d. Has successfully completed an Iowa division of criminal investigation background check. The background check fee will be assessed to the applicant.

e. Has successfully completed a national criminal history background check. The background check fee will be assessed to the applicant.

14.143(2) The fee for the substitute authorization is $25 for one year.

14.143(3) The substitute authorization must be renewed annually. Renewal requirements for the substitute authorization consist of a minimum of one renewal unit equivalent to 15 clock hours and completion of a child and dependent adult abuse training program approved by the state abuse education review panel. A waiver of the approved child and dependent adult abuse training requirement may apply under the following conditions with appropriate documentation of any of the following:

a. The person is engaged in active duty in the military service of this state or of the United States.

b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

c. The person is practicing a licensed profession outside this state.

d. The person is otherwise subject to circumstances that would preclude the person from completing the approved child and dependent adult abuse training in this state.

e. The person has previously renewed a license or authorization issued by the board of educational examiners and, at that time, reported the completion, within the past five years, of child and dependent adult abuse training approved by the state abuse education review panel.

These rules are intended to implement Iowa Code chapters 272 and 284.

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CHAPTER 20
EVALUATOR ENDORSEMENT AND LICENSE

[Prior to 9/7/88, see Public Instruction Department[670] Ch 81]
[Prior to 10/3/90, see Education Department[281] Ch 80]

These rules are to accompany 281—83.5(284), Evaluator Approval Training, adopted by the department of education.

282—20.1(272) Evaluator approval. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.2(272) Applicants for administrative licensure. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.3(272) Renewal or continuation of administrative licenses or endorsements. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.4(272) Out-of-state applicants. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.5(272) Development of evaluator approval programs. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.6(272) Requirements for renewal of evaluator approval. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.7(272) Evaluator approval endorsement. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.8(272) Holder of permanent professional certificate. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.9(272) Requirements for a one-year conditional administrative license. Rescinded IAB 3/31/04, effective 5/5/04.

282—20.10 to **20.50** Reserved.

282—20.51(272) Evaluator endorsement and license. This endorsement or this license authorizes services as required by Iowa Code section 284.10.

282—20.52(272) Initial evaluator endorsement. To obtain this authorization as an endorsement on an administrative, evaluator, or teaching license, an applicant must complete the requirements as specified in 281—83.5(284).

282—20.53(272) Evaluator endorsement. The requirements for the evaluator endorsement shall be included in each program leading to administrative licensure and administrative endorsements in Iowa colleges and universities approved to offer these programs.

282—20.54(272) Applicants for administrative licensure. Each applicant for an initial administrative license shall have completed the evaluator endorsement requirements.

282—20.55(272) Evaluator license. Applicants may apply for the five-year evaluator license upon completion of the evaluator training required in Iowa Code section 284.10.

The fee for the evaluator license is $50. If the term of the license extends beyond the term of the applicant's valid administrative or evaluator license, the fee for the evaluator license will be prorated to equal $10 per year of extension. The following provides examples of the prorated fees for this extension:

If the practitioner's current license is extended by five years, the fee is $50.

If the practitioner's current license is extended by four years, the fee is $40.

If the practitioner's current license is extended by three years, the fee is $30.

If the practitioner's current license is extended by two years, the fee is $20.

If the practitioner's current license is extended by one year, the fee is $10.

If the practitioner's current license is extended by less than one year, the fee is $10.

282—20.56(272) Out-of-state applicants. An out-of-state applicant who seeks an administrative license after July 1, 2003, will be granted a Class A license valid for one year in order to complete the evaluator endorsement requirements. If the person does not hold an administrative license in the state where the person completed the administrative program, then a Class A license will be granted. The Class A license is valid for one year and is nonrenewable. The requirements for the evaluator endorsement must be met before the issuance of the administrative license.

282—20.57(272) Renewal of administrative licenses. Each applicant for renewal of an administrative license shall have completed the evaluator endorsement requirements. A waiver of this requirement may apply if a person submits appropriate documentation of any of the following:

1. A person is engaged in active duty in the military service of this state or of the United States.
2. A person is practicing a licensed profession outside this state.
3. A person is practicing as a nonpublic school administrator in this state.
4. A person is practicing in a nonadministrative, nonevaluative position in this state.

282—20.58(272) Requirements for renewal of evaluator endorsement or license.

20.58(1) Coursework for renewal of the evaluator license or the license with the evaluator endorsement must complement the initial requirements. This coursework must be at least one semester hour of college or university credit or one renewal unit from an approved Iowa staff development program.

20.58(2) All applicants renewing an evaluator license must submit documentation of completion of the child and dependent adult abuse training approved by the state abuse education review panel. A waiver of this requirement may apply if a person submits appropriate documentation of any of the following:

a. A person is engaged in active duty in the military service of this state or of the United States.

b. The application of this requirement would impose an undue hardship on the person for whom the waiver is requested.

c. A person is practicing a licensed profession outside this state.

d. A person is otherwise subject to circumstances that would preclude the person from satisfying the approved child and dependent adult abuse training in this state.

20.58(3) An individual holding the evaluator license may convert this license to an endorsement at the time of renewal. The fee for this conversion process will equal the fee for license renewal. The endorsement will be placed on the administrative or teaching license.

282—20.59(272) Holder of permanent professional certificate.

20.59(1) The holder of the permanent professional certificate with an administrative endorsement must hold a valid evaluator license if the person serves as an administrator who evaluates licensed personnel.

20.59(2) The holder of the permanent professional certificate with an administrative endorsement cannot use the option in subrule 20.58(3).

282—20.60(272) Requirements for a Class A administrative license. A Class A license valid for one year may be issued to an individual who has not completed the required evaluator training program which is necessary for renewal of the administrative and evaluator licenses. The fee for this one-year license is $10. This license may be renewed for one additional year at the same fee if the individual cannot complete the required evaluator training program during the term of the initial conditional license. This rule will sunset January 1, 2005.

These rules are intended to implement Iowa Code chapter 272.

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CHAPTER 21
APPROVAL OF POSTSECONDARY SCHOOLS

283—21.1(261B) Approval criteria. The college student aid commission shall approve applicant schools that:

1. Are accredited by an agency recognized by the United States Department of Education or its successor agency.
2. Are approved for operation by the appropriate state agencies in all other states in which the schools operate or maintain a presence.
3. Are not subject to a limitation, suspension or termination order issued by the United States Department of Education or its successor agency.
4. Are free of sanctions from the schools' accrediting agencies and appropriate state agencies in all other states in which the schools operate or maintain a presence.
5. Enroll students who attend classes in Iowa and employ at least one full-time Iowa faculty member or program coordinator with graduate degrees, special training, experience, creative production or other accomplishments or distinctions that qualify them for their specific assignments.
6. Comply with Iowa Code section 261B.7 limiting the use of references to the secretary of state, state of Iowa, or college student aid commission in promotional material.
7. Comply with the requirements of Iowa Code section 261.9(1)*"e"* to *"h."*
8. File annual reports that the commission requires from all Iowa colleges and universities.
9. Have submitted a description of a proposed program(s) to members of the Iowa coordinating council for post-high school education and have responded to any inquiries or concerns.

*10. Meet all certification, accreditation, and approval standards established for Iowa colleges and universities that offer programs substantially the same as those offered by the applicant school.

This rule is intended to implement Iowa Code chapter 261B.

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CHAPTER 202
FOSTER CARE SERVICES

CHAPTER 203
IOWA ADOPTION EXCHANGE

CHAPTER 204
SUBSIDIZED GUARDIANSHIP PROGRAM

EXCEPTION: When some of the household members are eligible for full Medicaid benefits under the Health Insurance Premium Payment Program (HIPP), as provided in rule 441—75.21(249A), the health insurance premium shall not be allowed as a deduction to meet the spenddown obligation of those persons in the household in the medically needy coverage group.

2. An average statewide monthly standard deduction for the cost of medically necessary personal care services provided in a licensed residential care facility shall be allowed as a deduction for spenddown. These personal care services include assistance with activities of daily living such as preparation of a special diet, personal hygiene and bathing, dressing, ambulation, toilet use, transferring, eating, and managing medication.

The average statewide monthly standard deduction for personal care services shall be based on the average per day rate of health care costs associated with residential care facilities participating in the state supplementary assistance program for a 30.4-day month as computed in the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities (Category: All; Type of Care: Residential; Location: All; and Type of Control: All). The average statewide standard deduction for personal care services used in the medically needy program shall be updated and effective the first day of the first month beginning two full months after the release of the Unaudited Compilation of Cost and Statistical Data for Residential Care Facilities report.

3. Medical expenses for necessary medical and remedial services that are recognized under state law but not covered by Medicaid, chronologically by date of submission.

4. Medical expenses for acupuncture, chronologically by date of submission.

5. Medical expenses for necessary medical and remedial services that are covered by Medicaid, chronologically by date of submission.

(3) When incurred medical expenses have reduced income to the applicable MNIL, the individuals shall be eligible for Medicaid.

(4) Medical expenses reimbursed by a public program other than Medicaid prior to the certification period shall not be considered a medical deduction.

h. Medicaid services. Persons eligible for Medicaid as medically needy will be eligible for all services covered by Medicaid except:

(1) Care in a nursing facility or an intermediate care facility for the mentally retarded.

(2) Care in an institution for mental disease.

(3) Care in a Medicare-certified skilled nursing facility.

(4) Rehabilitative treatment services pursuant to 441—Chapter 185.

i. Reviews. Reviews of eligibility shall be made for SSI-related, CMAP-related, and FMAP-related medically needy recipients with a zero spenddown as often as circumstances indicate but in no instance shall the period of time between reviews exceed 12 months.

SSI-related, CMAP-related, and FMAP-related medically needy persons shall complete Form 470-2927, Health Services Application, as part of the review process when requested to do so by the county office.

j. Redetermination. When an SSI-related, CMAP-related, or FMAP-related recipient who has had ongoing eligibility because of a zero spenddown has income that exceeds the MNIL, a redetermination of eligibility shall be completed to change the recipient's eligibility to a two-month certification with spenddown. This redetermination shall be effective the month the income exceeds the MNIL or the first month following timely notice.

(1) The Health Services Application, Form 470-2927, 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.

(2) All eligibility factors shall be reviewed on recertifications. A face-to-face interview is not required for recertifications if the last face-to-face interview was less than 12 months ago and there has not been a break in assistance. When the length of time between face-to-face interviews would exceed 12 months, a face-to-face interview shall be required.

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, Form 470-2927, to be recertified.

l. Disability determinations. An applicant receiving social security disability benefits under Title II of the Social Security Act or railroad retirement benefits based on the Social Security Act definition of disability by the Railroad Retirement Board shall be deemed disabled without any further determination. In other cases under the medically needy program, the department shall conduct an independent determination of disability unless the applicant has been denied supplemental security income benefits based on lack of disability and does not allege either (1) a disabling condition different from or in addition to that considered by the Social Security Administration, or (2) that the applicant's condition has changed or deteriorated since the most recent Social Security Administration determination.

(1) In conducting an independent determination of disability, the department shall use the same criteria required by federal law to be used by the Social Security Administration of the United States Department of Health and Human Services in determining disability for purposes of Supplemental Security Income under Title XVI of the Social Security Act. The disability determination services bureau of the division of vocational rehabilitation shall make the initial disability determination on behalf of the department.

(2) For an independent determination of disability, the applicant or recipient or the applicant's or recipient's authorized representative shall submit either Form 470-2465, Disability Report for Adults, if the applicant or recipient is aged 18 or over, or Form 470-3912, Disability Report for Children, if the applicant or recipient is under the age of 18. A signed Authorization for Source to Release Information to the Department of Human Services, Form 470-2467, shall be completed for each medical source listed on the disability report.

(3) In connection with any independent determination of disability, the department shall determine whether reexamination of the person's medical condition will be necessary for periodic redeterminations of eligibility.

75.1(36) *Expanded specified low-income Medicare beneficiaries.* As long as 100 percent federal funding is available under the federal Qualified Individuals (QI) Program, Medicaid benefits to cover the cost of the Medicare Part B premium shall be available to persons who are entitled to Medicare Part A provided the following conditions are met:

a. The person is not otherwise eligible for Medicaid.

b. The person's monthly income is at least 120 percent of the federal poverty level but is less than 135 percent of the federal poverty level (as defined by the United States Office of Management and Budget and revised annually in accordance with Section 673(2) of the Omnibus Budget Reconciliation Act of 1981) applicable to a family of the size involved.

c. The person's resources do not exceed twice the maximum amount of resources that a person may have and obtain benefits under the Supplemental Security Income (SSI) program.

d. The amount of the income and resources shall be determined the same as under the SSI program unless the person lives and is expected to live at least 30 consecutive days in a medical institution and has a spouse at home. Then the resource determination shall be made according to subrules 75.5(3) and 75.5(4). Income shall not include any amount of social security income attributable to the cost-of-living increase through the month following the month in which the annual revision of the official poverty level is published.

e. The effective date of eligibility shall be as set forth in rule 441—76.5(249A).

75.1(37) *Home health specified low-income Medicare beneficiaries.* Rescinded IAB 10/30/02, effective 1/1/03.

75.1(38) *Continued Medicaid for disabled children from August 22, 1996.* Medical assistance shall be available to persons who were receiving SSI as of August 22, 1996, and who would continue to be eligible for SSI but for Section 211(a) of the Personal Responsibility and Work Opportunity Act of 1996 (P.L. 104-193).

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78.24(3) Payment will not be approved for the following services:

a. Psychological examinations performed without relationship to evaluations or psychotherapy for a specific condition, symptom, or complaint.

b. Psychological examinations covered under Part B of Medicare, except for the Part B Medicare deductible and coinsurance.

c. Psychological examinations employing unusual or experimental instrumentation.

d. Individual and group psychotherapy without specification of condition, symptom, or complaint.

e. Sensitivity training, marriage enrichment, assertiveness training, growth groups or marathons, or psychotherapy for nonspecific conditions of distress such as job dissatisfaction or general unhappiness.

78.24(4) Rescinded IAB 10/12/94, effective 12/1/94.

78.24(5) The following services shall require review by a consultant to the department.

a. Protracted therapy beyond 16 visits. These cases shall be reviewed following the sixteenth therapy session and periodically thereafter.

b. Any service which does not appear necessary or appears to fall outside the scope of what is professionally appropriate or necessary for a particular condition.

This rule is intended to implement Iowa Code sections 249A.4 and 249A.15.

441—78.25(249A) Maternal health centers. Payment will be made for prenatal and postpartum medical care, care coordination, health education, and transportation to receive prenatal and postpartum services. Payment will be made for enhanced perinatal services for persons determined high risk. These services include additional health education services, nutrition counseling, social services, additional care coordination services, and one postpartum home visit. Maternal health centers shall provide trimester and postpartum reports to the referring physician. Risk assessments using Form 470-2942, Medicaid Prenatal Risk Assessment, shall be completed twice during a Medicaid recipient's pregnancy.

Maternal health centers which wish to administer vaccines which are available through the vaccines for children program to Medicaid recipients shall enroll in the vaccines for children program. In lieu of payment, vaccines available through the vaccines for children program shall be accessed from the department of public health for Medicaid recipients. Maternal health centers shall receive reimbursement for the administration of vaccines to Medicaid recipients.

78.25(1) *Provider qualifications.*

a. Prenatal and postpartum medical services shall be provided by a physician, a physician assistant, or a nurse practitioner employed by or on contract with the center. Medical services performed by maternal health centers shall be performed under the supervision of a physician. Nurse practitioners and physician assistants performing under the supervision of a physician must do so within the scope of practice of that profession, as defined by Iowa Code chapters 152 and 148C, respectively.

b. Care coordination services shall be provided by a registered nurse; a person with at least a bachelor's degree in social work, counseling, sociology, family and community services, health or human development, health education, individual and family studies, or psychology; a person with a degree in dental hygiene; a licensed practical nurse; or a paraprofessional working under the direct supervision of a health professional.

c. Education services and postpartum home visits shall be provided by a registered nurse.

d. Nutrition services shall be provided by a licensed dietitian.

e. Psychosocial services shall be provided by a person with at least a bachelor's degree in social work, counseling, sociology, psychology, family and community services, health or human development, health education, or individual and family studies.

78.25(2) *Services covered for all pregnant women.* Services provided may include:

a. Prenatal and postpartum medical care.

b. Health education, which shall include:

(1) Importance of continued prenatal care.

(2) Normal changes of pregnancy including both maternal changes and fetal changes.

(3) Self-care during pregnancy.

(4) Comfort measures during pregnancy.

(5) Danger signs during pregnancy.

(6) Labor and delivery including the normal process of labor, signs of labor, coping skills, danger signs, and management of labor.

(7) Preparation for baby including feeding, equipment, and clothing.

(8) Education on the use of over-the-counter drugs.

(9) Education about HIV protection.

c. Care coordination services, which shall include:

(1) Presumptive eligibility.

(2) Referral to WIC.

(3) Referral for dental services.

(4) Referral to physician or midlevel practitioners.

(5) Risk assessment.

(6) Arrangements for delivery, as appropriate.

(7) Arrangements for prenatal classes.

(8) Departmental multiprogram application.

(9) Hepatitis screen.

(10) Referral for eligible services.

d. Transportation to receive prenatal and postpartum services that is not payable under rule 441—78.11(249A) or 441—78.13(249A).

78.25(3) *Enhanced services covered for women with high-risk pregnancies.* Enhanced perinatal services may be provided to a patient who has been determined to have a high-risk pregnancy as documented by Form 470-2942, Medicaid Prenatal Risk Assessment. An appropriately trained physician or advanced registered nurse practitioner must be involved in staffing the patients receiving enhanced services.

Enhanced services are as follows:

a. Care coordination, the coordination of comprehensive prenatal services, which shall include:

(1) Developing an individual plan of care based on the client's needs, including pregnancy and personal and interpersonal issues. This package includes counseling (such as coaching, supporting, educating, listening, encouraging, and feedback), referral, and assistance for other specified services such as mental health.

(2) Ensuring that the client receives all components as appropriate (medical, education, nutrition, psychosocial, and postpartum home visit).

(3) Risk tracking.

b. Education, which shall include as appropriate education about the following:

(1) High-risk medical conditions.

(2) High-risk sexual behavior.

(3) Smoking cessation.

(4) Alcohol usage education.

(5) Drug usage education.

(6) Environmental and occupational hazards.

c. Nutrition assessment and counseling, which shall include:

(1) Initial assessment of nutritional risk based on height, current and prepregnancy weight status, laboratory data, clinical data, and self-reported dietary information.

(2) Ongoing nutritional assessment.

(3) Development of an individualized nutritional care plan.

(4) Referral to food assistance programs if indicated.

(5) Nutritional intervention.

d. Psychosocial assessment and counseling, which shall include:

(1) A psychosocial assessment including: needs assessment, profile of client demographic factors, mental and physical health history and concerns, adjustment to pregnancy and future parenting, and environmental needs.

(2) A profile of the client's family composition, patterns of functioning and support systems.

(3) An assessment-based plan of care, risk tracking, counseling and anticipatory guidance as appropriate, and referral and follow-up services.

e. A postpartum home visit within two weeks of the child's discharge from the hospital, which shall include:

(1) Assessment of mother's health status.

(2) Physical and emotional changes postpartum.

(3) Family planning.

(4) Parenting skills.

(5) Assessment of infant health.

(6) Infant care.

(7) Grief support for unhealthy outcome.

(8) Parenting of a preterm infant.

(9) Identification of and referral to community resources as needed.

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

441—78.26(249A) Ambulatory surgical center services. Ambulatory surgical center services are those services furnished by an ambulatory surgical center in connection with a covered surgical procedure or a covered dental procedure.

Covered surgical procedures shall be those medically necessary procedures that are eligible for payment as physicians' services, under the circumstances specified in rule 441—78.1(249A) and performed on an eligible recipient, that can safely be performed in an outpatient setting as determined by the department upon advice from the department's utilization review and quality assurance firm.

Covered dental procedures are those medically necessary procedures that are eligible for payment as dentists' services, under the circumstances specified in rule 441—78.4(249A) and performed on an eligible recipient, that can safely be performed in an outpatient setting for Medicaid recipients whose mental, physical, or emotional condition necessitates deep sedation or general anesthesia.

The covered services provided by the ambulatory surgical center in connection with a Medicaid-covered surgical or dental procedure shall be those nonsurgical and nondental services covered by the Medicare program as ambulatory surgical center services in connection with Medicare-covered surgical procedures.

78.26(1) Abortion procedures are covered only when criteria in subrule 78.1(17) are met.

78.26(2) Sterilization procedures are covered only when criteria in subrule 78.1(16) are met.

78.26(3) Preprocedure review by the Iowa Foundation for Medical Care (IFMC) is required if ambulatory surgical centers are to be reimbursed for certain frequently performed surgical procedures as set forth under subrule 78.1(19). Criteria are available from IFMC, 3737 Woodland Avenue, Suite 500, West Des Moines, Iowa 50265, or in local hospital utilization review offices. (Cross-reference 78.28(6))

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

441—78.27(249A) Genetic consultation clinics. Rescinded IAB 6/28/00, effective 8/2/00.

441—78.28(249A) List of medical services and equipment requiring prior approval, preprocedure review or preadmission review.

78.28(1) Services, procedures, and medications prescribed by a physician (M.D. or D.O.) which are subject to prior approval or preprocedure review are as follows or as specified in the preferred drug list published by the department pursuant to Iowa Code Supplement section 249A.20A:

a. Prior authorization is required for psychostimulants for recipients 21 years of age or older. Prior approval shall be granted if there is documentation of one of the following:

1. Attention deficit disorder.
2. Attention deficit hyperactivity disorder.
3. Narcolepsy.
4. Adjunctive treatment of major depression.

The fiscal agent shall consider other conditions on an individual basis after review of documentation submitted regarding the need for psychostimulants. Psychostimulants include the following medications: dextroamphetamine, amphetamine mixtures, methampethamine, methylphenidate, pemoline (Cylert), and modafinil (Provigil). (Cross-reference 78.1(2)*"a"*(3))

b. Prior approval is required for multiple vitamins, tonic preparations and combinations with minerals, hormones, stimulants, or other compounds which are available as separate entities for treatment of specific conditions. Payment for these vitamins, preparations, or compounds will be approved when there is a specifically diagnosed vitamin deficiency disease or for recipients aged 20 or under if there is a diagnosed disease which inhibits the nutrition absorption process secondary to the disease. (Prior approval is not required for products principally marketed as prenatal vitamin-mineral supplements.) (Cross-reference 78.1(2)*"a"*(3))

c. Enteral products and enteral delivery pumps and supplies require prior approval. Daily enteral nutrition therapy shall be approved as medically necessary only for a recipient who either has a metabolic or digestive disorder that prevents the recipient from obtaining the necessary nutritional value from usual foods in any form and cannot be managed by avoidance of certain food products or has a severe pathology of the body that does not allow ingestion or absorption of sufficient nutrients from regular food to maintain weight and strength commensurate with the recipient's general condition. (Cross-reference 78.10(3)*"c"*(2))

(1) A request for prior approval shall include a physician's, physician assistant's, or advanced registered nurse practitioner's written order or prescription and documentation to establish the medical necessity for enteral products and enteral delivery pumps and supplies pursuant to the above standards. The documentation shall include:

1. A statement of the recipient's total medical condition that includes a description of the recipient's metabolic or digestive disorder or pathology.
2. Documentation of the medical necessity for commercially prepared products. The information submitted must identify other methods attempted to support the recipient's nutritional status and indicate that the recipient's nutritional needs were not or could not be met by regular food in pureed form.

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◊Two or more ARCs
December 15, 2002, effective date of 78.41(1)"c"*(3), 78.41(1)*"d,"* 78.43(2)*"c,"* 78.43(2)*"c"*(3) and 78.43(2)*"d"* delayed 70 days by the Administrative Rules Review Committee at its meeting held December 10, 2002; at its meeting held February 21, 2003, the Committee delayed the effective date until adjournment of the 2003 Session of the General Assembly.

Provider category	Basis of reimbursement	Upper limit
Hospitals (Critical access)	Retrospectively adjusted prospective rates. See 79.1(1)*"g"* and 79.1(5)	The reasonable cost of covered services provided to medical assistance recipients or the upper limits for other hospitals, whichever is greater.
Hospitals (Inpatient)	Prospective reimbursement. See 79.1(5)	Reimbursement rate in effect 6/30/01 less 3%.
Hospitals (Outpatient)	Prospective reimbursement for providers listed at 441—paragraphs 78.31(1)*"a"* to *"f."* See 79.1(16)	Ambulatory patient group rate (plus an evaluation rate) and assessment payment rate in effect on 6/30/01 less 3%.
	Fee schedule for providers listed at 441—paragraphs 78.31(1)*"g"* to *"n."* See 79.1(16)	Rates in effect on 6/30/01 less 3%.
Independent laboratories	Fee schedule. See 79.1(6)	Medicare fee schedule. See 79.1(6)
Indian health service 638 facilities	1. Base rate as determined by the United States Office of Management and Budget for outpatient visits for American Indian and Alaskan native recipients. 2. Fee schedule for service provided for all other Medicaid recipients.	1. Office of Management and Budget rate published in the Federal Register for outpatient visit rate. 2. Fee schedule.
Infant and toddler program providers	Fee schedule	Fee schedule
Intermediate care facilities for the mentally retarded	Prospective reimbursement. See 441—82.5(249A)	Eightieth percentile of facility costs as calculated from 12/31/00 cost reports
Lead inspection agency	Fee schedule	Fee schedule in effect 6/30/01 less 3%.
Local education agency services providers	Fee schedule	Fee schedule
Maternal health centers	Reasonable cost per service on a prospective basis as determined by the department based on financial and statistical data submitted annually by the provider group	Fee schedule
MR/CMI/DD case management providers	Monthly fee for service with cost settlement. See 79.1(1)*"d"*	Retrospective cost-settled rate

Provider category	Basis of reimbursement	Upper limit
Nursing facilities: 1. Nursing facility care	Prospective reimbursement. See 441—subrule 81.10(1) and 441—81.6(249A). The percentage of the median used to calculate the direct care excess payment allowance ceiling under 441—81.6 (16)*"d"*(1)"1" and (2)"1" is 95% of the patient-day-weighted median. The percentage of the difference used to calculate the direct care excess payment allowance is 100%. The percentage of the median used to calculate the direct care excess payment allowance limit is 10% of the patient-day-weighted median. The percentage of the median used to calculate the non-direct care excess payment allowance ceiling under 441—81.6(16)*"d"*(1)"2" and (2)"2" is 96% of the patient-day-weighted median. The percentage of the difference used to calculate the non-direct care excess payment allowance limit is 65%. The percentage of the median used to calculate the non-direct care excess payment allowance limit is 8% of the patient-day-weighted median.	See 441—subrules 81.6(4) and 81.6(14) and paragraph 81.6(16)*"f."* The direct care rate component limit under 441—81.6(16)*"f"*(1) and (2) is 120% of the patient-day-weighted median. The non-direct care rate component limit under 441—81.6(16)*"f"* (1) and (2) is 110% of the patient-day-weighted median.

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TITLE XII
LICENSING AND APPROVED STANDARDS

CHAPTER 105
COUNTY AND MULTICOUNTY JUVENILE DETENTION HOMES AND COUNTY AND MULTICOUNTY JUVENILE SHELTER CARE HOMES

[Prior to 7/1/83, Social Services[770] Ch 105]
[Prior to 2/11/87, Human Services[498]]

441—105.1(232) Definitions.

"*Administer medication*" means to remove medication from its storage place; to ensure to the extent possible that the child ingests, applies, or uses the appropriate dosage at the appropriate time of day; and to document the dosage and the time and date that the child ingested, applied, or used the medication.

"*Authorized prescriber*" means those persons identified in Iowa Code section 147.107 and Iowa Code chapter 154.

"*Chemical restraint*" means the use of chemical agents including psychotropic drugs as a form of restraint. The therapeutic use of psychotropic medications as a component of a service plan for a particular child is not considered chemical restraint.

"*Child care worker or house parent*" shall mean an individual employed by a facility whose primary responsibility is the direct care of the children in the facility.

"*Coed facility*" shall mean a facility which has both sexes in residence.

"*Control room*" shall mean a locked room in a juvenile detention home, used for the purpose of isolation or seclusion of a child. A control room shall not be allowed in a juvenile shelter care home.

"*Controlled substances*" means those substances identified in Iowa Code chapter 124.

"*County or multicounty*" shall mean that the governing body is a county board of supervisors or a combination of representatives from county boards of supervisors.

"*Facility*" shall mean a county or multicounty "juvenile detention home" or county or multicounty "juvenile shelter care home" as those terms are defined in Iowa Code section 232.2.

"*Family shelter home*" means a family home providing temporary care for a child in a physically unrestricting home at any time between the child's initial contact with the juvenile authorities and the disposition of the case.

"*Mechanical restraint*" means restriction by the use of a mechanical device of a child's mobility or ability to use the hands, arms or legs.

"*Nonprescription medication*" means any drug or device that is not a prescription medication as defined in this chapter.

"*Prescription medication*" means a prescription drug as defined in Iowa Code section 155A.3(30).

"*Prime programming time*" is any period of the day when special attention or supervision is necessary, for example, upon awakening in the morning, during meals, later afternoon play, transitions between activities, evenings, and bedtime, weekends and holidays, in order to maintain continuity of programs and care. Prime programming time shall be defined by the facility and approved by the department of human services.

441—105.2(232) Buildings and grounds.

105.2(1) *Grounds.*

a. An outdoor play area of 75 square feet per child shall be provided.

b. The play area shall be identified and kept free from hazards that could cause injury to a child.

c. Rubbish and trash shall be kept separated from the play area.

d. The grounds shall be adequately drained.

105.2(2) *Buildings.*

a. All living areas shall:

(1) Have screens on windows used for ventilation.

(2) Be maintained in clean, sanitary conditions, free from vermin, rodents, dampness, noxious gases, and objectionable odors.

(3) Be in safe repair.

(4) Provide for adequate lighting when natural sunlight is inadequate.

(5) Have heating and storage areas separated from sleeping or play areas.

(6) Have walls and ceilings surfaced with materials that are asbestos free.

b. All sleeping rooms shall be of finished construction and provide a minimum of 60 square feet per child for multiple occupancy, 80 square feet per child for single occupancy, and not sleep more than four children per room.

(1) Facilities licensed prior to July 1, 1981, having a square foot area less than that required shall be considered to meet these standards.

(2) There shall be not more than four youths per room in shelter and two youths per room in detention. Sleeping areas shall be assigned on the basis of the individual child's needs for privacy and independence of group support. For detention facilities built prior to July 1, 1979, four youths per room in detention may be allowed provided the minimum square feet per child requirement is met. When a detention facility licensed prior to July 1, 1979, remodels or makes an addition after July 1, 1979, only two youths per room shall be allowed.

c. All rooms aboveground shall:

(1) Have a ceiling height of at least 7 feet, 6 inches.

(2) Have a window area of at least 8 percent of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

d. All rooms belowground shall:

(1) Have a ceiling height of at least 6 feet, 8 inches.

(2) Have a window area of at least 2 percent of the floor area unless mechanical ventilation is provided that is capable of removing dampness and odors.

(3) Have floor and walls constructed of concrete or other materials with an impervious finish and free from groundwater leakage.

105.2(3) *Bedrooms.*

a. Each child in care shall have a solidly constructed bed.

b. Sheets, pillowcases and blankets shall be provided for each child and shall be kept clean and in good repair.

c. Each child in care shall have adequate storage space for private belongings.

d. No child over the age of five years shall occupy a bedroom with a member of the opposite sex.

105.2(4) *Heating.*

a. The heating unit shall be so located and operated as to maintain the temperature in the living quarters at a minimum of 65 degrees Fahrenheit during the day and 55 degrees Fahrenheit during the night. Variances may be made in case of health problems. Temperature is measured at 24 inches above the floor in the middle of the room.

b. All space heaters involving the combustion of fuel, such as gas, oil or similar fuel, shall be properly vented to the outside atmosphere.

c. Neither rubber nor plastic tubing shall be used as supply lines for gas or oil heaters.

d. The heating and cooling plant shall be checked yearly and kept in a safe working condition at all times.

105.2(5) *Bathroom facilities.*

a. Bathrooms shall have an adequate supply of hot and cold running water.

b. Each bathroom shall be properly equipped with toilet tissue, towels, soap, and other items required for personal hygiene unless children are individually given such items. Paper towels, when used, and toilet tissue shall be in dispensers. Detention facilities shall provide items required for personal hygiene but shall not be required to keep items in the bathrooms.

c. Toilets and baths or showers shall provide for individual privacy.

d. There shall be a shower or tub for each ten children or portion thereof.

e. Tubs and showers shall have slip-proof surfaces.

f. At least one toilet and one lavatory shall be provided for each six children or portion thereof.

g. Toilet facilities shall be provided with natural or artificial ventilation capable of removing odors and moisture.

h. Toilet facilities adjacent to a food preparation area shall be separated completely by a windowless door that completely fills the doorframe.

i. All toilet facilities shall be kept clean.

j. When more than one stool is used in one bathroom, partitions providing privacy shall be used.

k. Toilets, wash basins, and other plumbing or sanitary facilities shall be maintained in good operating condition.

105.2(6) *Food preparation and storage.*

a. Cracked dishes and utensils shall not be used in the preparation, serving, or storage of food.

b. Storage areas for perishable foods shall be kept at 45 degrees Fahrenheit or below.

c. Storage areas for frozen food shall be kept at zero degrees Fahrenheit or below.

d. Food that is to be served hot shall be maintained at 140 degrees Fahrenheit or above.

e. Food that is to be served cold shall be maintained at 45 degrees Fahrenheit or less.

f. The kitchen and food storage areas shall be kept clean and neat. Food shall not be stored on the floor.

g. The floor and walls shall be of smooth construction and in good repair.

105.2(7) *Personnel handling food.*

a. Shall be free of infection that might be transferred while preparing or handling food.

b. Shall be clean and neatly groomed.

c. Shall wear clean clothes.

d. Shall not use tobacco in any form while preparing or serving food.

105.2(8) *Dishwashing facilities.*

a. Manual dishwashing will be allowed in facilities that normally serve 15 or less people at one meal.

b. Automatic or commercial dishwashers shall be used in facilities normally serving more than 15 people at one meal, as long as the following conditions are met:

(1) When chemicals are added for sanitation purposes, they shall be automatically dispensed.

(2) Machines using hot water for sanitizing must maintain the wash water at least 150 degrees Fahrenheit and rinse water at a temperature of at least 180 degrees Fahrenheit or a single temperature machine at 165 degrees Fahrenheit for both wash and rinse.

(3) All machines shall be thoroughly cleaned and sanitized at least once each day or more often if necessary to maintain satisfactory operating condition.

c. Soiled and clean dish table areas shall be of adequate size to accommodate the dishes for one meal.

d. All hand-held food preparation and serving equipment shall be cleaned and sanitized following each meal. Dispensers, urns and similar equipment shall be cleaned and sanitized daily.

105.2(9) *Foods not prepared at site of serving.*

a. The place where food is prepared for off-site serving shall conform with all requirements for on-site food preparation.

b. Food shall be transported in covered containers or completely wrapped or packaged so as to be protected from contamination.

c. During transportation, and until served, hot foods shall be maintained at 140 degrees Fahrenheit or above and cold food maintained at 45 degrees Fahrenheit or below.

105.2(10) *Milk supply.* When fluid milk is used, it shall be pasteurized Grade "A."

105.2(11) *Public water supply.* The water supply is approved when the water is obtained from a public water supply system.

105.2(12) *Private water supplies.*

a. Each privately operated water supply shall be annually checked and evaluated for obvious deficiencies such as open or loose well tops or platforms and poor drainage around the wells.

b. As part of the evaluation, water samples must be collected and submitted by the department of human services worker or local health sanitarian to the state hygienic laboratory or other laboratory certified by the hygienic laboratory and analyzed for coliform bacteria and nitrate (NO_3) content.

c. When the water supply is obtained from more than one well, proof of the quality of the water from each well is required.

d. When no apparent deficiencies exist in the well and the water sample is approved, water safety requirements have been met.

e. When the water sample is not approved, the facility shall provide a written statement as to how the water supply will be upgraded.

f. A facility with unsafe water can meet water safety requirements by utilizing an alternative safe water source for children until the facility's own water supply is tested as safe. The facility must complete Form 470-0699, Provisions for Alternate Water Supply, and obtain approval from the department.

105.2(13) *Heating or storage of hot water.* Each tank used for the heating or storage of hot water shall be provided with a pressure and temperature relief valve.

105.2(14) *Sewage treatment.*

a. Facilities shall be connected to public sewer systems where available.

b. Private disposal systems shall be designed, constructed, and maintained so that no unsanitary or nuisance conditions exist, such as surface discharge of raw or partially treated sewage or failure of the sewer lines to convey sewage properly.

105.2(15) *Garbage storage and disposal.*

a. A sufficient number of garbage and rubbish containers shall be provided to properly store all material between collections.

b. Containers shall be fly-tight, leakproof, and rodent proof and shall be maintained in a sanitary condition.

105.2(16) *General.*

a. Facilities shall take sufficient measures to ensure the safety of the children in care.

b. Stairways, halls and aisles shall be of substantial nonslippery material, shall be maintained in a good state of repair, shall be adequately lighted and shall be kept free from obstructions at all times. All stairways shall have handrails.

c. Radiators, registers and steam and hot water pipes shall have protective covering or insulation. Electrical outlets and switches shall have wall plates.

d. Fuse boxes shall be inaccessible to children.

e. Facilities shall have written procedures for the handling and storage of hazardous materials.

f. Firearms are prohibited in shelter care and detention facilities.

g. All swimming pools shall conform to state and local health and safety regulations. Adult supervision shall be provided at all times when children are using the pool.

h. The facility shall have policies regarding fishing ponds, lakes or any bodies of water located on or near the institution grounds and accessible to the children.

105.2(17) *Emergency evacuation.* All living units utilized by children shall have a posted plan for evacuation in case of fire or disaster with practice drills held at least every six months.

105.2(18) *Fire inspection.* Each facility shall procure an annual fire inspection approved by the state fire marshal and shall meet the recommendations thereof.

105.2(19) *Local codes.* Each facility shall meet local building, zoning, sanitation and fire safety ordinances. Where no local standards exist, state standards shall be met.

441—105.3(232) Personnel policies.

105.3(1) *Policies in writing.* The following personnel policies and practices of the agency relating to a specific facility shall be described in writing and accessible to staff upon request:

a. Affirmative action and equal employment opportunity policies and procedures covering the hiring, assignment and promotion of employees.

b. Job descriptions for all positions.

c. Provisions for vacations, holidays and sick leave.

d. Effective, time-limited grievance procedures allowing the aggrieved party to bring the grievance to at least one level above that party's supervisor.

e. Authorized procedures, consistent with due process for the suspension and dismissal of an employee for just cause.

f. Written procedures for annual employee evaluation shall be in place for each facility and available to all staff upon request.

105.3(2) *Health of employees.* Staff who have direct client contact or are involved in food preparation shall be medically determined to be free of serious infectious communicable diseases and able to perform their duties. A statement by a physician (as defined in Iowa Code section 135.1) attesting to these facts shall be secured at the time of employment and whenever necessary thereafter and filed in the personnel records of that staff. A new statement shall be secured at least every three years.

105.3(3) *Personnel records.* A record shall be maintained by the facility which contains at least the following:

a. Name, address, and social security number of employee.

b. A job application containing sufficient information to justify the initial and current employment.

c. Education and experience requirements. Applicants for positions having educational requirements shall be permanently employed only after the facility has obtained a certified copy of the transcript, diploma, or verification from the school or supervising agency. Applicants for positions having experience requirements shall be permanently employed only after the facility has obtained verification from the agency supervising the experience.

d. License requirements. Applicants for positions requiring licenses shall be permanently employed only after the facility has obtained written verification of their licenses. Evidence of renewal of licenses as required by the licensing agency shall be maintained in the personnel record.

e. References. At least two written references or documentation of oral references shall be contained in the employee's personnel record. In case of unfavorable references, there shall be documentation of further checking to ensure that the person will be a reliable employee.

f. After July 1, 1983, a written, signed and dated statement which discloses any substantiated instances of child abuse, neglect or sexual abuse committed by the applicant is required.

g. Documentation of the submission of Form 470-0643, Request for Child Abuse Information, to the central abuse registry, the registry response, the department's evaluation of any abuse record discovered, and a copy of Form 470-2310, Record Check Evaluation, if the staff person has completed and submitted it.

h. A written, signed and dated statement furnished by the new applicant for employment which discloses any convictions of crimes involving the mistreatment or exploitation of a child.

i. Documentation of a check with the Iowa department of public safety on all new applicants for employment using Form 595-1396, DHS Criminal History Record Check, Form B; a copy of the department's evaluation of any criminal record discovered; and a copy of Form 470-2310, Record Check Evaluation, if the applicant has completed and submitted it.

j. Documentation of any checks with the Iowa department of public safety for persons hired before July 1, 1983, for whom the agency has reason to suspect a criminal record.

k. Current information relative to work performance evaluation.

l. Records of preemployment health examination or a record of a health report as required in 105.3(2) as well as a written record of subsequent health services rendered to an employee as necessary to ensure that all facility employees are physically able to perform their duties.

m. Information on written current reprimands or commendations.

n. Position in the agency, and date of employment.

o. Information covered in paragraphs *"g," "i," "j,"* is confidential and may not be redisseminated to that particular applicant or employee.

441—105.4(232) Procedures manual. The facility shall have written policies and procedures specifying the manner in which the program of the facility is to be carried out.

441—105.5(232) Staff.

105.5(1) *Number of staff.*

a. Generally. A sufficient number of child care or house parent staff shall be on duty at all times so as to provide adequate coverage. The number of staff required will vary depending on the size and complexity of the program. All facilities shall have at least one staff person on duty. Facilities having six or more residents shall have at least two staff persons on duty at all times that children are usually awake and present in the facility. Coed facilities having more than five residents should have both male and female staff on duty at all times. All child care or house parent staff shall be at least 18 years of age.

b. On-call system. There shall be an on-call system for coed facilities to provide that staff of the same sex as the resident shall perform the following:

(1) All personal body searches.

(2) Supervision of personal care.

c. Prime programming time. A minimum staff-child ratio of one child care worker or house parent to five children shall be maintained during prime programming times.

d. Night hours. At night, there shall be a staff person awake in each living unit and making regular visual checks throughout the night. The visual checks shall be made at least every hour in shelter care and every half hour in detention. A log shall be kept of all checks, including the time of the check and any significant observations. There shall be an on-call system which allows backup within minutes for both child care staff and casework personnel.

105.5(2) *Staff composition.* The composition of the program staff shall be determined by the facility, based on an assessment of the needs of the children being served, the facility's goals, the programs provided, and all applicable federal, state and local laws and regulations.

105.5(3) *Staff development*. Staff development shall be appropriate to the size and nature of the facility. There shall be a written plan for staff training that includes:

a. Orientation for all new employees, to acquaint them with the philosophy, organization, program practices, and goals of the facility.

b. Training of new employees in areas related to their job assignments.

c. Provisions in writing for all staff members to improve their competency through such means as:

(1) Attending staff meetings;

(2) Attending seminars, conferences, workshops, and institutes;

(3) Visiting other facilities;

(4) Access to consultants;

(5) Access to current literature, including books, monographs, and journals relevant to the facility's services.

d. There shall be an individual designated responsible for staff development and training, who will complete a written staff development plan which shall be updated annually.

105.5(4) *Organization and administration*. Whenever there is a change in the name of the facility, the address of the facility, the executive, or the capacity, the information shall be reported to the licensing manager. A table of organization including the identification of lines of responsibility and authority from policymaking to service to clients shall be available to the licensing staff. An executive director shall have full administrative responsibility for carrying out the policies, procedures and programs.

105.5(5) *Record checks.* The facility shall not employ any person who has been convicted of a crime involving the mistreatment or exploitation of a child. The facility shall not employ a person who has a record of a criminal conviction or founded child abuse report unless the department has made an evaluation of the crime or founded child abuse which concludes that the crime or founded child abuse does not merit prohibition of employment.

a. If a record of criminal conviction or founded child abuse exists, the person shall be offered the opportunity to complete and submit Form 470-2310, Record Check Evaluation.

b. In its evaluation, the department shall consider:

(1) The nature and seriousness of the crime or founded abuse in relation to the position sought;

(2) The time elapsed since the commission of the crime or founded abuse;

(3) The circumstances under which the crime or founded abuse was committed;

(4) The degree of rehabilitation; and

(5) The number of crimes or founded abuses committed by the person involved.

441—105.6(232) Intake procedures.

105.6(1) *Admissions*. Admission to shelter care or detention shall be in accordance with Iowa Code sections 232.20, 232.21 and 232.22. In no case shall a youth be admitted to detention or shelter care when the resulting admission would exceed the facility's approved client capacity. The facility and referring agency shall agree upon service responsibilities at the time of admission.

105.6(2) *Agency or court order placement*. Each agency or court placing a child in a facility shall make available to the facility the following:

a. A placement agreement should accompany the child.

When this is not possible, a copy of the placement agreement shall be provided the facility within 24 hours.

b. For court-ordered placements, a copy of the court order authorizing placement shall be provided to the facility within 48 hours.

c. When the child is in the facility more than four days, the following information shall be made available to the facility.

(1) All available psychological and psychiatric tests and reports concerning the child.

(2) Any available family social history.

(3) Any available school information.

105.6(3) *Self-referrals*. Any child admitting self to a facility shall be provided appropriate services. The facility shall notify the child's parents, guardian or the juvenile court as soon as possible concerning the child's admission to the facility but in any event the notification shall take place within 48 hours after the child's admission. Self-referrals shall not be accepted for placement in detention.

105.6(4) *Person responsible*. Each agency shall designate who has the authority to do intake. This may include anyone trained in intake procedures and who is designated to do intake.

105.6(5) *Intake sheet*. An intake sheet shall be completed on each child containing at least the information specified in 105.17(2).

441—105.7(232) Assessments.

105.7(1) *Personal*. At the time of intake and throughout a child's stay, individual needs will be identified by staff. The initial and ongoing determination of each child's needs will be based on written and verbal information from referral sources, observable behavior at intake, initial interview with the youth or family, school contacts, physical examination, and other relevant materials. The individual assessment shall provide the basis for development of a care plan for each youth.

105.7(2) *Educational*. An educational assessment shall be developed by the staff and referring worker for each child. When appropriate, other agencies such as the public schools and the area education agency shall be involved.

441—105.8(232) Program services.

105.8(1) *Care plan.* There shall be a written care plan developed for each resident remaining in the facility over four days. The care plan will be based on individual needs determined through the assessment of each youth. The care plan shall be developed in consultation with child care services, probation services, social services and educational, medical, psychiatric and psychological personnel as appropriate. The plan shall include:

a. Identification of specific needs;

b. Description of planned service;

c. Which staff person(s) will be responsible for each element of the plan;

d. Where services are to occur;

e. Frequency of activities or services.

105.8(2) *Educational programs*. All children currently enrolled in a school shall continue in that school when possible, or in an appropriate alternative. Where educational assessments indicate an educational need for a child not currently enrolled in public schools, an alternative shall be developed in cooperation with public schools, area education agency, and the referring worker. When an educational program is established within the facility it shall meet the educational and teaching standards established by the state department of public instruction. A child should be compelled to participate in an educational program only in compliance with the compulsory education law, Iowa Code chapter 299.

105.8(3) *Daily program*. The daily program shall be planned to provide a consistent, well structured, yet flexible framework for daily living, and shall be periodically reviewed and revised as the needs of the individual child or the living group change.

Attention shall be given to the special nature of the facility population and its resulting stresses, for example, rapid turnover in population and minimal screening at intake.

105.8(4) *Optional services*. When a facility provides services in addition to those required by these rules, they shall be clearly defined in writing.

105.8(5) *Recreation program.* The facility shall provide adequately designed and maintained indoor and outdoor activity areas, equipment, and equipment storage facilities appropriate for the age group which it serves. There shall be a variety of activity areas and equipment so that all children can be active participants in different types of individual and group sports and other motor activity.

a. Games, toys, equipment, and arts and crafts materials shall be selected according to age, number of children, and with consideration of the needs of children to engage in both active and quiet play. All materials shall be of a quality to ensure safety and shall be of a type which allows imaginative play and creativeness.

b. The facility shall plan and carry out efforts to establish and maintain workable relationships with the community recreational resources. The facility staff shall enlist the support of these resources to provide opportunities for children to participate in community recreational activities.

105.8(6) *Health care.*

a. Health assessment at intake. Facility staff shall review each child's health status at intake. The purpose of this preliminary review is to identify medication needs and problems that need immediate medical attention. Within seven days of intake, all reasonable efforts shall be made to perform a more comprehensive health assessment on each child who has not had a comprehensive health assessment within the past year. If the assessment cannot be performed within seven days, it shall be arranged for the earliest possible time, and the reasons for the delay shall be documented. A registered nurse, an advanced registered nurse practitioner, a physician assistant, or a physician shall perform the comprehensive health assessment.

b. Existing health needs. Facilities shall provide or secure medical treatment for a child's illnesses and injuries that come to the facility's attention during the child's stay.

c. Monitoring side effects of medications. Facilities shall monitor each child's use of medications and shall inform the authorized prescriber if adverse reactions are noted.

d. Sharing medical information. Facilities shall share information about significant changes in medical status with the child's caseworker and parents or guardian. Discharge information shall include information about significant medical changes that occurred while the child was at the facility.

105.8(7) *Counseling program.* Counseling services shall be related to the immediate problem, daily living skills, peer relationships, educational opportunities, vocational opportunities, future planning and preparation for placement, family counseling, and any other factors identified in the individual care plan. Counseling shall be done by appropriate staff personnel.

105.8(8) *Dietary program.* The facility shall provide properly planned, nutritious and inviting food and take into consideration the special food needs and tastes of children.

441—105.9(232) Medication management and administration.

105.9(1) *Obtaining prescription medications.* Facilities shall permit prescription medications to be brought into the facility for a child.

a. Prescription medication in its original container, clearly labeled and prescribed for the child, may be accepted as legitimate prescription medication for the child. The label serves as verification that the medication was ordered by an authorized prescriber.

b. Facilities shall review size, shape, color, and dosages and contact the identified pharmacy or authorized prescriber to confirm legitimacy if contraband is suspected.

105.9(2) *Obtaining nonprescription medications.* Shelter and detention facilities shall maintain a supply of standard nonprescription medications for use for children residing at the facility. Examples of standard nonprescription medications include cough drops and cough syrups, aspirin substitutes and other pain control medication, poison antidote, and diarrhea control medication.

a. All nonprescription medications kept on the premises for the use of residents shall be preapproved annually by a licensed pharmacist or an authorized prescriber.

b. Facilities shall maintain a list of all preapproved nonprescription medications. The list shall indicate standard uses, standard dosages, contraindications, side effects, and common drug interaction warnings. The facility administrator or the administrator's designee shall be responsible for determining the scope of the list and brands and types of medications included.

c. Only nonprescription medications on the preapproved list shall be available for use. However, the facility administrator or the administrator's designee, in consultation with an authorized prescriber or licensed pharmacist, may approve use of a nonprescription medication that is not on the preapproved list for a specific child.

105.9(3) *Storing medications.* Prescription and nonprescription medications shall be stored in a locked cabinet, a locked refrigerator, or a locked box within an unlocked refrigerator.

a. Controlled substances shall be stored in a locked box within a locked cabinet. Nothing other than controlled substances shall be stored in the locked box. Controlled substances requiring refrigeration also shall be maintained within a double-locked container separate from food and other items.

b. The facility administrator shall determine distribution and maintenance of keys to the medication storage cabinets and boxes.

c. A shelter facility administrator or the administrator's designee may preapprove shelter staff to carry prescription or nonprescription medications with them temporarily for use while on day trips or at sites away from the facility.

105.9(4) *Labeling medications.* Controlled substances and prescription medications shall be maintained in their original containers, clearly labeled by an authorized prescriber and prescribed for the child. Sample prescription medications shall be accompanied by a written prescription. Nonprescription medications shall be maintained as purchased in their original containers.

105.9(5) *Administering controlled medications.* Only staff who have completed a medication administration course shall be allowed to administer controlled substances.

105.9(6) *Administering prescription and nonprescription medications.* The facility administrator shall determine and provide written authority as to which staff may administer prescription and nonprescription medications.

a. Prescription medications shall be administered only in accordance with the orders of the authorized prescriber. Nonprescription medications shall be administered following the directions on the label.

b. The facility administrator or the administrator's designee may allow a child to self-administer prescription and nonprescription medication in appropriate situations. The facility shall require documentation if the child self-administers a medication.

105.9(7) *Documenting errors in administering medications.* All errors in administering prescription and nonprescription medications shall be documented. Facilities shall review and take appropriate action to ensure that similar errors do not recur.

105.9(8) *Medication for discharged residents.* When a child is discharged or leaves the facility, the facility shall turn over to a responsible agent controlled substances and prescription medications currently being administered. The facility may send nonprescription medications with the child as needed. The facility shall document in the child's file:

a. The name, strength, dosage form, and quantity of each medication.

b. The signature of the facility staff person turning over the medications to the responsible agent.

c. The signature of the responsible agent receiving the medications.

105.9(9) *Destroying outdated and unused medications.* Unused controlled and prescription medications kept at the facility for more than six months after the child has left the facility shall be destroyed by the administrator or the administrator's designee in the presence of at least one witness. Outdated, discontinued, or unusable nonprescription medications shall also be destroyed in a similar manner. The person destroying the medication shall document:

a. The child's name.

b. The name, strength, dosage form, and quantity of each medication.

c. The date the medication was destroyed.

d. The names and signatures of the witness and staff person who destroyed the medication.

441—105.10(232) Control room—juvenile detention home only.

105.10(1) *Written policies.* When a juvenile detention facility uses a control room as part of its service, the facility shall have written policies regarding its use and the facility director shall complete Form 470-0700, Evaluation and Recommendation to Operate a Control Room. The policy shall:

a. Specify the behaviors resulting in control room placement.

b. Delineate the staff members who may authorize its use as well as procedures for notification of supervisory personnel.

c. Document in writing behaviors leading to control room placement and the nature of the agreement reached with the child that will allow the child to return to the living unit.

105.10(2) *Physical requirements.* The control room shall be designed to ensure a physically safe environment that:

a. Has all switches controlling lights and ventilation outside of the room.

b. Allows for total observation of the child at all times.

c. Has protected recessed ceiling light.

d. Has no electrical outlets in the room.

e. Is properly heated, cooled and ventilated.

f. Has all doors, ceilings and walls constructed of strength and materials as to prevent damage to the extent that no harm could come to the child.

g. When a window is present, it is secured and protected in such a manner as to prevent harm to the child.

h. Is a minimum of 6 feet by 9 feet in size with at least a 7½ foot ceiling.

105.10(3) *Use.* A control room shall be used only when a less restrictive alternative to quiet or allow the child to gain control has failed. Utilization of the control room shall be in accordance with the following policies:

a. No more than one child shall be in the control room at any time.

b. There shall be provision for visual observation of the child at all times, regardless of the child's position in the room.

c. The control room should be checked thoroughly for safety and the absence of contraband prior to placing a child in the room.

d. The child shall be thoroughly checked before placement in the control room and all potentially injurious objects removed from such child including shoes, belts, pocket items, and similar items. The staff member placing the child in the control room shall document such check.

e. In no case shall all clothing or underwear be removed and the child shall be provided sufficient clothing to meet seasonal needs.

f. A staff member shall always be within hearing distance of the control room and the child shall be visually checked by the staff at least every 15 minutes and each check shall be recorded.

g. The child shall not remain in the control room longer than 1 hour except in consultation with and approval from the supervisor. Documentation in the child's case record shall include the time in the control room, the reasons for the control, and the reasons for the extension of time. Use of the control room for a total of more than 12 hours in any 24-hour period shall occur only in consultation with the referring agency or court. In no case shall a child be in a control room for a period longer than 24 hours.

h. The child's parents, referring worker, and the child's attorney shall be notified when the control room is used for more than a total of 30 minutes in any 24-hour period.

441—105.11(232) Clothing. All children shall have clothing that is suited to existing climate and seasonal conditions and is clean, dry and in good repair.

441—105.12(232) Staffings. The staff shall be available to participate in staffings or upon request to provide a written summary of the child's progress and behavior while in the facility program. Written recommendations regarding future planning and placement shall be provided to the referring agency or court upon request. Staff shall be available to discuss recommendations with the child's parent or guardian.

441—105.13(232) Child abuse. Written policies shall prohibit mistreatment, neglect or abuse of children and specify reporting and enforcement procedures for the facility. Alleged violations shall be reported immediately to the director of the facility and appropriate department of human services personnel. Any employee for whom there is a substantiated instance of child abuse or failure to report child abuse shall be subject to the agency's policies concerning dismissal.

441—105.14(232) Daily log. The facility shall maintain a daily log. The log shall be used to note general progress in regard to the care plan and any problem areas or unusual behavior for each child.

441—105.15(232) Children's rights.

105.15(1) *Policies in writing.* All policies and procedures covered in this rule shall be in writing and provided to the child upon admission and made available to the child's parent or guardian upon request. If the child remains in care over four days, the policies and procedures shall be provided to the parent or guardian. The rationale and circumstances of any deviation from these policies shall be discussed with the child's parents or guardian and the referring worker, documented, and placed in the child's case record.

105.15(2) *Confidentiality.* Information regarding children and their families shall be kept confidential and released only with proper written authorization.

105.15(3) *Communication.*

a. Unless specifically regulated by the court, visitation shall be allowed with members of the child's immediate family.

b. Family visits shall be monitored only to the extent necessary to ensure the child's safety and facility security. Rationale for monitoring shall be documented in the child's record.

c. The child shall be permitted to communicate privately with legal counsel and the referring worker.

d. The child shall be allowed to conduct telephone conversations with family members. Telephone calls shall be monitored only to the extent necessary to ensure the child's well-being and facility security. Rationale for monitoring a child's conversation shall be documented in the child's record. Incoming calls may be screened by staff to verify the identity of the caller before approval is given.

e. The staff shall not open or read residents' mail. The child shall be allowed to send and receive mail. The facility may require the child to open incoming mail in the presence of a staff member when the mail is suspected to contain contraband articles, or to contain money that should be receipted and deposited.

f. When limitations on visitation or other communications are indicated, they shall be determined with the participation or knowledge of the child, family or guardian, and the referring worker. All restrictions shall have specific bases which shall be made explicit to the child and family and documented in the child's case record.

105.15(4) *Privacy.* Reasonable provisions shall be made for the privacy of residents.

441—105.16(232) Discipline.

105.16(1) *Generally.* A facility shall have written policies regarding methods used for control and discipline of children which shall be available to all staff and to the child's family. Discipline shall not include withholding of basic necessities such as food, clothing, or sleep. Agency staff shall be in control of and responsible for discipline at all times.

105.16(2) *Corporal punishment prohibited.* The facility shall have a policy that clearly prohibits staff or the children from utilizing corporal punishment as a method of disciplining or correcting children. This policy shall be communicated in writing to all staff of the facility.

105.16(3) *Physical restraint.* The use of physical restraint shall be employed only to prevent the child from injury to self, to others, or to property. The rationale and authorization for the use of physical restraint, and staff action and procedures carried out to protect the children's rights and to ensure their safety, shall be clearly set forth in the child's record by the responsible staff.

105.16(4) *Room confinement.* Facilities shall provide sufficient programming and staff coverage to enable children to be involved in group activities during the day and evening hours. A child shall only be confined to the child's room for illness, at the child's own request, or for disciplinary reasons. A juvenile detention home may confine a child to the child's room during normal sleeping hours if the facility has written policies and procedures which are approved by the department regarding this confinement.

105.16(5) *Written policies.* The facility shall provide to the child written policies specifying inappropriate behaviors, reasonable consequences for misconduct, and due process procedures available to the child. Upon request, the above information shall be provided to the child's parent or guardian and referring worker.

441—105.17(232) Case files.

105.17(1) *Generally.* For the purpose of promoting a uniformity of program for all facilities and as an aid to the department of human services in determining its approval of a facility all facilities shall establish and maintain for inspection case files on each child.

105.17(2) *Face sheet.* For all children, a face sheet containing the following information shall be completed.

a. Full name, current address, and date of birth.

b. Parent's(s') full name(s).

c. Parent's(s') address and telephone number.

d. Religious preference of the child and also parent, if available.

e. Statement of who has legal custody and guardianship.

f. Name of referring worker and agency making the referral.

g. Telephone number and address of referring agency or court.

h. Name, address, and telephone number of the child's attorney.

105.17(3) *Written summary.* When a written summary has been requested under 441—105.12(232), a copy shall be placed in the child's record.

105.17(4) *Documentation.* The following information shall be documented in each child's record:

a. Appropriate notes on all significant contacts by staff with parents, referral person and other collateral contacts.

b. A summary related to discharge including name, address, and relationship of person to whom discharged.

105.17(5) *Other information.* The following information shall be requested when the child remains in the facility more than four days and, when available, placed in the child's record.

a. Current family history or social history.

b. Case plans submitted by the referring agency or orders of the court.

c. Psychological and psychiatric records; copies of all available testing performed plus notes and records of contact with the child.

d. Medical.

(1) A record of all illnesses, immunizations, communicable diseases and follow-up treatment.

(2) Medical and surgical authorization signed by the parent, guardian, custodian or court.

(3) A record of all medical and dental examinations including findings.

(4) Date of last physical examination prior to placement.

e. School.

(1) Name and address of school attended.

(2) Grade placement.

(3) Current school in which child is enrolled.

(4) Specific educational problems.

(5) Remedial action.

f. Placement agreement, court order, releases.

(1) Agreement shall authorize the facility to accept the child.

(2) The agreement shall set forth the terms of payment for care.

(3) Medical release authorizing emergency medical and surgical treatment, including the administration of anesthesia.

(4) All releases and authorizations shall be signed by the parent or legal guardian.

(5) All court orders affecting the custody or guardianship of the child.

441—105.18(232) Discharge.

105.18(1) Children in shelter care shall be discharged to a permanent placement at the earliest possible time, and in any event within 30 days from the date of admission. Extension requests shall be made, substantiated, and approved by both the referral agency and the shelter care agency by the twenty-fifth day of care. Maximum length of stay should not exceed 45 days. Maximum length of stay in detention should not exceed 21 days.

105.18(2) Rescinded IAB 3/31/04, effective 5/5/04.

441—105.19(232) Approval. The department will issue a Certificate of Approval, Form 470-0620, annually without cost to any juvenile detention home or juvenile shelter care home which meets the standards. The department may offer consultation to assist homes in meeting the standards.

105.19(1) *Applications.* An application shall be submitted on Form 470-0723, Application for License or Certificate of Approval. The application shall be signed by the operator of the home, chairman of the county board of supervisors, or chairman of the multicounty board of directors and shall indicate the type of home for which the application is made.

a. The withdrawal of an application shall be reported promptly to the department.

b. Each application will be evaluated by the department to ensure that all standards are met.

c. Reports and information shall be furnished to the department as requested.

105.19(2) *Rejection.*

a. Applications will be rejected when the minimum standards set forth in the rules in this chapter are not met.

b. Fraudulent applications will be rejected. A fraudulent application is one which contains false statements knowingly made by the applicant or one in which the applicant knowingly conceals information.

c. Applications will be rejected when the director of the facility has been convicted of a crime indicating an inability to operate a children's facility or care for children.

d. Applications will be rejected for just cause.

105.19(3) *Approval.* Approvals will be given for one year.

105.19(4) *Notification.* Homes should be notified of approval or rejection within 120 days of application unless the applicant requests and is granted an extension by the department. Form 470-0728, Notice of Action, will be used to inform applicants of approval, and a restricted certified letter will be used to inform applicants of rejection.

105.19(5) *Renewals.*

a. Applications for renewal shall be made on forms provided by the department and shall be made at least 30 days, but no more than 90 days, prior to expiration of the approval.

b. Each application for renewal will be evaluated by the department to ensure that standards continue to be met.

c. The application for renewal will be rejected or approved in the same manner as an application.

d. Decisions on renewals should be made within 60 days from the application for renewal. Notification of renewal decisions shall be the same as for new applications.

105.19(6) *Revocations.*

a. Approval shall be revoked by the state director for the following reasons:

(1) When the facility violates laws governing the provision of services or rules contained in this chapter.

(2) When the facility is misusing funds furnished by the department.

(3) When the facility is operating without due regard to the health, sanitation, hygiene, comfort, or well-being of the children in the facility.

(4) When the director has been convicted of a crime indicating an inability to operate a children's facility or care for children.

b. The following may be causes for revocation:

(1) Substantiated child abuse.

(2) When the facility staff has been convicted of a crime indicating an inability to operate a children's facility or care for children.

105.19(7) *Certificate of approval.* Upon approval, the home will be issued a certificate of approval containing the name of the home, address, capacity, and the date of expiration. Renewals will be shown by a seal bearing the new date of expiration, unless a change requires a new certificate to be issued.

441—105.20(232) Provisional approval.

105.20(1) *Required conditions.* A provisional approval may be issued at the time of application or reapplication for approval or as a result of a complaint investigation when all of the following conditions exist:

a. The shelter care or detention facility fails to meet the approval requirements.

b. A provisional approval has not previously been issued to the facility for the same deficiencies during the past year.

c. The deficiencies do not present an immediate danger to the child's physical or mental health.

d. The director of the facility, chairman of the county board of supervisors, or chairman of the multicounty board of directors provides the department with the following:

(1) A plan for correcting the deficiencies.

(2) The date by which the standards will be met.

If conditions *"b," "c,"* or *"d"* are not met, then the application for approval shall be rejected or the approval revoked.

105.20(2) *Time limited.* Provisional approvals shall not be issued for longer than one year.

105.20(3) *Completed corrective action.* When the corrective action is completed on or before the date specified on the provisional approval, a full approval shall be issued for the remainder of the year.

105.20(4) *Uncompleted corrective action.* When the corrective action is not completed by the date specified on a provisional approval, the department shall not grant a full approval and has the option of rejecting or extending the provisional approval. An extension of a provisional approval shall not cause the effective period of a provisional approval to exceed 18 months. If the corrective action plan is not completed within 18 months, the approval shall be rejected.

441—105.21(232) Mechanical restraint—juvenile detention only. When a juvenile detention facility uses mechanical restraints as part of its program, the facility shall have written policies regarding their use. These policies shall be approved by the department before use of mechanical restraints. The policies shall be available to clients, parents or guardians, and referral sources at the time of admission. Policies shall also be available to staff. The executive director of the detention home shall sign the commitment contained in Form 470-0703, Evaluation and Recommendation for Approval to Use Mechanical Restraint, before the facility shall be approved to use a mechanical restraint.

105.21(1) *Restrictions on mechanical restraints.*

a. Mechanical restraints shall not inflict physical injury.

b. Each use of mechanical restraint shall be authorized by the executive director of the facility, as discussed in 105.5(4), or other staff designated by the executive director if those staff meet one of the following requirements:

(1) Have a bachelor's degree in social work, psychology or a related behavioral science and one year of supervised experience in a juvenile shelter care, detention or foster group care facility.

(2) Have five years of supervised experience in a juvenile shelter care, detention or foster group care facility.

(3) Have some combination of advanced education in related behavioral sciences and supervised experience in a juvenile shelter care, detention or foster group care facility equal to five years. The facility shall have a written listing of all staff designated and qualified to authorize the use of mechanical restraint.

c. When immediate restraint is necessary to protect the safety of the child, other residents of the facility, staff or others, mechanical restraint may be utilized without prior authorization but in each case a person designated to provide authorization shall be contacted as soon as the child is restrained. The designated person shall visit the resident before determining if continued use of the mechanical restraint is necessary. If not viewed as necessary, the child shall be immediately released from restraint.

d. Each authorization of mechanical restraint shall not exceed one hour in duration without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

e. No child shall be kept in mechanical restraint for more than 1 hour in a 12-hour period without a visit by and written authorization from a licensed psychologist, psychiatrist or physician or psychologist employed by a local mental health center.

f. Anytime that a child is placed in mechanical restraint, a staff person shall be assigned to monitor the child with no duties other than to ensure that the child's physical needs are properly met. The staff person shall remain in continuous auditory and visual contact with the child.

g. Each child shall be released from mechanical restraint as soon as the restraints are no longer needed.

105.21(2) *Documentation.*

a. Each use of mechanical restraints shall be documented in the client's record and shall include at least the following:

(1) The date and time the child was placed in mechanical restraint.

(2) The type of mechanical restraint utilized.

(3) The reason for the restraint.

(4) The signature of the person authorizing the restraint and the time of authorization.

(5) The signature of the person placing the child in restraint.

(6) The signature of the person providing the continuous auditory and visual contact with the child.

(7) The signature of the person releasing the child and the time of release.

b. Each use of mechanical restraint shall be documented in a separate file which is used only for the recording of uses of mechanical restraints and shall contain the name of the child restrained and the information discussed in 105.21(2)*"a."*

c. Each facility authorized to use mechanical restraint shall submit a quarterly report to the bureau of adult, children and family services of the department which shall include all the information required in 105.21(2)*"b."*

105.21(3) *Continued use of mechanical restraints.* When a child requires mechanical restraint on more than four occasions during any 30-day period, the facility shall hold an immediate emergency meeting within 3 days of the fifth incident and shall have a licensed psychologist or psychiatrist or psychologist employed by a local mental health center present at the staffing to discuss the appropriateness of the child's continued placement at the facility.

105.21(4) *In transporting children.* Notwithstanding 105.21(1)*"d,"* mechanical restraint of a child by the staff of a juvenile detention facility while that child is being transported to a point outside the facility is permitted when there is a serious risk of the child exiting the vehicle while the vehicle is in motion. The facility shall place a written report on each use in the child's case record and the mechanical restraint file. This report shall document the necessity for the use of restraint.

Seat belts are not considered mechanical restraints. Agency policies should encourage the use of seat belts while transporting children.

441—105.22(232) Chemical restraint. Chemical restraint shall not be utilized in juvenile shelter care or detention facilities. Each juvenile shelter care or detention facility shall have written policies which clearly prohibit the use of chemical restraints.

These rules are intended to implement Iowa Code section 232.142.

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CHAPTER 106
Reserved

CHAPTER 108
LICENSING AND REGULATION OF CHILD-PLACING AGENCIES

[Prior to 7/1/83, Social Services [770] Ch 108]
[Prior to 2/11/87, Human Services [498]]

PREAMBLE

This chapter establishes licensing procedures for all child-placing agencies authorized by Iowa Code chapter 238. Included in this chapter are rules relating to: the licensing process; administration and organization; foster care services; adoption services; and supervised apartment living services.

441—108.1(238) Definitions.

"Administrator" means the person who is designated to have day-to-day responsibility for the administration of a child-placing agency, and who ensures that the mission of the agency and laws relating to the welfare and protection of children are carried out.

"Adoptive applicant" means the person who has requested approval for placement of a child for adoption from a licensed child-placing agency.

"Adoptive family" means an approved person or persons who have a child placed in their home for the purpose of adoption and are being supervised by the agency or who have a child in their home who has been legally adopted and is entitled to the same benefits as a child born to the parents.

"Approved living arrangement" means that the living situation shall be located so as to provide reasonably convenient access to schools, places of employment, or services required by the youth, comply with applicable state and local zoning, fire, and sanitary regulations, and be reasonably priced so as to fit within the youth's budget.

"Caseworker" means the person who works directly with children, their families, and other relevant individuals and who has primary responsibility for the development, implementation, and review of the agency's service plans for the child and parents; or who completes foster care or adoptive family home studies or supervises foster family or adoptive placements; or who supervises children placed in approved supervised apartment living arrangements.

"Child" shall mean the same as defined by Iowa Code section 234.1.

"Child-placing agency" means an agency organized within the state of Iowa for the purpose of receiving minor children for placement, supervision, or both in private family homes for foster care; or for adoption; or the placement, supervision, or both of children who are 16 years of age and older living in approved supervised apartment living placements.

"Department" means the department of human services.

"Parent" means custodial and noncustodial parent.

"Sibling" means two or more persons having at least one common parent.

"Supervised apartment living placement" means the placement of a child who is at least 16 years of age in an approved living arrangement which provides an environment in which the child can experience living in the community with minimum supervision.

"Volunteer" means any nonpaid person who donates time to an agency, either in working with an individual or groups of clients. A volunteer may also be a student intern.

441—108.2(238) Licensing procedure.

108.2(1) *Right to apply.* Any person or agency has the right to make application for a child-placing license. When applying for a child-placing license, the applicant shall indicate the services for which licensure is being requested.

108.2(2) *Application.* An agency or person applying for a license shall complete Form 470-0723, Application for License or Certificate of Approval. The application shall be completed and signed by the administrator or the appropriate officer and submitted to the department.

a. The applicant shall report withdrawal of an application to the department within 30 days of the withdrawal decision.

b. Each application shall be evaluated by the department to ensure that all requirements are met.

c. The applicant shall provide requested reports and information relevant to the licensing determination to the department.

108.2(3) *Applications for renewal.* Applications for renewal shall be made to the department at least 30 but no more than 90 days before expiration of the license.

108.2(4) *Notification.* Agencies shall be notified of approval or denial within 90 days of application or reapplication.

108.2(5) *Certificate of license.* The department shall issue or renew Form 470-3623, Certificate of License, every three years, without cost, to any child-placing agency which meets the minimum requirements applicable to child-placing agencies as defined by Iowa Code chapter 238 and this chapter. The license shall be posted in a conspicuous place on the licensed premises.

108.2(6) *Provisional license.* A provisional license may be issued to an agency which does not meet all licensing requirements when the failure to meet all licensing requirements does not pose a danger to the health, safety, or well-being of the children being served. It is issued until the agency meets all requirements, up to a maximum time period of one year. A provisional license is issued when the applicant has signed a written statement which includes the following:

a. The deficiencies necessitating the provisional license, including the specific requirements which are not met.

b. A plan for correcting the deficiencies.

c. The date by which the requirements will be met.

108.2(7) *Suspension of a license.* The suspension of a child-placing license prohibits the agency from engaging in any child-placing activities during the period of the suspension. The department shall suspend a license when the agency's failure to meet the requirements poses a danger to the health, safety, or well-being of the children being served. The suspension of a license shall not extend beyond 12 months, and the existence of the condition requiring suspension shall be corrected within a year and documented in the agency's record.

The agency shall submit a written statement for approval by the department. The statement shall include the following:

a. The deficiencies necessitating the suspended license, including the specific requirements which are not met.

b. A plan for correcting the deficiencies.

c. The date by which the requirements will be met.

108.2(8) *Completed corrective action.* When the corrective action plan is completed on or before the date specified on the provisional license or notice of suspension, a full license shall be issued for the remainder of the licensing period.

d. Graduation from an accredited four-year college or university with a master's degree in social work or related human service field.

e. Any equivalent combination of graduate education in the social or behavioral sciences from an accredited four-year college or university and qualifying experience up to a maximum of 30 semester hours for one year of the required experience.

108.4(4) *Person filling more than one position.* A person functioning in more than one position specified by these rules shall meet the requirements for each of the positions the person fills.

441—108.5(238) Staffing requirements.

108.5(1) *Number of staff.* The agency shall employ a sufficient number of competent staff to perform duties as required by licensing rules for those programs operated by the agency. This shall include the following:

a. Administration of services offered by the agency.

b. Selection and appointment of qualified staff.

c. Provision for staff training.

108.5(2) *Staffing caseload.* The agency shall develop a written policy regarding a staffing ratio based on the workload necessary to provide services in accordance with the agency's program statements. The staffing ratio shall take into consideration all of the following:

a. Qualifications of the caseworkers.

b. Types of children served and their special needs.

c. Types and intensity of services to be provided.

d. Distances involved in provision of services.

e. Other functions or responsibilities of the caseworkers.

441—108.6(238) Personnel administration.

108.6(1) *Personnel policies.* An agency shall develop personnel policies in writing that identify responsibilities of the organization and staff. The policies shall specify hours of work, grievance procedures, sick leave, vacation and all other benefits. A copy of the policies shall be made available to the employee at time of hire.

108.6(2) *Job description and evaluation.* There shall be a written job description for each employee, volunteer, and contracted position identifying duties, qualifications, education, training requirements, and lines of authority. A copy shall be made available to the employees, volunteers, and contracted workers. There shall be a written evaluation of an employee's or contracted worker's performance within six months of being hired or contracted, and annually thereafter.

108.6(3) *Staff training.* An agency shall provide orientation training on the agency's purpose, policies and procedures within one month of hire and 24 hours of training in the first year of employment for all employed and contracted casework staff. The 24 hours of training shall include: training on family foster care services, adoption services, supervised apartment living services, or children and families' mental health topics, and 2 hours of training related to the identification and reporting of child abuse for all employed or contracted casework staff in accordance with Iowa Code section 232.69. An agency shall provide 12 hours of training per year after the first year of employment for all employed or contracted casework staff. The 12 hours of training shall include: training on family foster care services, adoption services, supervised apartment living services, or children and families' mental health topics and child abuse training every five years in accordance with Iowa Code section 232.69.

The training formats that shall qualify as training are as follows: in-service training, seminars, conferences, workshops, institutes, visiting other facilities, and meeting with consultants.

The training provided shall be documented. The documentation shall include the training topic, format, date and number of hours.

108.6(4) *Volunteers.* An agency which utilizes volunteer or student intern staff to work directly with a particular child or group of children shall have a written plan for using these volunteers. This plan shall be given to all volunteer staff and shall indicate that all volunteers are:

a. To be supervised directly by a paid staff member.

b. To be trained and oriented in the philosophy of the agency, the needs of the clients being served, and the methods of meeting these needs.

c. To be subject to the character and reference disclosure and checks required of employed and contracted applicants and employees.

d. To be subject to the same confidentiality rules as paid or contracted staff.

e. To assist and supplement paid staff only, and not replace them.

108.6(5) *Personnel records.* A confidential personnel record shall be maintained for each employee, contracted agent, and volunteer. The record shall contain all of the following information:

a. Name and address.

b. Record of training sessions attended, including dates and content of training.

c. Record of criminal convictions and the department's evaluation of same.

d. Record of founded child abuse reports and the department's evaluation of same.

441—108.7(238) Foster care services.

108.7(1) *Program statement.* An agency authorized to place children in foster care shall have a current written program statement. This statement shall be made available to all agency foster parents, foster children, their parents, referring agencies, and all persons making formal inquiry regarding foster care. The program statement shall include all of the following:

a. Types of foster care provided.

b. Types of children accepted for foster care.

c. Types of services provided to the children, their families, and their foster families.

d. Fees and application costs, if any.

e. A statement informing applicants of the right to appeal the agency's decision regarding nonapproval of the family for placement of a child for foster care.

108.7(2) *Agency's authorization to place.* The agency shall obtain a signed placement agreement from the child's custodial parent or legal custodian within 48 hours of placement.

108.7(3) *Preplacement documentation.* Except for emergency placements, a child shall be placed in the agency's foster care program only after the agency determines that its foster care program is an appropriate resource.

108.7(4) *Placement of siblings.* Preference shall be given to placing children from the same family together. If this is not in the best interest of the child, the reasons shall be documented in the child's record.

108.7(5) *Consideration of racial and cultural identity.* Race, color, or national origin may not be routinely considered in placement selections. Placement decisions shall be made consistent with the best interests and special needs of the child.

f. Birth family information and background report, including physical descriptions, medical and mental health history, educational level, developmental history, problem areas such as substance or alcohol abuse.

g. Summary narrative on the placement decision and the preplacement and postplacement contacts with the adoptive family and child.

h. Information pertaining to the child including, but not limited to: physical, medical, and mental health; problem areas, including verification of the child's special needs; and whether or not a referral was made to the department for adoption subsidy.

i. In the event a family is not approved for placement of a child, the narrative shall clearly indicate the reason.

j. In the event a family is approved, but no child is placed with them, the narrative shall clearly indicate the reason.

108.9(10) *Right to appeal.* An adoptive applicant or an adoptive family may appeal an adverse decision made by a licensed agency. The appeal shall be filed with the department within 30 days of the notice of decision to the applicant or family by the licensed agency.

108.9(11) *Disposition of records.* When an adoption has occurred, the agency must maintain all records regarding the child, the birth family, and the adoptive family or families, forever. Any subsequent information received following the adoption finalization shall be placed in the adoption record. If the agency closes, all adoption records shall be forwarded to the department.

441—108.10(238) Supervised apartment living placement services. An agency seeking to obtain a child-placing license which authorizes the agency to place or supervise children in supervised apartment living placements shall meet the standards in rules 108.2(238) to 108.6(238).

108.10(1) *Program statement.* An agency authorized to place or supervise children in supervised apartment living placements shall have a current written program statement which includes all of the following:

a. A description of the types of living arrangements approved by the agency.

b. The eligibility requirements for the children who may be placed in a supervised apartment living placement.

c. The means of financial support for the children.

d. The expectations the agency has for children while placed in a supervised apartment living placement.

e. Services provided to the children.

f. Provisions for emergency medical care.

This program statement shall be provided to all children placed in supervised apartment living.

108.10(2) *Basis for placement.* Before placing a child in supervised apartment living, an agency shall document all of the following:

a. The child is at least 16 years of age.

b. An initial assessment has been made that identifies the child's strengths and needs as these pertain to the child's ability to live independently.

c. The child has the capacity to function outside the structure of a foster family or group care setting.

d. The selection of a supervised apartment living placement is the most appropriate placement for the child.

e. The child shall be involved in school or other educational or vocational program, work, or a combination thereof on a full-time basis, as indicated in the child's individual care plan.

f. The child has entered into a mutually agreed-upon written contract with the agency which specifies the responsibilities of the agency and the child. This contract shall be reviewed quarterly.

g. It has been determined, through a visit to the living arrangement, that the minimum standards for approval have been met.

108.10(3) *Services provided.* The following services are required:

a. Ongoing assessment that identifies child's strengths and needs as these pertain to the child's ability to live independently.

b. The development of an individual service plan within 30 days of placement. The service plan shall be developed in consultation with the child and referring agent. The individual service plan shall include projection of the expected length of stay in supervised apartment living and shall address the activities necessary to achieve independence and the services needed to be provided to the child. The individual service plan shall be updated quarterly.

c. At least weekly face-to-face contacts with the child for the first 60 days of placement and at least twice a month face-to-face contact thereafter. Frequency of visits shall be based on the needs of the individual child.

d. Personal observation by the agency worker that the living situation provides safe and suitable social, emotional, and physical care.

e. Maintenance of a means by which the youth can contact agency personnel 24 hours a day, seven days a week.

108.10(4) *Record.* An agency shall maintain a record for each child in a supervised apartment living placement. The record shall contain all of the following:

a. The name, date of birth, sex, and address of the child and information on how the child can be contacted.

b. Documentation of financial support sufficient to meet the child's housing, clothing, food, and miscellaneous expenses.

c. Name, address, and phone number of guardian, if applicable, and referring agent.

d. Medical records.

e. Educational and employment records.

f. All of the individual service plans and updated reviews.

g. Documentation of visits.

108.10(5) *Staffing requirements.* Each child in a supervised apartment living placement shall receive an agreed-upon number of hours of casework services per month. This shall be recorded in the child's individual service plan.

These rules are intended to implement Iowa Code chapter 238.

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i. Capital gains.

j. The value of the coupon allotment under the Food Stamp Act of 1964, as amended, in excess of the amount paid for the coupons.

k. The value of USDA donated foods.

l. The value of supplemental food assistance under the Child Nutrition Act of 1966 and the special food program for children under the National School Lunch Act, as amended.

m. Earnings of a child 14 years of age or under.

n. Loans and grants obtained and used under conditions that preclude their use for current living expenses.

o. Any grant or loan to any undergraduate student for educational purposes made or insured under the Higher Education Act.

p. Home produce utilized for household consumption.

q. Earnings received by any youth under Title III, Part C—Youth Employment Demonstration Program of the Comprehensive Employment and Training Act of 1973.

r. Stipends received by persons for participating in the foster grandparent program.

s. The first $65 plus 50 percent of the remainder of income earned in a sheltered workshop or work activity setting.

t. Payments from the low-income home energy assistance program.

u. In determining eligibility for purchase of local services, one-third of the income of a disabled survivor who is a recipient of child's insurance benefits under the federal old-age, survivors, and disability insurance program established under Title II of the Federal Social Security Act.

v. In determining eligibility for purchase of local services, one-third of the income of a person who receives social security permanent disability benefits.

w. Agent Orange settlement payments.

x. For child care services, the income of the parent(s) with whom the teen parent(s) resides.

y. For child care services for children with special needs, income spent on any regular ongoing cost is specific to that child's disability.

z. Moneys received under the federal Social Security Persons Achieving Self-Sufficiency (PASS) program or the Income-Related Work Expense (IRWE) program.

aa. For child care services, if a recipient of the family investment program, or one whose earned income was taken into account in determining the needs of the family investment program recipient, is excluded from the family investment program due to receiving Supplemental Security Income, the income received from the Supplemental Security Income recipient is excluded in determining gross income. The income of a child who would be in the family investment program eligible group except for the receipt of Supplemental Security Income is also excluded.

**ab.* For child care assistance, any adoption subsidy payments received from the Iowa department of human services.

130.3(4) Rescinded IAB 8/9/89, effective 10/1/89.

130.3(5) Temporary absence. The composition of the family group does not change when one, or more, of the group members is temporarily absent from the household.

"Temporary absence" means:

a. A medical absence anticipated to be less than three months.

b. An absence for the purpose of education or employment.

c. When a family member is absent and intends to return home within three months.

*January 1, 2004, effective date delayed 70 days by the Administrative Rules Review Committee at its meeting held November 10, 2003; at its meeting held March 8, 2004, the Committee delayed the effective date until adjournment of the 2004 Session of the General Assembly.

130.3(6) A person who is deemed to be eligible for state child care assistance program benefits under this chapter is subject to all other state child care assistance requirements including, but not limited to, provider requirements under Iowa Code chapter 237A, provider reimbursement methodology and rates, and any other requirements established by the department.

This rule is intended to implement Iowa Code section 234.6 and 1999 Iowa Acts, House File 761, division III.

441—130.4(234,239B) Fees. The department may set fees to be charged to clients for services received. The fees will be charged to those clients eligible under rule 130.3(234,239B), but not those receiving services without regard to income due to a protective service situation or for rehabilitative treatment services. Nothing in these rules shall preclude a client from voluntarily contributing toward the costs of service.

130.4(1) *Collection.* The provider shall collect fees from clients. The provider shall maintain records of fees collected, and such records shall be available for audit by the department or its representative. When a client does not pay the fee, the provider shall demonstrate that a reasonable effort has been made to collect the fee. Reasonable effort to collect means an original billing and two follow-up notices of nonpayment.

130.4(2) *Monthly income.* Rescinded IAB 1/8/92, effective 3/1/92.

130.4(3) *Child care services.* The fee schedule for child care services provided according to 441—Chapter 170 is shown in the following table:

Monthly Income Increment Levels According to Family Size

Income Increment Levels	1	2	3	4	5	6	7	8	9	10	Half-Day Fee
A	$ 712	$ 960	$1208	$1457	$1705	$1954	$2203	$2451	$2700	$2949	$0.00
B	749	1010	1272	1534	1795	2057	2319	2580	2842	3104	$0.50
C	791	1067	1343	1620	1896	2172	2449	2724	3001	3278	$1.00
D	835	1126	1418	1711	2002	2294	2586	2877	3169	3461	$1.50
E	882	1189	1498	1806	2114	2422	2731	3038	3347	3655	$2.00
F	931	1256	1582	1908	2232	2558	2884	3208	3534	3860	$2.50
G	984	1326	1670	2014	2357	2701	3045	3388	3732	4076	$3.00
H	1039	1401	1764	2127	2489	2852	3216	3578	3941	4304	$3.50
I	1097	1479	1863	2246	2629	3012	3396	3778	4162	4545	$4.00
J	1158	1562	1967	2372	2776	3181	3586	3990	4395	4800	$4.50
K	1223	1649	2077	2505	2931	3359	3787	4213	4641	5069	$5.00
L	1292	1742	2193	2645	3095	3547	3999	4449	4901	5353	$5.50
M	1364	1839	2316	2793	3269	3746	4223	4698	5175	5652	$6.00

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*Effective date of 130.3(3)"*ab*" delayed 70 days by the Administrative Rules Review Committee at its meeting held November 10, 2003; at its meeting held March 8, 2004, the Committee delayed the effective date until adjournment of the 2004 Session of the General Assembly.

150.3(3) *Conditions of participation.* The provider shall meet the following standards:

a. Licensure, approval, or accreditation. The provider shall have any license, approval, and accreditation required by law, regulation or administrative rules, or standards of operation required by the state or the federal government before the contract can be effective. Out-of-state providers shall meet Iowa licensing standards related to treatment, professional staff to client ratio, and staff qualifications.

b. Signed contract. A contract can be effective only when signed by all parties required in 150.3(1)*"d."*

c. Civil rights laws. The providers shall be in compliance with all federal, state and local civil rights laws and regulations with respect to equal employment opportunity, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

d. Title VI compliance. The provider shall be in compliance with Title VI of the 1964 Civil Rights Act and all other federal, state, and local laws and regulations regarding the provision of services, or have a written plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

e. Section 504 compliance. The provider shall be in compliance with Section 504 of the Rehabilitation Act of 1973 and with all federal, state, and local Section 504 laws and regulations, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, Plan Review Accessibility Checklist, Form 470-0149, and Section 504 Transition Plan: Structural Accessibility, Form 470-0150, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

f. Affirmative action. The provider shall be in compliance with all federal, state, and local laws and regulations regarding affirmative action, or have a written work plan approved by the diversity programs unit to come into compliance. Equal Opportunity Review, Form 470-0148, shall be completed by the provider. Equal Opportunity Review Status Report, Form 470-2194, shall be completed by the diversity programs unit.

g. Abuse reporting. The provider shall have a written policy and procedure approved by the regional administrator or designee for reporting abuse or denial of critical care of children or dependent adults.

h. Confidentiality. The provider shall comply with all applicable federal and state laws and regulations on confidentiality including rules on confidentiality contained in 441—Chapter 9. The provider shall have a written policy and procedure approved by the regional administrator or designee for maintaining individual client confidentiality including client record destruction.

i. Client appeals and grievances. Clients receiving service through a purchase of service contract have the right to appeal adverse decisions made by the department or the provider. The provider shall have a written policy and procedure approved by the regional administrator or designee for handling client appeals and grievances and shall provide information to clients about their rights to appeal.

j. Client reports. The provider shall maintain the following client records:

(1) Provider service plan or individual program plan. Providers shall develop a written service plan or individual program plan for each client within 30 days of service initiation. The plan shall include a concise description of the situation or area which will be the focus of the service; statement of the goals to be achieved through the delivery of services; time limited and measurable objectives which will lead to the attainment of the goal to be achieved; specific service components, frequency, and the assignment of responsibility for the provision of the components; and the month and year when it is estimated the client will be able to achieve the current goals and objectives. The provider service plan shall be updated upon receipt of a new departmental case plan, but at least once every six months.

(2) Quarterly progress reports. Quarterly progress reports shall be sent to the department service worker responsible for the client. The first report shall be submitted to the department three months after service is initiated. Reports shall be submitted quarterly thereafter, unless provided for otherwise in rules for a specific service.

The progress report shall include a description of the specific service components provided, their frequency, and who provided them; the client's progress with respect to the goals and service objectives; and any recommended changes in the service plan or individual program plan. For all placement cases the report shall include interpretation of the client's reaction to placement, a summary of medical or dental services that were provided, a summary of educational or vocational progress and participation, and a summary of the involvement of the family with the client and the services.

Reports for the supervised apartment living service shall also include supporting documentation for service provision. The documentation shall list dates of client and collateral contacts, type of contact, persons contacted, and a brief explanation of the focus of each contact. Each unit of service for which payment is sought should be the subject of a written progress note.

(3) Termination of service summary. A termination of service summary shall be sent to the department service worker responsible for the client within two weeks of service termination. The summary shall include the rationale for service termination and the impact of the service components on the client in relationship to the established goals and objectives.

k. Financial and statistical records. Each provider of service must maintain sufficient financial and statistical records, including program and census data, to document the validity of the reports submitted to the department.

(1) The records shall be available for review at any time during normal business hours by department personnel, the purchase of service fiscal consultant, and state or federal audit personnel.

(2) These records shall be retained for a period of five years after final payment.

l. Reports on financial and statistical records. Reports on financial and statistical records shall be submitted as required. Failure to do so within the required time limits is grounds for termination of the contract.

m. Maintenance of client records. Records for clients served through a purchase of service contract must be retained by the provider for a period of three years after service to the client terminates.

n. Provider charges. A provider shall not charge department clients more than it receives for the same services provided to nondepartmental clients.

k. Capital asset use allowance (depreciation) schedule. The Capital Asset Use Allowance Schedule shall be prepared using the guidelines for provider reimbursement in the Medicare and Medicaid Guide, December 1981.

l. The following expenses shall not be allowed:

(1) Fees paid directors and nonworking officers' salaries.

(2) Bad debts.

(3) Entertainment expenses.

(4) Memberships in recreational clubs, paid for by an agency (country clubs, dinner clubs, health clubs, or similar places) which are primarily for the benefit of the employees of the agency.

(5) Legal assistance on behalf of clients.

(6) Costs eligible for reimbursement through the medical assistance program.

(7) Food and lodging expenses for personnel incurred in the city or immediate area surrounding the personnel's residence or office of employment, except when the specific expense is required by the agency and documentation is maintained for audit purposes. Food and lodging expenses incurred as part of programmed activities on behalf of clients, their parents, guardians, or consultants are allowable expenses when documentation is available for audit purposes.

(8) Business conferences and conventions. Meeting costs of an agency which are not required in licensure.

(9) Awards and grants to recognize board members and community citizens for achievement. Awards and grants to clients as part of treatment program are reimbursable.

(10) Survey costs when required certification is not attained.

(11) Federal and state income taxes.

m. Limited service—without a ceiling. The following expenses are limited for service without a ceiling established by administrative rule or law for that service. This includes services with maximum rates, with the exception of shelter care.

(1) Moving and recruitment are allowed as a reimbursable cost only to the extent allowed for state employees. Expenses incurred for placing advertising for purposes of locating qualified individuals for staff positions are allowed for reimbursement purposes.

(2) and (3) Rescinded IAB 5/18/88, effective May 1, 1988.

(4) Costs for participation in educational conferences are limited to 3 percent of the agency's actual salary costs, less excluded or limited salary costs as recorded on the financial and statistical report.

(5) Costs of reference publications and subscriptions for program-related materials are limited to $500 per year.

(6) Memberships in professional service organizations are allowed to the extent they do not exceed one-half of 1 percent of the total salary costs less excluded salary costs.

(7) In-state travel costs for mileage and per diem expenses are allowable to the extent they do not exceed the maximum mileage and per diem rates for state employees for travel in the state.

(8) Reimbursement for air travel shall not exceed the lesser of the minimum commercial rate or the rate allowed for mileage in subparagraph (7) above.

(9) The maximum reimbursable salary for the agency administrator or executive director charged to purchase of service is $40,000 annually.

(10) Annual meeting costs of an agency which are required in licensure are allowed to the extent required by licensure.

n. Limited service—with a ceiling. The following expenses are limited for services with a ceiling established by administrative rule or law for that service. This includes shelter care.

(1) The maximum reimbursable compensation for the agency administrator or executive director charged to purchase of service annually is $40,000.

(2) Annual meeting costs of an agency which are required for licensure are allowed to the extent required by licensure.

o. Establishment of ceiling and reimbursement rate.

(1) The maximum allowable rate ceiling applicable to each service is found in the rules for that particular service.

(2) When a ceiling exists, the reimbursement rate shall be established by determining on a per unit basis the allowable cost plus the current cost adjustment subject to the maximum allowable cost ceiling.

p. Rate limits. Interruptions in service programs will not affect the rate. If an agency assumes the delivery of service from another agency, the rate shall remain the same as for the former agency.

(1) Unless otherwise provided for in 441—Chapter 156, rates for shelter care shall not exceed $83.69 per day based on a 365-day year.

(2) For the fiscal year beginning July 1, 2003, the maximum reimbursement rates for services provided under a purchase of social service agency contract (adoption, shelter care, family planning, and supervised apartment living) shall be the same as the rates in effect on June 30, 2003, except under any of the following circumstances:

1. If a new service was added after June 30, 2001, the initial reimbursement rate for the service shall be based upon actual and allowable costs. A new service does not include a new building or location or other changes in method of service delivery for a service currently provided under the contract.

For adoption, the only time a provider shall be considered to be offering a new service is if the provider adds the adoptive home study, the adoptive home study update, placement services, or postplacement services for the first time. Preparation of the child, preparation of the family and preplacement visits are components of the services listed above.

For shelter care, if the provider is currently offering shelter care under social services contract, the only time the provider shall be considered to be offering a new service is if the provider adds a service other than shelter care.

For family planning, the only time the provider shall be considered to be offering a new service is when a new unit of service is added by administrative rule.

For supervised apartment living, the only time a provider shall be considered to be offering a new service is when the agency adds a cluster site or a scattered site for the first time. If, for example, the agency has a supervised apartment living cluster site, the addition of a new site does not constitute a new service.

If the department defines, in administrative rule, a new service as a social service that may be purchased, this shall constitute a new service for purposes of establishment of a rate. Once the rate for the new service is established for a provider, the rate will be subject to any limitations established by administrative rule or law.

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CHAPTER 156
PAYMENTS FOR FOSTER CARE AND FOSTER PARENT TRAINING

[Prior to 7/1/83, Social Services[770] Ch 137]
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441—156.1(234) Definitions.

"Basic family foster care" means the 24-hour care and supervision of a child provided by a licensed foster family. It includes the provision of food, lodging, clothing, shelter, support, ordinary transportation, recreation, and training which is appropriate for the child's age, mental, and physical capacity. It also includes assisting and contributing to the creation and updating of a child's lifebook and personal history, as well as assisting the child in maintaining cultural and ethnic connections.

"Basic maintenance payment" means the monthly reimbursement paid to foster parents for providing basic family foster care. The payment is based on the schedule found in subrule 156.6(l).

"Cost of foster care" means the maintenance and supervision costs of foster family care, the maintenance costs of group care, and the maintenance and service costs of supervised apartment living and shelter care. The cost for foster family care supervision and supervised apartment living services, when provided directly by the department caseworker rather than purchased from a provider, shall be $250 per month. When using this average monthly charge results in unearned income or parental liability being collected in excess of the cost of foster care, the excess funds shall be placed in the child's escrow account. The cost for foster family supervision and supervised apartment living services purchased from a private provider shall be the actual costs paid by the department.

"Department" means the Iowa department of human services.

"Difficulty of care maintenance payment" means a monthly payment made, in addition to the basic maintenance payment, to foster parents providing care to a special needs child to cover the extra expenses, care and supervision, associated with the child's special needs.

"Director" means the director of the child support recovery unit of the department or the director's designee.

"Earned income" means income in the form of a salary, wages, tips, bonuses, commissions earned as an employee, income from job corps or profit from self-employment.

"Emergency foster family care" means a foster care placement in a licensed foster home in which the family is willing to accept children with less than 24-hour notice. These placements are intended to be limited to 30 days or less, although some placements may extend longer. The emergency maintenance payment is based on the schedule found in rule 441—156.11(234).

"Escrow account" means an interest bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

"Family foster care supervision" means the support, assistance, and oversight provided by department or private agency caseworkers to children in family foster care which is directed toward achievement of the child's permanency plan goals.

"Foster care" means substitute care furnished on a 24-hour-a-day basis to an eligible child, in a licensed or approved facility, by a person or agency other than the child's parent or guardian, but does not include care provided in a family home through an informal arrangement for a period of less than 20 days. Child foster care shall include but is not limited to the provision of food, lodging, training, education, supervision and health care.

"Foster family care" means foster care provided in a single family living unit licensed by the department according to 441—Chapter 113 or licensed or approved by the state in which it is located.

"Foster family home study" means the initial written report and the annual update containing documentation of the family's compliance with 441—Chapter 113, an assessment of the family's ability to provide foster care, and a licensing recommendation.

"Group care maintenance" means food, clothing, shelter, school supplies, personal incidentals, daily care and supervision of children to ensure their well-being and safety, and administration of maintenance items provided in a group care facility.

"Income" means earned and unearned income.

"Mental health professional" means the same as defined in rule 441—24.61(225C,230A).

"Mentally retarded" means a child meeting the definition in Iowa Code section 222.2(5).

"Mental retardation professional" means the same as defined in the department of inspections and appeals subrule 481—57.1(15).

"Parent" means the biological or adoptive parent of the child.

"Parental liability" means a parent's liability for the support of a child during the period of foster care placement. Liability shall be determined pursuant to 441—Chapter 99, Division I.

"Personal allowance" means the family investment program schedule of living costs for the areas of food, clothing, personal care and supplies, medicine chest items and communications as defined in 441—subrules 41.8(2) and 41.28(2).

"Physician" means a licensed medical or osteopathic doctor as defined in rule 441—77.1(249A).

"Regional administrator" means the department employee or designee responsible for managing department offices within a region and for implementing policies and procedures of the department.

"Required school fees" means fees required for the participation in school or extracurricular activities and fees related to enrolling a child in preschool when a mental health or mental retardation professional has recommended school attendance.

"Special needs child" means a child with one or more of the following conditions:

1. The child has been diagnosed by a physician to have a disability which substantially limits one or more major life activities; and requires professional treatment, assistance in self-care, or the purchase of special adaptive equipment.
2. The child has been determined by a qualified mental retardation professional to have mental retardation.
3. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning.
4. The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior, which deviates substantially from behavior appropriate to the child's age or which significantly interferes with the child's intellectual, social, or personal adjustment.
5. The child has been diagnosed by a qualified medical professional, mental health professional, or substance abuse treatment supervisor as having a substance abuse problem.
6. The child is an unaccompanied refugee minor.
7. The child has been adjudicated delinquent.
8. The child has been diagnosed as HIV-infected or has had an HIV-positive test result by a qualified medical professional.

(7) Additional reports if requested by the referral worker.

(8) Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services.

156.7(3) *Family foster care treatment services.* Purchased family foster care rehabilitative treatment services shall meet the requirements in rules 441—185.61(234) to 441—185.64(234); shall be purchased from an agency certified pursuant to rules 441—185.9(234) and 441—185.10(234), and pursuant to rule 441—185.11(234); and shall be reimbursed pursuant to rules 441—185.101(234) to 441—185.108(234).

156.7(4) *Foster family home studies.* Purchased foster family home studies shall meet the following requirements:

a. Home studies shall be completed in accordance with rule 441—108.8(234).

b. The department shall determine when to refer a family to a private agency for a home study or when to purchase a home study or update completed by the private agency on Form 470-3055, Referral of Client for Rehabilitative Treatment and Supportive Services.

c. The unit of service shall be the completed home study.

d. The unit rate shall be determined according to the policies in rules 441—185.101(234) to 441—185.108(234), except that foster family recruitment shall be considered an allowable cost in determining the unit rate for foster family home studies.

156.7(5) *Purchasing services for individual children.* The department shall purchase services for a child based on the needs of the individual child. This may include one or more cores of rehabilitative treatment services, or a combination of rehabilitative treatment services and family foster care supervision.

156.7(6) *Billing procedures.* Billings shall be prepared and submitted pursuant to rule 441—185.121(234).

441—156.8(234) Special needs.

156.8(1) *Clothing allowance.* When in the judgment of the worker clothing is needed at the time the child is removed from the child's home and placed in foster care, an allowance may be authorized, not to exceed $250, to purchase clothing.

A second clothing allowance, not to exceed $200 for family foster care and $100 for all other levels, may be approved, not more than once within a calendar year, by the worker when a child in foster care needs clothing to replace lost clothing or because of unusual growth or weight change, and the child does not have escrow funds.

156.8(2) *Supervised apartment living.* When a youth is initially placed in supervised apartment living, the service area manager or designee may authorize an allowance not to exceed $400 if the youth does not have sufficient resources to cover initial costs.

156.8(3) *Medical care.* When a child in foster care needs medical care or examinations which are not covered by the Medicaid program and no other source of payment is available, the cost may be paid from foster care funds with the approval of the regional administrator or designee. Eligible costs shall include emergency room care, medical treatment by out-of-state providers who refuse to participate in the Iowa Medicaid program, and excessive expenses for nonprescription drugs or supplies. Requests for payment for out-of-state medical treatment and for nonprescription drugs or supplies shall be approved prior to the care being provided or the drugs or supplies purchased. Claims shall be submitted to the department on Form 07-350, Purchase Order/Payment Voucher, within 90 days after the service is provided. The rate of payment shall be the same as allowed under the Iowa Medicaid program.

156.8(4) *Transportation for medical care.* When a child in foster family care has expenses for transportation to receive medical care which cannot be covered by the Medicaid program, the expenses may be paid from foster care funds, with the approval of the regional administrator. The claim for all the expenses shall be submitted to the department on Form 07-350, Purchase Order/Payment Voucher, within 90 days after the trip. This payment shall not duplicate or supplement payment through the Medicaid program. The expenses may include the actual cost of meals, parking, child care, lodging, passenger fare, or mileage at the rate granted state employees.

156.8(5) *Funeral expense.* When a child under the guardianship of the department dies, the department will pay funeral expenses not covered by the child's resources, insurance or other death benefits, the child's legal parents, or the child's county of legal settlement, not to exceed $650.

The total cost of the funeral and the goods and services included in the total cost shall be the same as defined in rule 441—56.3(239,249).

The claim shall be submitted by the funeral director to the department on Form 07-350, Purchase Order/Payment Voucher, and shall be approved by the regional administrator. Claims shall be submitted within 90 days after the child's death.

156.8(6) *School fees.* Payment for required school fees of a child in foster family care or supervised apartment living exceeding $5 may be authorized by the worker in an amount not to exceed $50 per calendar year if the child does not have escrow funds.

156.8(7) *Respite care.* The human services area administrator may authorize respite for a child in family foster care for up to 24 days per calendar year per placement. Respite shall be provided by a licensed foster family. The payment rate to the respite foster family shall be established as follows:

a. If the payment rate for the child is the basic rate, per subrule 156.6(1), or the basic rate per subrule 156.6(1) plus a difficulty of care rate per paragraph 156.6(4)*"a," "b,"* or *"c,"* the respite family shall receive the basic rate per 156.6(1).

b. If the payment rate for the child is the basic rate, per subrule 156.6(1), plus a difficulty of care rate, per paragraph 156.6(4)*"d,"* and the respite foster family meets the definition of treatment foster parent in rule 441—156.1(234,252C), then the respite foster family shall receive the basic rate per subrule 156.6(1) plus the difficulty of care payment per paragraph 156.6(4)*"d."*

c. If the payment rate for the child is the basic rate, per subrule 156.6(1), plus a difficulty of care rate, per paragraph 156.6(4)*"d,"* and the respite foster family does not meet the definition of treatment foster parent in rule 441—156.1(234,252C), then the respite foster family shall receive the basic rate per subrule 156.6(1).

156.8(8) *Tangible goods, child care, and ancillary services.* To the extent that a child's escrow funds are not available, the human services area administrator may authorize reimbursement to foster parents for the following:

a. Tangible goods for a special needs child including, but not limited to, building modifications, medical equipment not covered by Medicaid, specialized educational materials not covered by educational funds, and communication devices not covered by Medicaid.

b. Child care services when the foster parents are working, the child is not in school, and the provision of child care is identified in the child's case permanency plan. A maximum of $750,000 in state funds shall be allocated among the department regions based on the number of licensed foster families in each region on July 1. The allocation shall be reviewed yearly and adjusted to reflect a change in the number of licensed families. Requests for child care shall be denied when the region's funds are obligated or depleted.

Child care services shall be provided by a licensed foster parent or a licensed or registered child care provider when available.

a. Agencies shall be reimbursed for any units of service provided in excess of the six-month utilization factor on a six-month basis. The six-month utilization factor is computed by multiplying the utilization factor by the number of days in the six-month period. The six-month periods shall end December 31 and June 30. The amount of reimbursement shall be determined by multiplying the agency's unit cost by the number of excess units provided.

EXCEPTION: For the first period of fiscal year 1996, the number of months will be four, rather than six, beginning September 1, 1995, and ending December 31, 1995. Calculations shall be made as above, adjusted for the four-month period.

b. The total reimbursement to the agency shall not exceed the agency's allowable costs as defined in 441—subrule 150.3(5). Agencies shall refund any payments which have been made in excess of the agencies' allowable costs.

c. Rescinded IAB 8/2/95, effective 9/1/95.

This rule is intended to implement Iowa Code section 234.35.

441—156.12(234) Supervised apartment living.

156.12(1) *Maintenance.* When a youth at least aged 16 but under the age of 20 is living in a supervised apartment living situation, the maximum monthly maintenance payment for the youth shall be made pursuant to the basic daily maintenance rate for a child aged 16 and over in subrule 156.6(1). The maximum monthly payment shall be computed by multiplying the daily rate in subrule 156.6(1) by 365 and dividing by 12. This payment may be paid to the youth or another payee, other than a department employee, for the youth's care.

156.12(2) *Service.* When services for a youth in supervised apartment living are purchased, the service components and number of hours purchased shall be specified by the service worker in the youth's case permanency plan.

This rule is intended to implement Iowa Code section 234.35.

441—156.13(234) Excessive rates. Rescinded IAB 6/9/93, effective 8/1/93.

441—156.14(234,252C) Voluntary placements. When placement is made on a voluntary basis the parent or guardian shall complete and sign Form SS-2604, Voluntary Placement Agreement.

441—156.15(234) Child's earnings. Earned income of a child who is not in a supervised apartment living arrangement and who is a full-time student or engaged in an educational or training program shall be reported to the department and its use shall be a part of a plan for service, but the income shall not be used towards the cost of the child's care as established by the department. When the earned income of children in supervised apartment living arrangements or of other children exceeds the foster care standard, the income in excess of the standard shall be applied to meet the cost of the child's care. When the income of the child exceeds twice the cost of maintenance, the child shall be discontinued from foster care.

441—156.16(234) Trust funds and investments.

156.16(1) When the child is a beneficiary of a trust and the proceeds therefrom are not currently available, or are not sufficient to meet the child's needs, the worker shall assist the child in having a petition presented to the court requesting release of funds to help meet current requirements. When the child and responsible adult cooperate in necessary action to obtain a ruling of the court, income shall not be considered available until the decision of the court has been rendered and implemented. When the child and responsible adult do not cooperate in the action necessary to obtain a ruling of the court, the trust fund or investments shall be considered as available to meet the child's needs immediately. When the child or responsible adult does not cooperate within 90 days in making the income available the maintenance payment shall be terminated.

156.16(2) The Iowa department of human services shall be payee for income from any trust funds or investments unless limited by the trust.

156.16(3) Savings accounts from any income and proceeds from the liquidation of securities shall be placed in the child's account maintained by the department and any amount in excess of $1,500 shall be applied towards cost of the child's maintenance.

This rule is intended to implement Iowa Code section 234.39.

441—156.17(234) Adoptive homes. Payment for foster care for a child placed in an adoptive home will only be made when the placement is made in anticipation of a subsidized adoption. The payment shall be limited to the amount anticipated for subsidy, and shall terminate when the adoption decree is granted.

This rule is intended to implement Iowa Code section 234.38.

441—156.18(237) Foster parent training expenses.

156.18(1) *Preservice training and orientation.* Each prospective foster family and provisionally licensed foster family who completes the required preservice training program and is issued a foster home license shall receive a $100 stipend from the department. The stipend shall be issued on or after the date that the license is issued. No expense stipend is provided for orientation.

156.18(2) *Required orientation.* Rescinded IAB 1/5/94, effective 3/1/94.

156.18(3) *Foster parent and social worker trainers.* Foster parents and social workers who serve as trainers for approved preservice training programs shall each be paid a contract fee per class hour appropriate to community standards based on the education and experience of each trainer. These rates shall be negotiated between the entity that contracts with the department and the trainer.

156.18(4) *In-service training.* Each licensed foster family who completes the in-service training requirement shall receive a $100 stipend from the department when the family's license is renewed, for per diem expenses related to meeting the in-service training requirement.

156.18(5) *Funds to association.* The department may provide funds to the Iowa foster and adoptive parent association for the following purposes:

a. Publication of educational articles in the association newsletter.

b. Financial assistance for foster parents who attend the National Foster Parent Association's annual conference.

c. Financial assistance for foster parents who attend the state association's annual conference.

156.18(6) *Foster parent training enhancement.* Rescinded IAB 12/11/02, effective 2/1/03.

156.18(7) *Transition.* Rescinded IAB 10/31/90, effective 1/1/91.

This rule is intended to implement Iowa Code section 237.5A.

441—156.19(237) Rate of payment for care in a residential care facility. When a child is receiving group care maintenance and treatment services in a licensed residential care facility and is not eligible for supplemental security income or state supplementary assistance, the department will pay for the group care maintenance and treatment services in accordance with rules 441—185.81(234) and 441—185.101(234) to 441—185.108(234). When a child receives group care maintenance and treatment services in a licensed residential care facility and is eligible for supplemental security income or state supplementary assistance, the department will pay for group care treatment services in accordance with rules 441—185.81(234) to 441—185.108(234).

This rule is intended to implement Iowa Code section 237.1(3)*"e."*

441—156.20(234) Eligibility for foster care payment.

156.20(1) *Client eligibility.* Foster care payment shall be limited to the following populations.

a. Youth under the age of 18 shall be eligible based on legal status, subject to certain limitations.

(1) Legal status. The youth's placement shall be based on one of the following legal statuses:

1. The court has ordered foster care placement pursuant to Iowa Code section 232.52, subsection 2, paragraph *"d,"* Iowa Code section 232.102, subsection 1, Iowa Code section 232.117, or Iowa Code section 232.182, subsection 5.

2. The child is placed in shelter care pursuant to Iowa Code section 232.20, subsection 1, or Iowa Code section 232.21.

3. The department has agreed to provide foster care pursuant to rule 441—202.3(234).

(2) Limitations. Department payment for group care shall be limited to placements which have been authorized by the review organization pursuant to rule 441—185.4(234) and which conform to the regional group care plan developed pursuant to rule 441—202.17(232). Payment for an out-of-state group care placement shall be limited to placements approved pursuant to 441—subrule 202.8(2) and where the facility meets provider certification according to rule 441—185.10(234).

b. Youth aged 18 and older who meet the definition of child in rule 441—202.1(234) shall be eligible based on age, a voluntary placement agreement pursuant to 441—subrule 202.3(3), and type of placement.

(1) Except as provided in subparagraph 156.20(1)*"b"*(3), payment for a child who is 18 years of age shall be limited to family foster care or supervised apartment living.

(2) Except as provided in subparagraph 156.20(1)*"b"*(3), payment for a child who is 19 years of age shall be limited to supervised apartment living.

(3) Exceptions. An exception to subparagraphs (1) and (2) shall be granted for all unaccompanied refugee minors. The regional administrator or designee shall grant an exception for other children when the child meets all of the following criteria. The child's eligibility for the exception shall be documented in the case record.

1. The child does not have mental retardation. Funding for services for persons with mental retardation is the responsibility of the county or state pursuant to Iowa Code section 222.60.

2. The child is at imminent risk of becoming homeless or of failing to graduate from high school or obtain a general equivalency diploma. "At imminent risk of becoming homeless" shall mean that a less restrictive living arrangement is not available.

3. The placement is in the child's best interests.

4. Funds are available in the region's allocation. When the regional administrator has approved payment for foster care pursuant to this subparagraph, funds which may be necessary to provide payment for the time period of the exception, not to exceed the current fiscal year, shall be considered encumbered and no longer available. Each region's funding allocation shall be based on the region's portion of the total number of children in foster care on March 31 preceding the beginning of the fiscal year, who would no longer be eligible for foster care during the fiscal year due to age, excluding unaccompanied refugee minors.

c. A young mother shall be eligible for the extra payment for her young child living with her in care as set forth in subrule 156.6(4), paragraph *"a,"* and subrule 156.9(4) if all of the following apply:

(1) The mother is placed in foster care.

(2) The mother's custodian determines, as documented in the mother's case permanency plan, that it is in her best interest and the best interest of the young child that the child remain with her.

(3) A placement is available.

(4) The mother agrees to refund to the department any child support payments she receives on behalf of the child and to allow the department to be made payee for any other unearned income for the child.

156.20(2) *Provider eligibility for payment.* Except for payments for foster parents or youth in supervised apartment living, payment shall be limited to providers with a purchase of service contract in force. Providers of family foster care treatment services and group care treatment services shall meet certification requirements in rule 441—185.9(234) or 441—185.10(234) and have a purchase of rehabilitative treatment and supportive services contract under 441—Chapter 152 in force.

This rule is intended to implement Iowa Code sections 232.143, 234.35 and 234.38.

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441—185.61(234) Component services. Component services of rehabilitative treatment services to children in family foster care and their families are:

1. Restorative living skills development.
2. Family skills development.
3. Social skills development.
4. Therapy and counseling services.
5. Behavioral management for children in therapeutic foster care.

441—185.62(234) Core services. Providers offering family foster care rehabilitative treatment services shall provide one or more of the component sets of services.

185.62(1) *Service core one.* Services in this core are delivered to a child or family to develop and implement a planned and structured therapeutic approach to address the presenting factors identified through the diagnostic and assessment process.

a. Therapy and counseling shall comprise service core one.

b. These services shall:

(1) Occur on a face-to-face basis.

(2) Be directed toward the needs of the child and shall include the child, other family members, or both.

(3) Be delivered in whatever locations the referral worker's social casework findings indicate are appropriate to ensure that all reasonable efforts are being made to meet the child and family's needs.

c. Units of service shall be provided in one-half hour increments.

**d.* Services shall be reimbursed for each billable unit of core one services authorized and delivered. Services shall not be provided while driving a motor vehicle.

185.62(2) *Service core two.* Services in this core are delivered to a child or family to build the necessary skills of the child and family, to ameliorate the identified problems and to enable the child and family to function in the community on a daily basis.

a. Skill development services shall comprise service core two. Skill development services include restorative living skills, social skills and family skills development.

b. These services shall:

(1) Occur on a face-to-face basis.

(2) Be directed toward the needs of the child and shall include the child, other family members, or both.

(3) Be delivered in whatever locations the referral worker's social casework findings indicate are appropriate to ensure that all reasonable efforts are being made to meet the child's or family's needs.

c. Units of service shall be provided in one-half hour increments.

**d.* Services shall be reimbursed for each billable unit of core two services authorized and delivered. Services shall not be provided while driving a motor vehicle.

185.62(3) *Service core three.* Services in this core are delivered to a child and treatment foster family and shall only be provided to a child placed in foster families meeting the requirements in paragraph 185.10(8)"*b.*" These services provide initial and ongoing assistance to the child and foster family with developing, implementing, and revising the care plan for the child.

a. Behavioral management for children in therapeutic foster care shall comprise service core three.

*Effective date delayed 70 days from 8/1/95 by the Administrative Rules Review Committee at its meeting held July 11, 1995.

b. These services shall:

(1) Occur on a face-to-face basis.

(2) Be directed toward the needs of the child and shall include the treatment foster family.

(3) Be delivered in whatever locations the referral worker's social casework findings indicate are appropriate to ensure that all reasonable efforts are being made to meet the child's needs.

c. Units of service shall be provided in one-half hour increments.

**d.* Services shall be reimbursed for each billable unit of core three services authorized and delivered. Services shall not be provided while driving a motor vehicle.

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185.62(4) *Difficulty of care payments to foster families.* Additional care provided by the foster family to meet the child's special needs shall be considered difficulty of care maintenance.

441—185.63(234) Duration of services. Family foster care rehabilitative treatment services shall not be authorized for more than six months from the initial day of service provision by the provider. Prior approval shall be obtained from the review organization for services to extend beyond the time period authorized initially.

441—185.64(234) Desired outcomes of family foster care treatment services. Desired outcomes include achieving movement towards the goals identified in the child's case permanency plan, treatment plan, or court order, continued involvement in an active school program or employment (if age appropriate), eliminating risk of abuse or neglect of the child by the family, reducing or eliminating risk of delinquency of the child, and moving to a more permanent or less restrictive level of care (e.g., family, adoption, or supervised apartment living).

These rules are intended to implement Iowa Code section 234.38.

441—185.65 to **185.80** Reserved.

DIVISION V
GROUP TREATMENT

PREAMBLE

Group treatment is a highly structured treatment service in a licensed group care setting having intensive staff supervision and programs for children who may include emotionally disturbed, aggressive or multihandicapped children or adolescents. These children are not able to live in a less restrictive environment due to the intensity or severity of their current emotional problems, behavioral disorders or acting-out behaviors. The treatment program is behavioral, psychological, and psychosocial in orientation.

The goals of group treatment are to enable children to overcome their problems by meeting their treatment needs, to prevent placement in an institutional setting, and to assist children to move to a less restrictive community placement with plans toward eventual placement in a family or supervised apartment living situation.

441—185.81(234) Required component services. Component services for agencies providing group treatment services to the child shall include:

1. Restorative living skills development.
2. Social skills development.
3. Therapy and counseling services provided to the child, except that therapy and counseling shall not be included as a required component in facilities licensed under 441—Chapter 116 or 481—Chapter 57 or 63. For facilities licensed under 441—Chapter 116 or 481—Chapter 57 or 63, therapy and counseling shall be provided, based on the needs of the individual child, as an additional service pursuant to rule 441—185.84(234).

***441—185.82(234) Optional services.** Group treatment providers are required to address the treatment services needed to reunite the family. The following services may be provided to the family of a child in group treatment:

1. Family skill development.
2. Therapy and counseling provided to family members.

These component services shall be individually purchased based on the needs of the child and the child's family and are not included in the required core services for children in group treatment.

These component services shall occur on a face-to-face basis, be directed to the needs of the child, and shall include the child, other family members, or both. Services shall not be provided while driving a motor vehicle.

441—185.83(234) Levels of group treatment. There shall be four levels of group treatment. These levels are differentiated by the intensity and frequency of treatment services and the supervision and structure required by a child who presents various levels of emotional or behavioral problems. The four levels of group treatment are:

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185.83(1) *Community residential group treatment.* Community residential group treatment provides treatment in a facility licensed under 441—Chapter 114, 115, or 116, 481—Chapter 57 or 63, or 643—Chapter 3 for individuals who are unable to live in family situations due to emotional or behavioral disabilities but are capable of interacting in a community environment. This level of treatment requires a level of supervision and intensity of programming required to treat children who present less intensive emotional or behavioral problems. Restorative living and social skills development will be provided to individuals on a daily basis. Therapy and counseling to the child, either on a group or individual basis, shall be provided in accordance with the requirements of subrule 185.83(5), except for facilities licensed under 441—Chapter 116 or 481—Chapter 57 or 63. Children are provided with 24-hour supervision, 16 hours of which staff is awake.

a. Children receiving community residential group treatment shall receive the following services: restorative living or social skills development and group or individual therapy and counseling. Therapy and counseling services shall be provided to each child in accordance with the requirements of subrule 185.83(5).

b. There shall be at least one staff meeting the qualifications for skill development services for every eight children during prime programming time except that facilities licensed under 441—Chapter 116 shall have at least one staff meeting the qualifications for skill development services for every four children during prime programming time. During nonprime programming time, child care staff shall also meet the qualifications for skill development services. During sleeping time, child care staff shall meet the qualifications in 441—paragraph 114.8(1)*"c,"* except that the child care staff in facilities licensed under 441—Chapter 116 shall meet the qualifications of paraprofessional direct-service providers in 441—paragraph 116.3(1)*"a."*

c. These services shall be provided on a face-to-face basis with the child.

d. The unit of service for community residential group treatment shall be one day.

e. The payment for the daily rate shall be based on a 365-day year.

185.83(2) *Comprehensive residential treatment.* Comprehensive residential treatment provides treatment in a facility licensed under 441—Chapter 115 or 643—Chapter 3 for children who are unable to live in a family situation due to social, emotional, or behavioral disabilities and who require a structured program of supervision and treatment services as indicated in the individual treatment plan. These youth are not able to function in the community without supervision. Specialized behavior management techniques are often used several times per day. In addition, individuals in comprehensive residential group treatment shall require and receive interventions several times daily to enhance their living and social skills. In addition to the intensive programming and structure, the children are provided with 24-hour awake supervision.

a. Component services to be provided to individuals in comprehensive residential treatment include: restorative living or social skills development provided several times per day and group or individual therapy or counseling. Therapy and counseling services shall be provided to each child in accordance with the requirements of subrule 185.83(5).

b. There shall be at least one staff meeting the qualifications for skill development services for every five children during prime programming time. During nonprime programming time, child care staff shall also meet the qualifications for skill development services. During sleeping time, child care staff shall meet the qualifications in 441—paragraph 114.8(1)*"c."*

c. The payment for the daily rate shall be based on a 365-day year.

d. The unit of service for comprehensive residential group treatment shall be one day.

e. These services shall be provided on a face-to-face basis with the child.

c. Enhanced residential treatment. Each child in enhanced residential treatment shall receive the number of hours of therapy and counseling services set forth below, based upon the number of days during the calendar month that the child is present in the facility.

Number of days present in facility	Required number of hours
1-2	0
3-4	1
5-6	2
7-13	3
14-20	6
21-27	9
28-31	12

The required number of hours of therapy and counseling may be provided on any day during the calendar month that the child is present in the facility, and may be provided on either a group or individual basis.

d. Satisfaction of required therapy and counseling with additional services contracted for under rule 441—185.84(234).

(1) If the review organization has authorized additional therapy and counseling services to the child under rule 441—185.84(234), and the provider has failed to meet the therapy and counseling requirements established in this subrule, the additional therapy and counseling services provided when the child is present in the facility shall be applied toward satisfaction of the therapy and counseling requirements established in this subrule.

(2) To the extent that the additional therapy and counseling services are applied to satisfy the therapy and counseling requirements, the provider shall not be entitled to payment for additional therapy and counseling services under rule 441—185.84(234).

441—185.84(234) Additional services provided in group care. Additional therapy and counseling services to the child that are in excess of frequency and intensity of services set forth in the core group of services and which are approved by the review organization pursuant to rule 441—185.4(234) shall be provided on an individual unit basis. Units of additional therapy and counseling provided in group care shall be defined and reimbursed in half-hour increments, with a billable unit being face-to-face contact with the child. The provider may bill for additional units after documenting that the services are in excess of that required in the daily rate.

441—185.85(234) Duration of services. Group treatment services shall not be authorized for more than six months from the initial day of service provision by the provider. Prior approval shall be obtained from the review organization for services to extend beyond the time period authorized initially.

441—185.86(234) Desired outcomes of group treatment. Desired outcomes are to achieve or document movement toward the goals identified in the permanency plan, treatment plan, or court order, continue engagement in an active school program or employment, reduce or eliminate risk of delinquency of the child, eliminate risk of abuse of the child by the family, and movement to less restrictive level of care (e.g., family, family foster care, supervised apartment living).

These rules are intended to implement Iowa Code section 234.38.

441—185.87 to **185.100** Reserved.

This error rate is then multiplied by the difference between the total amount the provider billed for the month ($2,790) less the overpayment for the erroneous billing ($450). There is no audit adjustment for skill development since the required skill development was properly documented. Thus, the overpayment for therapy and counseling is $390 (($2,790 – $450) x 16.67 percent = $390).

The total overpayment amount is $840, the sum of the overpayment for the erroneous billing ($450) and the overpayment for therapy and counseling ($390).

EXAMPLE 2. The provider furnishes community residential group treatment to Child B for the month of August. A provider may bill for the day of admittance to the program if service provision requirements for that day are otherwise satisfied. Since Child B was admitted to the program on August 14, Child B was present in the program for 18 days during the month. The provider has billed a per diem rate of $75 for each day of service, representing a total billing for August of $1,350 ($75 x 18).

Upon audit, it is determined that the provider failed to document the provision of skill development for two of the days during the service period during the month and that the provider has furnished 1.5 hours of therapy and counseling to Child B during August. The overpayment calculation with respect to Child B is as follows:

The failure to document the provision of skill development for two days of service during the month results in an audit adjustment for skill development of $150 ($75 x 2).

The requirement for therapy and counseling for the number of days of service for which the provider may bill (16) is two hours, but only 1.5 hours of therapy and counseling were provided, resulting in an error rate of 25 percent ((2 – 1.5) ÷ 2 = 25 percent). This error rate is then multiplied by the difference between the total amount billed by the provider for the month ($1,350) less the overpayment determined for skill development ($150). Thus, the overpayment for therapy and counseling is $300 (($1,350 – $150) x 25 percent = $300).

The total overpayment amount is $450, the sum of the overpayment for skill development ($150) and the overpayment for therapy and counseling ($300).

EXAMPLE 3. The provider furnishes enhanced residential treatment to Child C for the month of September. Child C is present in the program from the beginning of the month until discharged from the program on September 16. Since a provider may not bill for the day of discharge, the provider bills for 15 days of service for the month. The provider has billed a per diem rate of $100 for each day of service, representing a total billing for September of $1,500 ($100 x 15).

Upon audit, it is determined that the provider has documented the required skill development for the month and has furnished four hours of therapy and counseling to Child C during September. The overpayment calculation with respect to Child C is as follows:

There is no audit adjustment for skill development since the required skill development was properly documented.

The requirement for therapy and counseling for the number of days of service for which the provider may bill (15) is six hours, but only four hours of therapy and counseling were provided, resulting in an error rate of 33.33 percent ((6 – 4) ÷ 6 = 33.33 percent). This error rate is then multiplied by the difference between the total amount the provider billed for the month ($1,500) less the overpayment determined for skill development ($0). Thus, the overpayment for therapy and counseling is $500 (($1,500 – $0) x 33.33 percent = $500).

The total overpayment amount is $500, the sum of the overpayment for skill development ($0) and the overpayment for therapy and counseling ($500).

These rules are intended to implement Iowa Code sections 234.6 and 234.38.

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CHAPTER 201
SUBSIDIZED ADOPTIONS

[Prior to 7/1/83, Social Services(770), Ch 138]
[Previously appeared as Ch 138—renumbered IAB 2/29/84]
[Prior to 2/11/87, Human Services(498)]

***441—201.1(600) Administration.** The Iowa department of human services, through the administrator of the division of behavioral, developmental, and protective services for families, adults, and children, shall administer the subsidized adoption program, in conformance with the legal requirements for adoption as defined in Iowa Code chapter 600.

441—201.2(600) Definitions.

"Child" means a person who has not attained age 18, or a person with a physical or mental disability who has not attained age 21.

"Escrow account" means an interest-bearing account in a bank or savings and loan association which is maintained by the department in the name of a particular child.

"Maintenance subsidy" means a monthly payment to assist in covering the cost of room, board, clothing, and spending money. The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

"Mental health professional" means the same as defined in the department's rule 33.1(225C,230A).

"Mental retardation professional" means a person who has at least one year of experience working directly with persons with mental retardation or other developmental disabilities and who is one of the following:

1. A doctor of medicine or osteopathy.
2. A registered nurse.
3. A person who holds at least a bachelor's degree in a human services field including, but not limited to: social work, sociology, special education, rehabilitation counseling, and psychology.

"Nonrecurring expenses" means reasonable and necessary adoption fees, court costs, attorney fees and other expenses which are directly related to the legal adoption of a child with special needs. These shall be limited to attorney fees, court filing fees and other court costs.

"Physician" means a licensed medical or osteopathic doctor as defined in rule 441—77.1(249A).

"Presubsidy" means payment for maintenance or special services for a special needs child who is placed in an adoptive home but whose adoption is not finalized.

"Special services subsidy" means payment to a provider or the parent for medical, dental, therapeutic, or other services, equipment or appliances required by a child because of a handicapping condition.

441—201.3(600) Conditions of eligibility or ineligibility.

201.3(1) The child is eligible for subsidy when the department or a private agency has documented that it has been unable to place the child in an appropriate adoptive home without a subsidy and the child is determined to be a child with "special needs" based on one or more of the following reasons:

a. The child has a medically diagnosed disability which substantially limits one or more major life activities, requires professional treatment, assistance in self-care, or the purchase of special equipment.

b. The child has been determined to be mentally retarded by a qualified mental retardation professional.

**c.* Rescinded IAB 10/29/03, effective 1/1/04.

*January 1, 2004, effective date of amendments published in the October 29, 2003, Iowa Administrative Bulletin as ARC 2900B delayed 70 days by the Administrative Rules Review Committee at its meeting held November 10, 2003; at its meeting held March 8, 2004, the Committee delayed the effective date until adjournment of the 2004 Session of the General Assembly.

d. The child has been diagnosed by a qualified mental health professional to have a psychiatric condition which impairs the child's mental, intellectual, or social functioning, and for which the child requires professional services.

e. The child has been diagnosed by a qualified mental health professional to have a behavioral or emotional disorder characterized by situationally inappropriate behavior which deviates substantially from behavior appropriate to the child's age or significantly interferes with the child's intellectual, social and personal adjustment.

f. The child is aged eight or over and Caucasian.

**g.* The child is aged two or older and is a member of a minority race or ethnic group or the child's biological parents are of different races.

**h.* The child is a member of a sibling group of three or more who are placed in the same adoptive home.

***201.3(2)** A child who enters the United States from another country on the basis of a visa classifying the child as an orphan, in accordance with the Immigration and Naturalization Act, for the purpose of adoption by a specific United States family is not eligible for subsidized adoption maintenance payments, medical assistance, or special services except for nonrecurring expenses. A child entering the country for adoption may be eligible for subsidy for nonrecurring expenses, not to exceed $2000, in the following situations:

a. Rescinded IAB 8/11/99, effective 10/1/99.

b. The child from another country who meets the criteria in subrule 201.3(1) and whose adoption is finalized after June 14, 1989, must file an application on Form 470-0744, Application for Adoption Subsidy, and complete Form 470-0749, Adoption Subsidy Agreement, prior to or at the time of a final decree of adoption. The claim for reimbursement must be filed on Form 07-350, Purchase Order/Payment Voucher, within two years of the date of the adoption decree and must include receipts.

c. If the adoptive placement disrupts prior to finalization or if the parental rights of the adoptive parents are terminated after the adoption is finalized and the department is named guardian of the child, the child may be eligible for subsidy in another adoptive placement.

201.3(3) Maintenance and child care subsidies for children who were determined to be eligible before January 1, 2004, shall continue unless one of the conditions for termination defined in 441—201.7(600) is present. The child care subsidy payment shall not exceed the applicable reimbursement rate under the child care assistance program as specified in 441—subrule 170.4(7).

201.3(4) The determination of whether a child meets eligibility requirements is made by the Iowa department of human services. An adverse determination may be appealed according to rules in 441—Chapter 7.

***201.3(5)** The department shall review the subsidy agreement when the child reaches the age of 17½ to determine whether the child is eligible to receive a subsidy through the age of 21 due to the child's physical or mental disability.

a. The disability shall be diagnosed by a physician, a qualified mental health professional, or a qualified mental retardation professional.

b. The diagnosis shall be current within one year of the child's eighteenth birthday.

***441—201.4(600) Application.** Application for presubsidy or subsidy shall be made on Form 470-0744, Application for Subsidy, at the time of the adoptive placement of the child, or at any time in the adoptive process before finalization of the adoption.

201.4(1) The prospective adoptive family residing in Iowa who has been studied and approved for adoptive placement or a family residing outside of the state of Iowa studied and approved by a governmental child-placing agency or a licensed child-placing agency in that state, may apply for subsidy for an eligible Iowa child.

201.4(2) Withdrawal of the application for the subsidy shall be reported to the department immediately.

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201.4(3) The effective date for the Adoption Subsidy Agreement will be the date the agreement is signed by all parties, which may be the date the child is placed in the adoptive home or any date up to and including the date the adoption is finalized. The agreement shall state the amount of the presubsidy or subsidy, and the frequency and duration of payments.

201.4(4) An application for subsidy cannot be taken after the child is adopted except when one of the following occurs:

**a.* There are facts relevant to a child's eligibility that were not presented before the finalizing of the adoption. Upon receiving verification that the child was eligible before the child's adoption, the department may conduct an administrative review of the facts and may determine the child an eligible special needs child. Eligibility will be effective after Form 470-0744, Application for Subsidy, is completed and Form 470-0749, Adoption Subsidy Agreement, is signed by all parties.

b. The child is adopted as provided in 201.3(2)*"a."*

*Requests for determining a child an eligible special needs child after the adoption is finalized shall be forwarded with verification of eligibility to the division of behavioral, developmental, and protective services for families, adults, and children, adoption program. The division shall conduct an administrative review of eligibility factors and render a written decision regarding the child's eligibility as a special needs child within 30 days of receipt of request and verification materials unless additional verification is requested. If additional verification is requested, a decision shall be reached within 30 days of receipt of additional verification materials.

441—201.5(600) Negotiation of amount of presubsidy or subsidy.

***201.5(1)** The amount of presubsidy or subsidy shall be negotiated between the department and the adoptive parents and shall be based upon the needs of the child and the circumstances of the family.

a. Each time negotiations are completed, the Adoption Subsidy Agreement, Form 470-0749, shall be completed.

b. Form 470-0762, Agreement to Future Adoption Subsidy, shall be completed and retained in an inactive case record for future reference when:

(1) A child is eligible for subsidy but the child or family does not currently need assistance; or

(2) The child is at risk of being determined a child with special needs according to paragraph 201.3(1)*"a," "b," "d,"* or *"e"* in the future.

***201.5(2)** Other services available to the family free of charge to meet the needs of the child, such as other federal, state, and local governmental and private assistance programs, shall be explored and used before the expenditure of subsidy funds.

a. Unearned income of the child from sources such as social security, veterans benefits, railroad compensation, trust funds, and the family's insurance shall be used to reduce the amount of the maintenance subsidy, dollar for dollar.

b. Child support payments shall be excluded from consideration in computation of the maintenance subsidy.

c. Unearned income of the child shall be verified by documentation provided to the department worker by the family from the source of the income.

201.5(3) to **201.5(5)** Rescinded IAB 5/3/89, effective 7/1/89.

201.5(6) A maintenance subsidy may be no less than $10 per month.

***201.5(7)** An adoptive family may request a review of the subsidy agreement when there is a change in the family's circumstances or the needs of the child.

201.5(8) Maintenance subsidy shall continue under the same rules if the adoptive family moves outside of the state of Iowa.

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__201.5(9)__ The maximum monthly maintenance payment for a child in subsidized adoption shall be made pursuant to the foster family care maintenance rates according to the age and special needs of the child as found at 441—subrule 156.6(1) and 441—paragraph 156.6(4)"a."* If, at the time of placement, the child was receiving the special needs payment found at 441—paragraph 156.6(4)*"d"* or was in group care and would have been eligible for the payment if the child had been in foster care, the child shall be eligible for this payment in a subsidized adoptive placement.

441—201.6(600) Types of subsidy.

201.6(1) *Special services only.*

a. Reimbursement to the adoptive family or direct payment made to a provider is limited to the following services:

*(1) Outpatient counseling or therapy services. Reimbursement for outpatient individual or family services may be provided from a non-Medicaid provider only with approval from the service area manager or designee and when one of the following applies:

1. The services are not available from a Medicaid provider within a reasonable distance from the family.
2. The child and the family were already receiving therapy or counseling from a non-Medicaid provider and it would not be in the child's best interest to disrupt the services.
3. Available Medicaid providers lack experience in working with foster, adoptive, or blended families.

Reimbursement to non-Medicaid providers shall be limited to the Medicaid rate.

*(2) Expenses for transportation, lodging, or per diem related to preplacement visits, not to exceed $2000 per family.

(3) Medical services not covered by the Medicaid program shall be limited to an additional premium amount due to the child's special needs to include the child in the family's health insurance coverage group. An adoption subsidy payment shall not supplement the Medicaid payment rate to a Medicaid provider or a non-Medicaid provider.

(4) Child care, as required by the child's special needs. When a child's special need requires child care as determined by the physician, therapist, or other specialist, the family shall apply for child care assistance or other community resources. A family's eligibility for child care assistance shall be determined before subsidy funds are used. When a child receives the subsidy rate defined in 441—paragraph 156.6(4)"d,"* the child is not eligible for child care reimbursement. When subsidy funds are used to pay for child care, the following conditions shall apply:

1. Child care may be provided inside or outside the home.
2. Child care shall be limited to meeting specific needs of the child through a specialized program.
3. The maximum reimbursement rate for child care shall not exceed the child care assistance rate.
4. The department shall review the need for child care reimbursement and the level of reimbursement at the beginning of each fiscal year.

(5) Medical transportation not covered by Medicaid and the family's lodging and meals, if necessary, when the child is receiving specialized care or the child and family are required to stay overnight as part of a treatment plan.

*(6) Supplies and equipment as required by the child's special needs and unavailable through other resources. When a sibling group of three or more are placed together, a one-time-only payment can be made, not to exceed $500 per child. When home modifications have been authorized to accommodate a child's special needs and the family later sells the house, the family shall repay the department an amount equal to the increase in the equity value of the home attributable to the modifications.

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*(7) Attorney fees and court costs necessary to finalize the adoption, limited to $700 per child. When two or more children are adopted together, the maximum reimbursement rate shall be $700 for the first child and $500 for each additional child. Attorney fees may be paid when the adoptive family has negotiated an Agreement to Future Adoption Subsidy, Form 470-0762.

(8) Funeral benefits at the amount allowed for a foster child in accordance with 441—subrule 156.8(5).

b. The need for special services shall be established by a report in the child's record from the private or public agency which had guardianship of the child, and substantiating information from specialists as defined in rule 441—201.2(600).

c. Any single special service and any special service delivered over a 12-month period costing $500 or more shall have prior approval from the central office adoption program manager prior to expending program funds.

d. For all Medicaid covered services the department shall reimburse at the same rate and duration as Medicaid as set forth in rule 441—79.1(249A).

201.6(2) *Maintenance only.* A monthly payment to assist with room, board, clothing and spending money may be provided, as determined under 201.5(600). The child will also be eligible for medical assistance pursuant to 441—Chapter 75.

201.6(3) *Maintenance and special services.* For special needs children, a special services subsidy may also be included when a maintenance subsidy is provided.

441—201.7(600) Termination of subsidy. Subsidy will terminate when any of the following occur:

201.7(1) The adoptive child no longer meets the definition of child in rule 441—201.1(600).

201.7(2) The child marries.

201.7(3) The adoptive parents are no longer using the maintenance payments to support the child.

201.7(4) Death of the child, or death of the parents of the child (one in a single-parent family and both in a two-parent family).

201.7(5) Upon conclusion of the terms of the agreement.

201.7(6) Upon request of the adoptive parents.

201.7(7) The adoptive parents are no longer legally responsible for the child.

201.7(8) The family fails to participate in the renewal process.

441—201.8(600) Reinstatement of subsidy. Reinstatement of subsidy will be made when the subsidy was terminated because of reasons in 201.7(3) or 201.7(6) to 201.7(8) and the reason for termination no longer exists.

441—201.9(600) New application. New applications will be taken at any time, but processed only so long as funds are available. Maintenance and special services already approved will continue.

441—201.10(600) Medical assistance based on residency. Special needs children eligible for any type of subsidy are entitled to medical assistance as defined in 441—Chapter 75. The funding source for medical assistance is based on the following criteria:

201.10(1) IV-E-eligible children:

a. IV-E-eligible children residing in Iowa from Iowa and from other states shall receive medical assistance from Iowa.

b. IV-E-eligible children from Iowa residing in another state shall receive medical assistance from the family's state of residence, even though medical assistance available in the family's state of residence may vary from Iowa's medical assistance.

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201.10(2) Non-IV-E-eligible children:

a. Non-IV-E children from Iowa residing in Iowa shall be covered by Iowa's medical assistance.

b. Non-IV-E children from Iowa residing in another state shall receive medical assistance from the state of residence when the state has adopted the adoption assistance interstate compact and a contract between Iowa and the family's state of residence is completed. Medical assistance available in the family's state of residence may vary from Iowa's medical assistance.

c. Non-IV-E-eligible children from another state residing in Iowa shall continue to be covered by the other state's medical assistance unless the state has adopted the adoption assistance interstate compact and a contract between Iowa and the other state exists.

201.10(3) When an Iowa child receives medical assistance from another state, Iowa shall discontinue paying any medical costs the month following the move unless additional time is necessary for a timely notice of decision to be provided to the family. An exception shall be made when the initial Iowa subsidy agreement provides for services not covered by the other states.

441—201.11(600) Presubsidy recovery. The department shall recover the cost of presubsidy maintenance and special services provided by the department as follows:

201.11(1) Funds shall be applied to the cost of presubsidy maintenance and special services from the unearned income of the child.

201.11(2) The department shall serve as payee to receive the child's unearned income. The income shall be placed in an account from whence it shall be applied toward the cost of the child's current care and the remainder placed in an escrow account.

201.11(3) When a child has funds in escrow these funds may be used by the department to meet the current needs of the child not covered by the presubsidy payments and not prohibited by the source of the funds.

201.11(4) When the child leaves presubsidy care, funds in the escrow shall be paid to the adoptive parents, or to the child if the child has attained the age of majority.

*These rules are intended to implement Iowa Code sections 600.17 to 600.21 and 600.23, and 2003 Iowa Acts, House File 667, section 29, subsection 5.

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202.3(2) When the voluntary placement is of a child who is under the age of 18, a Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the parent(s) or guardian and the county office where the parent or guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with parents or guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's parent or guardian moves outside Iowa after the placement.

202.3(3) Voluntary placement of a child aged 18 or older may be granted for six months at a time only when the child meets the definition of "child" in subrule 202.1(3), was in foster care or a state institution immediately prior to reaching the age of 18, has continued in foster care or a state institution since reaching the age of 18, and has demonstrated a willingness to participate in case planning and to fulfill responsibilities as defined in the case plan. Payment shall be limited pursuant to 441—paragraph 156.20(1)*"b."*

a. When the voluntary placement is of a child who is aged 18 or older and who has a court-ordered guardian, the Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the guardian and the county office where the guardian resides. Voluntary Foster Care Placement Agreements shall not be used to place children outside Iowa and shall not be signed with guardians who reside outside Iowa. Voluntary Foster Care Placement Agreements shall terminate if the child's guardian moves outside Iowa after the placement.

b. When the voluntary placement is of a child who is aged 18 or older and who does not have a court-appointed guardian, the Voluntary Foster Care Placement Agreement, Form 470-0715, shall be completed and signed by the child and the county office where the child resides.

c. An exception to the requirement for continuous placement may be made for a youth who leaves foster care at age 18 and voluntarily returns to supervised apartment living foster care before the youth's twentieth birthday in order to complete high school or obtain a general equivalency diploma (GED).

202.3(4) All voluntary placements shall be approved by the service area manager or designee.

This rule is intended to implement Iowa Code section 234.6(6)*"b"* and section 234.35(1)*"c"* as amended by 2003 Iowa Acts, House File 667, section 37.

441—202.4(234) Selection of facility.

202.4(1) Placement consistent with the best interests and special needs of the child shall be made in the least restrictive, most family-like facility available and in close proximity to the child's home. Race, color, or national origin may not be routinely considered in placement selections.

202.4(2) Efforts shall be made to place siblings together unless to do so would be detrimental to any of the children's physical, emotional or mental well-being. Efforts to prevent separating siblings, reasons for separating siblings, and plans to maintain sibling contact shall be documented in the child's case permanency plan.

202.4(3) Staff shall consider placing the child in a relative's home unless to do so would interfere with the permanency plan for the child, no relatives are available or willing to accept placement, or to do so would be detrimental to the child's physical, emotional or mental well-being. Efforts to place the child in a relative's home and reasons for using a nonrelative placement shall be documented in the child's case permanency plan.

202.4(4) If the child cannot be placed with a relative, foster family care shall be used for a child unless the child has problems requiring specialized service which cannot be provided in a family setting. Reasons for using a more restrictive placement shall be documented in the child's case permanency plan.

202.4(5) A foster family shall be selected on the basis of compatibility with the child, taking into consideration:

a. The extent to which interests, strengths, abilities and needs of the foster family enable the foster family members to understand, accept and provide for the individual needs of the child.

b. The child's individual problems, medical needs, and plans for future care.

c. The capacity of the foster family to understand and accept the child's case permanency plan, the needs and attitudes of the child's parents, and the relationship of the child to the parents.

d. The characteristics of the foster family that offer a positive experience for the child who has specific problems as a consequence of past relationships.

e. An environment that will cause minimum disruption of the child including few changes in placement for the child.

f. The treatment needs of the child as determined by the review organization pursuant to rule 441—185.2(234).

202.4(6) A foster group care facility shall be selected on the basis of its ability to meet the needs of the child, promote the child's growth and development, and ensure physical, intellectual and emotional progress during the stay in the facility. The department shall place a child only in a licensed or approved facility which has a current purchase of service contract with the department.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.5(234) Preplacement.

202.5(1) Except for emergency foster care, a child placed in a facility shall have a preplacement visit involving the child, the foster parents or agency staff if the child is placed in a public or private agency, and the service worker. The parents shall be included in the preplacement visit unless their presence would be disruptive to the child's placement.

202.5(2) Prior to placement, the worker shall provide the facility with general information regarding the child, including a description of the child's medical needs, behavioral patterns, educational plans, and permanency goal.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.6(234) Placement.

202.6(1) At the time of placement, the worker shall provide the facility with specific information regarding the child including the case permanency plan, the results of a physical examination, the child's medical needs including special needs of HIV, behavioral patterns, and educational arrangements, the placement contract or agreement, and medical authorizations, service authorizations, and other releases as needed.

Prior to releasing specific information about HIV, the department shall use Form 470-3225, Authorization to Release HIV-Related Information, to obtain a release from the child or the child's parent or guardian, or a court order permitting the release of the information. Form 470-3227, Receipt of HIV-Related Information, shall be completed by the person receiving this information to document understanding of the confidentiality of this knowledge.

Form 470-3226, HIV General Agreement, shall be completed by foster parents who have agreed to care for children who have AIDS, test HIV positive, or are at risk for HIV infection.

202.6(2) For placement in a foster family home supervised directly by department staff, Form SS-2605-0, Foster Family Placement Contract, shall be completed by the provider and department representatives. A new foster family placement contract shall be completed when the rate of payment or special provisions change.

202.6(3) A follow-up visit shall be made to the child at the foster family home within two weeks of the initial placement for placements supervised directly by the department.

202.6(4) The case permanency plan shall be reviewed at least every six months to assure appropriateness of the child's placement. A copy of the subsequent case plan, including the Face Sheet, Form 427-1020, the Problem and Responsibility List, Form 427-1023 (if any of the information has changed or if there have been any additions), and the Case Permanency Plan Review, Form 427-1021, and report to the court shall be submitted to the court every six months unless the court orders a different frequency for reports.

202.6(5) In conjunction with the case plan review, the case shall be presented every six months to a review committee which conforms to the requirements in subrule 202.2(5). The regional administrator may also approve a review by a local foster care review board authorized in Iowa Code section 237.19 or the court as meeting this requirement as long as the review conforms to subrule 202.2(5), paragraphs *"b"* to *"h,"* and to subrule 202.6(5), paragraphs *"a"* to *"e."* The review committee shall:

a. Evaluate the continuing necessity for foster care placement.

b. Evaluate the continuing appropriateness of the foster care placement.

c. Evaluate the extent of compliance with the case plan.

d. Evaluate the extent of progress made toward lessening the causes for foster care placement.

e. Project a likely date by which the child will leave foster care.

This rule is intended to implement Iowa Code sections 234.6(6)*"b,"* and 237.19.

441—202.7(234) Out-of-region placements.

202.7(1) When the department makes a placement of a child in the foster care system out of the region in which the child resides, this placement shall occur only when there is no appropriate placement within the region, when the placement is necessary to facilitate reunification of the child with the parents, or when an out-of-region agency is closer to the community where the child resides than an in-region agency offering the same services.

202.7(2) The authority for approving out-of-region placements rests with both the placing and receiving regional administrators.

202.7(3) Transfer of responsibility for supervision, planning, and visitation shall be approved by the placing and receiving regional administrators and, when appropriate, by the court.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.8(234) Out-of-state placements.

202.8(1) The department shall make an out-of-state foster family care placement only with the approval of the regional administrator. Approval shall be granted only when the placement will not interfere with the goals of the child's case plan and when one of the following conditions exists:

a. The foster family with whom the child is placed is moving out of state.

b. An out-of-state family having previous knowledge of the child desires to provide foster care to the child.

c. An out-of-state family is approved to adopt the child under subsidy and is eligible to receive maintenance payments until the adoption is final.

d. An out-of-state placement is necessary to facilitate reunification of the child with the parents.

202.8(2) Placements shall be made in an out-of-state group care facility only with the approval of the regional administrator or designee.

202.8(3) All out-of-state placements shall be made pursuant to interstate compact procedures.

202.8(4) The reasons for selecting an out-of-state placement shall be documented in the child's case permanency plan.

202.8(5) Regional out-of-state placement committees. Rescinded IAB 7/6/94, effective 7/1/94.

This rule is intended to implement Iowa Code section 234.6(6)"*b.*"

441—202.9(234) Supervised apartment living. A supervised apartment living arrangement shall provide a youth with an environment in which the youth can experience living in the community with supervision. This arrangement shall prepare the youth for self-sufficiency. It is an arrangement where the youth lives in an apartment unit, shops for food, prepares individual meals, and manages time for cleaning and laundry. It is not a structured living arrangement where life skills are learned through simulated activities.

202.9(1) *Eligibility.* To be eligible for supervised apartment living placement, a youth shall meet all of the following conditions:

a. Be at least 16 years old. If aged 18 or older, the youth shall:

(1) Meet the definition of a child in Iowa Code section 234.1; and

(2) Have been in foster care or state institutional placement immediately before reaching the age of 18, and have continued in foster care or a state institution since reaching the age of 18. The service area manager or designee may waive the requirement for continuous placement for a youth who leaves foster care at age 18 and voluntarily returns before the youth's twentieth birthday in order to complete high school or obtain a general equivalency diploma (GED), consistent with Iowa Code sections 234.35(1)"*f*" and 234.35(3)"*c.*"

b. If under the age of 18, either be working (or in work training) full-time or be attending high school, GED classes, or postsecondary classes and working (or in work training) part-time. If aged 18 or older, the youth shall be attending high school or GED classes and making satisfactory progress toward completion of the high school or GED program and working (or in work training) part-time. "Work training" includes individualized programs developed specifically to meet the youth's employment needs. Waiver of the work or work training requirement may be allowed with the prior approval of the service area manager or designee if:

(1) The youth can demonstrate involvement in some alternative daily activity that promotes self-sufficiency; and

(2) The waiver is in the youth's best interest.

c. Need foster care placement and services, based on an assessment completed according to rule 441—202.2(234) and subrule 202.6(5).

d. Participate in activities and services to achieve self-sufficiency.

e. Have capacity to live in the community with less supervision than that provided by a foster family or group care setting, as determined by an assessment that reviews available information on the youth to identify the needs, strengths, and resources of the youth, especially as they pertain to the youth's ability to function in the community.

f. Have an approved living situation that meets the following minimum standards:

(1) Be located so as to provide reasonably convenient access to schools, places of employment, or services required by the youth.

(2) Comply with applicable state and local zoning, fire, sanitary and safety regulations.

(3) Be reasonably priced so as to fit within the youth's budget.

g. Have the approval of the service area manager or designee.

h. If under age 18, have the approval of the juvenile court.

202.9(2) *Services to be provided.*

a. *Required services.* The following activities are required:

(1) Through visits with the youth and to the living situation, determination that:

1. There is no reasonable cause for believing that the youth's living situation presents any unacceptable risks to the youth's health or safety;
2. The living situation is maintained in a reasonably safe condition;
3. The youth is receiving any necessary medical care; and
4. The current program plan provides appropriate and sufficient services and supports.

(2) Supervision to assist the youth in developing the needed structure to live in this setting and in locating and using other needed services. If the youth is under age 18, supervision shall include a minimum of weekly face-to-face contacts. For youth aged 18 or older, supervision shall include a minimum of biweekly face-to-face contacts. Supervision may include guidance, oversight, and behavior monitoring.

(3) Ongoing assessment activities directed toward monitoring the progress being made in the youth's ability to achieve self-sufficiency and coordination and evaluation at least every 90 days to monitor the services and supports being provided to reach this goal.

(4) If services are purchased, visits by the department to the youth according to subrule 202.11(2).

(5) If services are purchased, compliance by the provider with all reporting requirements in 441—paragraph 150.3(3)*"j,"* including requirements for the individual service plan, quarterly reports, and a termination summary.

(6) A review of the case and case plan every six months, in accordance with subrules 202.6(4) and 202.6(5).

b. *Optional services.* The following services may be provided to a youth depending on the needs described in the youth's case permanency plan.

(1) Counseling services to reduce stress and severe social, emotional, or behavioral problems that affect the youth's stability or ability to achieve self-sufficiency.

(2) Leisure time and recreational services to enhance the youth's ability to develop recreational, social, leisure time or hobby, and cultural skills.

(3) Parent skill development services to train or educate youth who are parents or prospective parents to enable them to meet the needs of their children.

(4) Basic living skills services to enable or train the youth to maintain a safe, healthy, and stable home.

(5) Educational tutoring and vocational services to enable the youth to secure and maintain paid employment.

(6) Community involvement services to enable the youth to access community resources and to develop support systems, including services to assist the youth in establishing or reestablishing relationships with significant adults.

202.9(3) *Living arrangements.*

a. There are two types of supervised apartment living arrangements as follows:

(1) Scattered site arrangements have no specific site or building which houses the program. Youth are assisted by staff people in locating apartments scattered throughout the community. Up to three youths supervised by one agency may reside in apartments located in one building. Youths living in such an arrangement shall be able to contact supervising agency staff 24 hours a day, seven days a week.

(2) Cluster arrangements are those in which four to six youths reside in apartments located in one building and are supervised by one agency. Cluster arrangements shall have an adult employed by the agency on-site at any time that more than one youth is present in the cluster arrangement.

b. There shall be no provision of a meal or meals, either individually or as congregate dining, by the landlord as an inherent part of the living arrangement. This provision does not apply to youth under the age of 18 who are living in a postsecondary dormitory setting when that living arrangement best meets their needs.

c. If an agency rents an apartment to the youth, there shall be a signed lease between both parties that includes, but is not limited to:

(1) Amount to be paid for rental unit.

(2) Term of lease with both a beginning and ending date.

(3) Rights and responsibilities of tenant.

(4) Rights and responsibilities of landlord.

(5) Conditions under which lease can be terminated.

202.9(4) *Method of service provision.*

a. Supervised apartment living services may be provided directly by the department or may be purchased from a licensed child-placing agency. If services are purchased, department staff shall be responsible to determine the specific service components and the number of hours to be provided. The department case permanency plan shall specify the goals of the services that are being purchased.

b. If services are purchased, service billings shall be based on one hour, or any portion thereof (with monthly cumulative units rounded up or down to the nearest whole unit), of:

(1) Direct face-to-face contact between the service provider and the youth.

(2) Activities undertaken to assist the youth with the use of community resources and to consult and collaborate on service directions with schools, employers, landlords, volunteers, extended family members, peer support groups, training resources, or other community resources on behalf of the youth.

c. If services are purchased, expenses of transporting youth, service management activities, and other administrative functions shall be allowable indirect costs subject to the restrictions set forth in rule 441—150.3(234).

d. When youth receive services in a group rather than individually, the purchase of service contract shall specify the unit rate for group services separate from other services defined in the contract.

(1) The unit of service for group services shall be based on one hour, or any quarter portion thereof, of direct face-to-face contact between the service provider and each group member. Monthly cumulative units shall be rounded up or down to the nearest whole unit. The contract shall specify the average number of group participants.

(2) The unit rate shall be based upon the cost of the service when provided by a single caseworker. Reimbursement for a team approach to service delivery will not be made except in accordance with subparagraph (3) below.

(3) When two or more individuals from a service provider agency jointly deliver a unit of service, billings for that unit of service shall be reimbursable in an amount equal to the cost of two or more units of service if the following criteria are met:

1. The department case plan requests a team approach to service delivery and specifies the number of individuals that will be working together on the team, and a purchase of service contract identifies the service provider's ability to provide a team approach.

2. The specific number of individuals requested in the case plan who are representing the service provider are physically present to deliver the service to the youth.

202.9(5) Reserved.

202.9(6) *Termination of services.*

a. Mandatory termination. Supervised apartment living services shall be terminated when any of the following occurs:

(1) The youth no longer meets the definition of a child in Iowa Code section 234.1.

(2) The youth fails to meet the work (or work training) requirement for 30 consecutive days.

(3) The youth no longer needs foster care placement and services.

(4) The youth needs a more restrictive level of placement.

(5) The youth chooses to live in a nonapproved setting.

(6) The youth refuses to follow the provisions of the case plan, after having been given the opportunity to correct the behavior.

(7) to (10) Rescinded IAB 3/31/04, effective 6/1/04.

(11) The youth is aged 18 or over and fails to make satisfactory progress towards completion of the high school GED program, after having been given the opportunity to correct the behavior.

b. Notice of adverse action. When services are denied or terminated, adequate and timely notice shall be provided the youth as defined in rule 441—130.5(234).

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.10(234) Services to foster parents. Foster parents shall be provided necessary supportive services for the purpose of aiding them in the care and supervision of the child. These services shall include, but not be limited to:

202.10(1) Availability of social service staff on a 24-hour basis in case of emergency.

202.10(2) Conferences to develop in-depth planning regarding family visits, expectations of the department, future objectives and time frames, use of resources, and termination of placements.

202.10(3) Visitation by the service worker at least monthly regardless of the duration of the placements.

202.10(4) Making available all known pertinent information needed for the care of the child including HIV status and special confidentiality requirements. Prior to releasing specific information about HIV, the department shall use Form 470-3225, Authorization to Release HIV-Related Information, to obtain a release from the child or the child's parent or guardian, or a court order permitting the release of the information. Form 470-3227, Receipt of HIV-Related Information, shall be completed by the person receiving this information to document understanding of the confidentiality of this knowledge.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.11(234) Services to the child. The service worker shall maintain a continuous relationship with the child and help the child plan for the future, evaluate the child's needs and progress, supervise the living arrangement, arrange for social and other related services including, but not limited to, medical, psychiatric, psychological, and educational services from other resources as needed, and counsel the child in adjusting to the placement.

202.11(1) When the child is placed in a foster family home, the service worker shall visit the child regularly to fulfill responsibilities set forth in the case permanency plan and to review the child's progress. The frequency of visits shall be based on the needs of the child. At a minimum, visits to the child shall be monthly, not to exceed 35 days.

202.11(2) When the child is placed in group foster care, purchased foster family care, or purchased supervised apartment living, the service worker shall visit the child regularly to fulfill responsibilities set forth in the case plan and to review the progress of the child.

a. If the permanency goal for the child is long-term foster care, visits shall be at least quarterly, not to exceed 90 days.

b. For all other cases, visits shall be at least every 45 days. When the funded full-time equivalency (FTE) workload exceeds 150, as established in the department's budget allocation, minimum visits for group care shall be at least quarterly, not to exceed 90 days; for purchased foster family care visits shall be at least every other month, not to exceed 60 days.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.12(234) Services to parents.

202.12(1) Social services and treatment services shall be made available to the parents throughout the period of placement for the purpose of reuniting the family in an agreed upon time frame.

202.12(2) The parents shall be notified of the location and nature of the child's placement, unless it is documented in the child's case record that to do so would be disruptive to the placement.

202.12(3) The case plan and treatment plan shall specify the services to be provided and the time frame for reuniting the family. These plans shall be developed in cooperation with the parents.

202.12(4) Personal contact shall be made regularly with the parents and the progress towards goal attainment reviewed and documented in the case record. The frequency of the personal contact shall be specified in the child's case plan.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.13(234) Removal of the child.

202.13(1) When the department plans to remove a child from a facility, the facility shall be informed in writing of the date of the removal, the reason for the removal, the recourse available to the facility, if any, and that the chapter 17A contested case proceeding is not applicable to the removal. The department shall inform the facility ten days in advance of the removal, except that the facility may be informed less than ten days prior to the removal in the following instances:

a. When the parent or guardian removes the child from voluntary placement.

b. When the court orders removal of a child from placement.

c. When there is evidence of neglect or physical or sexual abuse.

202.13(2) The department may remove a child from a facility when any of the following conditions exist:

a. There is evidence of abuse, neglect, or exploitation of the child.

b. The child needs a specialized service that the facility does not offer.

c. The child is unable to benefit from the placement as evidenced by lack of progress of the child.

d. There is evidence the facility is unable to provide the care needed by the child and fulfill its responsibilities under the case plan.

e. There is lack of cooperation of the facility with the department.

202.13(3) If a foster family objects in writing within seven days from the date that the information of plans to remove the child is mailed, the regional administrator shall grant a conference to the foster family to determine that the removal is in the child's best interest.

This conference shall not be construed to be a contested case under the Iowa administrative procedure Act, Iowa Code chapter 17A.

The conference shall be provided before the child is removed except in instances listed in 202.13(1)*"a"* to *"c."* The regional administrator shall review the propriety of the removal and explain the decision to the foster family.

The regional administrator, on finding that the removal is not in the child's best interests, may overrule the removal decision unless a court order or parental decision prevents the department from doing so.

202.13(4) When the facility requests a child be removed from its care, it shall give a minimum of ten days' notice to the department so planning may be made on behalf of the child.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.14(234) Termination. The foster care services shall be terminated when the child is no longer an eligible child, or when the attainment of goals in the case plan has been achieved, or when the goals for whatever reasons cannot be achieved, or when it is evident that the family or individual is unable to benefit from the service or unwilling to accept further services.

This rule is intended to implement Iowa Code section 234.6(6)*"b."*

441—202.15(234) Case permanency plan.

202.15(1) The department worker shall ensure that a case permanency plan is developed for each child who is placed in foster care if the department has agreed to provide foster care through a voluntary placement agreement, if a court has transferred custody or guardianship to the department for the purpose of foster care, or if a court has placed the child in foster care and ordered the department to supervise the placement.

202.15(2) The department worker shall develop the case permanency plan with the child's parents, unless the child's parents are unwilling to participate in the plan's development, and with the child, unless the child is unable or unwilling to participate.

202.15(3) The department worker shall be responsible for ensuring the development of the case permanency plan within the time frames specified in rule 441—130.7(234). In all cases, the case permanency plan shall be completed within 60 days of the date the child entered foster care.

202.15(4) Copies of the initial and subsequent case permanency plans shall be provided to the child, the child's parents, and the foster care provider. Copies shall also be provided to the following, if involved in services to the child: the juvenile court officer, the judge, the child's attorney, the child's guardian ad litem, the child's guardian, the child's custodian, the child's court appointed special advocate, the parents' attorneys, the county attorney, the state foster care review board, and any other interested parties identified on Form 427-1020, Face Sheet.

202.15(5) The initial and subsequent case permanency plans shall be completed on the forms specified in rule 441—130.7(234).

202.15(6) If the need arises to add a new problem or responsibility prior to the next scheduled review, the department worker shall send a copy of Forms 427-1021, Case Permanency Plan Review and 427-1023, The Problem and Responsibility List, with a cover letter to the judge, if applicable, and all interested parties identified on Form 427-1020, Face Sheet, to advise them of the amendment to the case permanency plan.

441—202.16(135H) Department approval of need for a psychiatric medical institution for children.

202.16(1) Applicants for departmental approval of need shall submit the following to the division of adult, children and family services:

a. A description of the population to be served, including age, sex, and types of disorders, and an estimate of the number of these youth in need of psychiatric care in the area of the state in which the applicant is located.

b. A statement of the number of beds requested and a description of the treatment program to be provided, the outcomes to be achieved and the techniques for measuring outcomes.

c. A proposed date of operation as a psychiatric medical institution for children.

d. A description of the applicant's experience with providing similar services to youth, especially the target population.

e. A description of the applicant's plan, including the timeline for achieving accreditation to provide psychiatric services from a federally recognized accrediting organization under the organization's standards for residential settings and licensure as a psychiatric medical institution for children, or a copy of the organization's report if already accredited.

f. References from the regional administrator for the department region in which the proposed psychiatric medical institution for children would be located, the chief juvenile court officer of the judicial district in which the proposed psychiatric medical institution for children would be located and the applicant's licensor from the department of inspections and appeals or department of public health.

202.16(2) The department shall evaluate proposals and issue a decision based on the following criteria:

a. The number of psychiatric medical institutions for children beds for the proposed population which are needed in the area of the state in which the facility would be located, based on the department's most recent needs assessment.

b. The steps the facility has taken towards achieving accreditation from a federally recognized accrediting organization and licensure as a psychiatric medical institution for children.

c. The applicant's ability to provide services and support consistent with the requirements under Iowa Code chapter 232 including, but not limited to, evidence that:

(1) Children will be served in a setting which is in close proximity to their parents' home.

(2) Each child will receive services consistent with the child's best interests and special psychiatric needs as identified in the child's case permanency plan.

(3) Children and their families will receive services to facilitate the children's return home or other permanent placement.

d. The applicant's ability to provide children with a non-hospital-type living environment if the applicant is not freestanding from a hospital or health care facility.

e. The limits on the number of beds found in Iowa Code section 135H.6, subsection 5.

202.16(3) If a facility has not been licensed as a psychiatric medical institution for children within one year after the date of the department's approval of need, the department's approval shall expire unless the department has approved an extension. An extension may be approved up to a maximum of six months if the agency has documented extenuating circumstances which prevented completion of the licensing process.

This rule is intended to implement Iowa Code section 135H.6.

441—202.17(232) Regional group care targets.

202.17(1) *Regional target.* A group care budget target shall be established for each departmental region which shall be based on the annual statewide group care appropriation established by the general assembly.

a. The department and the judicial branch shall jointly develop a formula for allocating the group care appropriation among the departmental regions. The formula shall be based on:

(1) Proportional child population.

(2) Proportional group foster care usage in the previous five completed fiscal years.

(3) Other indicators of need.

b. Any portion of the group care appropriation allocated for 50 highly structured juvenile program beds and not used may be used for group care.

c. Upon written agreement of the affected regional administrators and chief juvenile court officers, regions may transfer part of their group care budget from one region to another. A region may exceed its budget target figure up to 5 percent during the fiscal year, providing that the overall funding allocation by the department for all child welfare services in the region is not exceeded.

d. Notwithstanding the statewide appropriation established in this subrule, a budget established in a region's group care plan pursuant to Iowa Code section 232.143 may be exceeded, a group care placement may be ordered, and state payment may be made if the review organization finds that the placement is necessary to meet the child's service needs and if the region has additional funds transferred from another region or if the region is within 5 percent of its group care budget target figure pursuant to 441—paragraph 202.17(1)"*c.*"

The department and juvenile court services shall work together to ensure that a region's group care expenditures shall not exceed the funds allocated to the region for group care in the fiscal year.

e. If at any time after September 30, 1998, annualization of a region's current expenditures indicates a region is at risk of exceeding its group foster care expenditure target under Iowa Code section 232.143 by more than 5 percent, the department and juvenile court services shall examine all group foster care placements in that region in order to identify those which might be appropriate for termination. In addition, any aftercare services believed to be needed for the children whose placements may be terminated shall be identified. The department and juvenile court services shall initiate action to set dispositional review hearings for the placements identified. In the dispositional review hearing, the juvenile court shall determine whether needed aftercare services are available and whether termination of the placement is in the best interest of the child and the community.

202.17(2) *Regional plan for achieving target.* For each of the departmental regions, representatives appointed by the department and juvenile court services shall establish a plan for containing the expenditure for children placed in group care within the budget target allocated to that region. The plan shall include monthly targets and strategies for developing alternatives to group care placements.

The plans shall also ensure potential group care referrals are reviewed by the review organization prior to submission of a recommendation for group care placement to the court.

Each regional plan shall be established in advance of the fiscal year to which the regional plan applies. To the extent possible, the department and the juvenile court shall coordinate the planning required under this subrule with planning for services paid under Iowa Code section 232.141, subsection 4. The department's regional administrator shall communicate regularly, as specified in the regional plan, with the juvenile courts within the region concerning the current status of the regional plan's implementation.

This rule is intended to implement Iowa Code section 232.143.

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481—50.1(10A) Inspections. The health facilities division inspects health care facilities, hospitals, and providers and suppliers of medical services in Iowa. Standards to obtain a license are explained in this chapter.

481—50.2(10A) Definitions.

"Administrator" means the person coordinating the administration of the division.

"Department" means the department of inspections and appeals.

"Director" means the director of inspections and appeals.

"Division" means the health facilities division.

481—50.3(135B,135C) Licensing. All hospitals and health care facilities shall be licensed by the department. Applications are available from the Health Facilities Division, Lucas State Office Building, Des Moines, Iowa 50319-0083. Completed applications are returned to the division with the fee.

50.3(1) Initial fees for hospitals are:

a. Fifty beds or less, $15;

b. More than 50 and not more than 100 beds, $25;

c. Any greater number of beds, $50.

A fee of $10 is charged to renew a hospital license each year.

50.3(2) Initial and renewal fees for health care facilities are:

a. Ten beds or less, $20;

b. More than 10 and not more than 25 beds, $40;

c. More than 26 and not more than 75 beds, $60;

d. More than 76 and not more than 150 beds, $80;

e. Any greater number of beds, $100.

50.3(3) Standards used to determine whether a license is granted or retained are found in the rules of the department of inspections and appeals in the Iowa Administrative Code as follows:

a. Hospitals, 481—Chapter 51;

b. Hospices, 481—Chapter 53;

c. Residential care facilities, 481—Chapters 57 and 60;

d. Nursing facilities, 481—Chapters 58 and 61;

e. Residential care facilities for persons with mental illness, 481—Chapters 60 and 62;

f. Residential care facilities for the mentally retarded, 481—Chapters 60 and 63;

g. Intermediate care facilities for the mentally retarded, 481—Chapter 64; and

h. Intermediate care facilities for persons with mental illness, 481—Chapter 65.

50.3(4) Posting of license. The license shall be posted in each facility so the public can see it easily.

481—50.4(135C) Fines and citations. A fine or citation will be issued and may be contested according to the rules in 481—Chapter 56.

481—50.5(135C) Denial, suspension or revocation.

50.5(1) A denial, suspension or revocation shall be effective 30 days after certified mailing or personal service of the notice.

50.5(2) A hearing may be requested and the request must be made in writing to the department within 30 days of the mailing or service.

481—50.6(10A) Formal hearing. All decisions of the division may be contested. Appeals and hearings are controlled by 481—Chapter 10, "Contested Case Hearings."

50.6(1) The proposed decision of the hearing officer becomes final ten days after it is mailed.

50.6(2) Any request for administrative review of a proposed decision must:

1. Be made in writing,
2. Be mailed by certified mail to the director, within ten days after the proposed decision was mailed to the aggrieved party,
3. State the reason(s) for the request.

A copy shall also be sent to the hearing officer at the Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

50.6(3) The decision of the director shall be based upon the record and becomes final agency action upon mailing by certified mail.

50.6(4) The fees of witnesses for attendance and travel shall be the same as the fees for witnesses before the district court and shall be paid by the party to the proceeding at whose request the subpoena is issued.

481—50.7(10A,135C) Additional notification. The director or the director's designee shall be notified within 24 hours:

50.7(1) Of any accident causing major injury or death including but not limited to:

a. The resident wandered away,

b. The resident was assaulted,

c. The resident attempted suicide.

50.7(2) When damage to the facility which impairs its ability to function is caused by fire or natural or other disaster.

The director or the director's designee shall be notified within 24 hours by the most expeditious means available. A written report may be requested by the department. (I, II, III)

481—50.8(22,135B,135C) Records. The division collects and stores a variety of records in the course of licensing and inspecting health care facilities. Some information stored may be personally identifiable. None is retrievable by personal identifier with the exception of a business which uses an individual's name in the title. All records stored by the health facilities division are kept in files under the name of a facility. Computer files are retrieved by facility name also.

50.8(1) The department maintains information about long-term care facilities in files which are organized by facility name, city, and county. No information is retrievable by personal identifier. Each long-term care facility record contains both open and confidential information.

a. Open information includes:

(1) License application and status,

(2) Variance requests and responses,

(3) Final findings of state and Medicaid survey investigations,

(4) Records of complaints,

(5) Reports from the fire marshal,
(6) Plans of correction submitted by the facility,
(7) Medicaid status,
(8) Official notices of license and Medicaid sanctions.

b. Confidential information includes:

(1) Survey or investigation information which does not comprise a final finding. Survey information which does not comprise a final finding may be made public in a proceeding concerning the citation of a facility, denial, suspension or revocation of a license, Iowa Code section 135C.19(1),

(2) Names of all complainants, Iowa Code sections 135C.19(1) and 135C.37,

(3) Names of patients in all facilities, identifying medical information and the address of anyone other than an owner, Section 1106 of the Social Security Act as amended, 42 CFR Part 401, Subpart B (October 1, 1986) and Iowa Code sections 22.9 and 135C.19(1).

50.8(2) The department maintains records about hospitals. The records are organized by facility name, city, and county. The records are not retrievable by personal identifier. The Joint Commission on the Accreditation of Healthcare Organizations is referred to as JCAHO, and the American Osteopathic Association is referred to as AOA in this rule. These records may contain both open and confidential information.

a. Open information includes:

(1) License status,
(2) Medicare certification status,
(3) Medicare survey reports,
(4) Plans of correction submitted by a hospital,
(5) Official notices of involuntary provider termination or license sanctions,
(6) For hospitals not certified by JCAHO or AOA, reports of the fire marshal,

(7) Final survey findings of the JCAHO and the AOA with respect to compliance by a hospital with the requirements for licensure or accreditation.

b. Confidential information includes:

(1) Names of patients and identifying medical information,
(2) Identity of any complainant, and

(3) The address of anyone other than the owner, Iowa Code section 135B.12 and Section 1106 of the Social Security Act, 42 CFR Part 401, Subpart B (October 1, 1986) and Iowa Code section 22.9.

(4) Rescinded IAB 2/19/92, effective 3/25/92.

(5) No information may be disclosed in a manner which will identify individuals or hospitals except in a proceeding concerning the question of license or the denial, suspension or revocation of a license, Iowa Code section 135B.12.

50.8(3) The department maintains files for all other Medicare-certified facilities. These files are organized by facility or agency name, city, and county. None is retrievable by personal identifier except when a business uses an individual's name in its title. These files contain both open and confidential information.

a. Open information includes:

(1) Certification status,
(2) Survey reports,
(3) Plans of correction,
(4) Official notices of involuntary provider termination,

(5) Proficiency test results for non-JCAHO or AOA accredited hospitals, Medicare laboratories and laboratories licensed under the clinical Laboratory Improvement Act.

b. Confidential information includes:

(1) Name of any patient,

(2) Medical information about any identifiable patient,

(3) The identity of any complainant, and

(4) The address of anyone other than an owner of the facility, Section 1106 of the Social Security Act, 43 CFR, Part 401, Subpart B (October 1, 1986), and Iowa Code section 22.9.

50.8(4) Rescinded IAB 3/31/04, effective 5/5/04.

50.8(5) Following a written request and payment of a fee in the amount determined by the department, one or more of the following lists may be obtained by the public.

a. Corporations which own more than one facility and the list of facilities owned by each corporation.

b. All the facilities in the state with the owner of the real estate property identified.

c. All corporations that lease facilities and the facilities they lease.

d. All corporations which manage facilities for other owners and the facilities they manage.

Requests are sent to Health Facilities Division, Department of Inspections and Appeals, Lucas State Office Building, Des Moines, Iowa 50319.

481—50.9(135C) Background checks. Beginning July 1, 1988, each home health agency or hospice that is regulated by the state or receives any state or federal funding shall submit a form specified by the department of public safety to the department of public safety and receive the results of a criminal history check and dependent adult abuse record check before any person is employed by the home health agency or hospice. The home health agency or hospice may submit a form specified by the department of human services to the department of human services to request a child abuse history check.

For the purposes of this rule, "employed in or by a home health agency or hospice" shall be defined as any individual who is paid, either by the home health agency, hospice or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractor) to provide direct or indirect treatment or services to patients of the home health agency or hospice. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include, but are not limited to, person-to-person contact services provided by administration, homemaker aides, and assistants.

50.9(1) A person who has a criminal record or founded dependent adult abuse report cannot be employed in a home health agency or hospice unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse report does not merit prohibition from employment.

50.9(2) Each home health agency or hospice shall ask each person seeking employment by the home health agency or hospice, "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime in this state or any other state?" The person shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The person shall indicate, by signature, that the person has been informed that the record checks will be conducted.

50.9(3) If a person has a record of founded child abuse in Iowa or any other state, the person shall not be employed by a home health agency or hospice unless the department of human services has evaluated the crime or founded abuse report and concluded that the report does not merit prohibition of employment.

50.9(4) Proof of dependent adult abuse and criminal history checks may be kept in files maintained by the temporary employment agencies and contractors. Home health agencies and hospices may require temporary agencies and contractors to provide a copy of the results of dependent adult abuse and criminal history checks.

50.9(5) The results of a records check shall be valid for a period of 30 days from the date it was requested during which time the facility may determine whether the potential employee is to be hired.

These rules are intended to implement Iowa Code sections 22.11, 135B.3 to 135B.7, 135C.6, 135C.7, 135C.10, 135C.11, 135C.14, 135C.16, 135C.19, and 135C.26.

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51.53(7) The department shall recognize, in lieu of its own inspection, the comparable inspections and inspections findings of the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA) if the department is provided with copies of all requested materials relating to the inspections and the inspection process.

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

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CHAPTER 52
BIRTH CENTERS
Rescinded IAB 3/31/04, effective 5/5/04

58.10(8) Infection control program. Each facility shall have a written and implemented infection control program addressing the following:

a. Techniques for hand washing consistent with Guidelines for Handwashing and Hospital Control, 1985, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923404; (I, II, III)

b. Techniques for handling of blood, body fluids, and body wastes consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

c. Decubitus care; (I, II, III)

d. Infection identification; (I, II, III)

e. Resident care procedures to be used when there is an infection present which are consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

f. Sanitation techniques for resident care equipment; (I, II, III)

g. Techniques for sanitary use and reuse of feeding syringes and single-resident use and reuse of urine collection bags; (I, II, III)

h. Techniques for use and disposal of needles, syringes, and other sharp instruments consistent with Guideline for Isolation Precautions in Hospitals, Centers for Disease Control, U.S. Department of Health and Human Services, PB96-138102; (I, II, III)

i. Aseptic techniques when using: (I, II, III)

(1) Intravenous or central line catheter consistent with Guidelines for Prevention of Intravascular Device Related Infections, Centers for Disease Control, U.S. Department of Health and Human Services, PB97-130074, (I, II, III)

(2) Urinary catheter, (I, II, III)

(3) Respiratory suction, oxygen or humidification, (I, II, III)

(4) Dressings, soaks, or packs, (I, II, III)

(5) Tracheostomy, (I, II, III)

(6) Nasogastric or gastrostomy tubes. (I, II, III)

CDC Guidelines may be obtained from the U.S. Department of Commerce, Technology Administration, National Technical Information Service, 5285 Port Royal Rd., Springfield, Virginia 22161 (1-800-553-6847).

58.10(9) Infection control committee. Each facility shall establish an infection control committee of representative professional staff responsible for overall infection control in the facility. (III)

a. The committee shall annually review and revise the infection control policies and procedures to monitor effectiveness and suggest improvement. (III)

b. The committee shall meet at least quarterly, submit reports to the administrator, and maintain minutes in sufficient detail to document its proceedings and actions. (III)

c. The committee shall monitor the health aspect and the environment of the facility. (III)

58.10(10) There shall be written policies for resident care programs and services as outlined in these rules. (III)

58.10(11) Prior to the removal of a deceased resident/patient from a facility, the funeral director or person responsible for transporting the body shall be notified by the facility staff of any special precautions that were followed by the facility having to do with the mode of transmission of a known or suspected communicable disease. (III)

481—58.11(135C) Personnel.

58.11(1) *General qualifications.*

a. No person with a current record of habitual alcohol intoxication or addiction to the use of drugs shall serve in a managerial role of a nursing facility. (II)

b. No person under the influence of alcohol or intoxicating drugs shall be permitted to provide services in a nursing facility. (II)

c. No person shall be allowed to provide services in a facility if the person has a disease:

(1) Which is transmissible through required workplace contact, (I, II, III)

(2) Which presents a significant risk of infecting others, (I, II, III)

(3) Which presents a substantial possibility of harming others, and (I, II, III)

(4) For which no reasonable accommodation can eliminate the risk. (I, II, III)

Refer to Guidelines for Infection Control in Hospital Personnel, Centers for Disease Control, U.S. Department of Health and Human Services, PB85-923402 to determine (1), (2), (3) and (4).

d. Reserved.

e. Individuals with either physical or mental disabilities may be employed for specific duties, but only if that disability is unrelated to that individual's ability to perform the duties of the job. (III)

f. Persons employed in all departments, except the nursing department of a nursing facility shall be qualified through formal training or through prior experience to perform the type of work for which they have been employed. Prior experience means at least 240 hours of full-time employment in a field related to their duties. Persons may be hired in laundry, housekeeping, activities and dietary without experience or training if the facility institutes a formal in-service training program to fit the job description in question and documents such as having taken place within 30 days after the initial hiring of such untrained employees. (III)

g. Rescinded, effective 7/14/82.

h. The health services supervisor shall be a qualified nurse as defined in these regulations. (II)

i. Those persons employed as nurse's aides, orderlies, or attendants in a nursing facility who have not completed the state-approved 60-hour nurse's aide program shall be required to participate in a structured on-the-job training program of 20 hours' duration to be conducted prior to any resident contact, except that contact required by the training program. This educational program shall be in addition to facility orientation. Each individual shall demonstrate competencies covered by the curriculum. This shall be observed and documented by an R.N. and maintained in the personnel file. No aide shall work independently until this is accomplished, nor shall their hours count toward meeting the minimum hours of nursing care required by the department. The curriculum shall be approved by the department. An aide who has completed the 60-hour course may model skills to be learned.

Further, such personnel shall be enrolled in a state-approved 60-hour nurse's aide program to be completed no later than six months from the date of employment or the effective date of implementation of this rule, whichever is the later. Those persons employed as nurse's aides, orderlies, or attendants by the facility prior to the effective date of this rule shall be exempt from participation in the 20-hour structured on-the-job training requirement. If the 60-hour program has been completed prior to employment, the on-the-job training program requirement is waived. The 20-hour course is in addition to the 60-hour course and is not a substitute in whole or in part. The 60-hour program, approved by the department, may be provided by the facility or academic institution.

Newly hired aides who have completed the 60-hour course shall demonstrate competencies taught in the 20-hour course upon hire. This shall be observed and documented by an R.N. and maintained in the personnel file.

All personnel administering medications must have completed the state-approved training program in medication administration. (II)

j. There shall be an organized ongoing in-service educational and training program planned in advance for all personnel in all departments. (II, III)

k. Nurse aides, orderlies or attendants in a nursing facility who have received training other than the Iowa state-approved program, must pass a challenge examination approved by the department of inspections and appeals. Evidence of prior formal training in a nursing aide, orderly, attendant, or other comparable program must be presented to the facility or institution conducting the challenge examination before the examination is given. The approved facility or institution, following department of inspections and appeals guidelines, shall make the determination of who is qualified to take the examination. Documentation of the challenge examinations administered shall be maintained.

58.11(2) *Nursing supervision and staffing.*

a. Rescinded IAB 8/7/91, effective 7/19/91.

b. Where only part-time nurses are employed, one nurse shall be designated health service supervisor. (III)

c. A qualified nurse shall be employed to relieve the supervising nurses, including charge nurses, on holidays, vacation, sick leave, days off, absences or emergencies. Pertinent information for contacting such relief person shall be posted at the nurse's station. (III)

d. When the health service supervisor serves as the administrator of a facility 50 beds and over, a qualified nurse must be employed to relieve the health service supervisor of nursing responsibilities. (III)

e. The department may establish on an individual facility basis the numbers and qualifications of the staff required in the facility using as its criteria the services being offered and the needs of the residents. (III)

f. Additional staffing, above the minimum ratio, may be required by the department commensurate with the needs of the individual residents. (III)

g. The minimum hours of resident care personnel required for residents needing intermediate nursing care shall be 2.0 hours per resident day computed on a seven-day week. A minimum of 20 percent of this time shall be provided by qualified nurses. If the maximum medical assistance rate is reduced below the 74th percentile, the requirement will return to 1.7 hours per resident per day computed on a seven-day week. A minimum of 20 percent of this time shall be provided by qualified nurses. (II, III)

h. The health service supervisor's hours worked per week shall be included in computing the 20 percent requirement.

i. A nursing facility of 75 beds or more shall have a qualified nurse on duty 24 hours per day, seven days a week. (II, III)

j. In facilities under 75 beds, if the health service supervisor is a licensed practical nurse, the facility shall employ a registered nurse, for at least four hours each week for consultation, who must be on duty at the same time as the health service supervisor. (II, III)

(1) This shall be an on-site consultation and documentation shall be made of the visit. (III)

(2) The registered nurse-consultant shall have responsibilities clearly outlined in a written agreement with the facility. (III)

(3) Consultation shall include but not be limited to the following: counseling the health service supervisor in the management of the health services; (III) reviewing and evaluating the health services in determining that the needs of the residents are met; (II, III) conducting a review of medications at least monthly if the facility does not employ a registered nurse part-time. (II, III)

k. Facilities with 75 or more beds must employ a health service supervisor who is a registered nurse. (II)

l. There shall be at least two people who shall be capable of rendering nursing service, awake, dressed, and on duty at all times. (II)

m. Physician's orders shall be implemented by qualified personnel. (II, III)

58.11(3) *Personnel histories.*

a. Each health care facility shall submit a form specified by the department of public safety to the department of public safety, and receive the results of a criminal history check and dependent adult abuse record check before any person is employed in a health care facility. The health care facility may submit a form specified by the department of human services to the department of human services to request a child abuse history check. For the purposes of this subrule, "employed in a facility" shall be defined as any individual who is paid, either by the health care facility or any other entity (i.e., temporary agency, private duty, Medicare/Medicaid or independent contractors), to provide direct or indirect treatment or services to residents in a health care facility. Direct treatment or services include those provided through person-to-person contact. Indirect treatment or services include those provided without person-to-person contact such as those provided by administration, dietary, laundry, and maintenance. Specifically excluded from the requirements of this subrule are individuals such as building contractors, repair workers or others who are in a facility for a very limited purpose, are not in the facility on a regular basis, and who do not provide any treatment or services to the residents of the health care facility. (I, II, III)

b. A person who has a criminal record or founded dependent adult abuse report cannot be employed in a health care facility unless the department of human services has evaluated the crime or founded abuse report and concluded that the crime or founded abuse report does not merit prohibition from employment. (I, II, III)

c. Each health care facility shall ask each person seeking employment in a facility "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of crime in this state or any other state?" The person shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The person shall indicate, by signature, that the person has been informed that the record checks will be conducted. (I, II, III)

d. If a person has a record of founded child abuse in Iowa or any other state, the person shall not be employed in a health care facility unless the department of human services has evaluated the crime or founded report and concluded that the report does not merit prohibition of employment. (I, II, III)

e. Proof of dependent adult abuse and criminal history checks may be kept in files maintained by the temporary employee agencies and contractors. Facilities may require temporary agencies and contractors to provide a copy of the results of the dependent adult abuse and criminal history checks. (I, II, III)

481—58.12(135C) Admission, transfer, and discharge.

58.12(1) *General admission policies.*

a. No resident shall be admitted or retained in a nursing facility who is in need of greater services than the facility can provide. (II, III)

b. No nursing facility shall admit more residents than the number of beds for which it is licensed. (II, III)

c. There shall be no more beds erected than is stipulated on the license. (II, III)

d. There shall be no more beds erected in a room than its size and other characteristics will permit. (II, III)

e. The admission of a resident to a nursing facility shall not give the facility or any employee of the facility the right to manage, use, or dispose of any property of the resident except with the written authorization of the resident or the resident's legal representative. (III)

f. The admission of a resident shall not grant the nursing facility the authority or responsibility to manage the personal affairs of the resident except as may be necessary for the safety of the resident and safe and orderly management of the facility as required by these rules. (III)

g. A nursing facility shall provide for the safekeeping of personal effects, funds, and other property of its residents. The facility may require that items of exceptional value or which would convey unreasonable responsibilities to the licensee be removed from the premises of the facility for safekeeping. (III)

h. Rescinded, effective 7/14/82.

i. Funds or properties received by the nursing facility belonging to or due a resident, expendable for the resident's account, shall be trust funds. (III)

j. Infants and children under the age of 16 shall not be admitted to health care facilities for adults unless given prior written approval by the department. A distinct part of a health care facility, segregated from the adult section, may be established based on a program of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

k. No health care facility, and no owner, administrator, employee or representative thereof shall act as guardian, trustee, or conservator for any resident's property, unless such resident is related to the person acting as guardian within the third degree of consanguinity.

l. For all residents residing in a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A on July 1, 2003, and all others subsequently admitted, the facility shall collect and report information regarding the resident's eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs as requested by the Iowa commission on veterans affairs. The facility shall collect and report the information on forms and by the procedures prescribed by the Iowa commission on veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services. In the event that a resident is unable to assist the facility in obtaining the information, the facility shall seek the requested information from the resident's family members or responsible party.

For all new admissions, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 30 days of the resident's admission. For residents residing in the facility as of July 1, 2003, and prior to May 5, 2004, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 90 days after May 5, 2004.

If a resident is eligible for benefits through the federal Department of Veterans Affairs or other third-party payor, the facility shall seek reimbursement from such benefits to the maximum extent available before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

58.12(2) *Discharge or transfer.*

a. Prior notification shall be made to the next of kin, legal representative, attending physician, and sponsoring agency, if any, prior to transfer or discharge of any resident. (III)

b. Proper arrangements shall be made by the nursing facility for the welfare of the resident prior to transfer or discharge in the event of an emergency or inability to reach the next of kin or legal representative. (III)

c. The licensee shall not refuse to discharge or transfer a resident when the physician, family, resident, or legal representative requests such a discharge or transfer. (II, III)

d. Advance notification by telephone will be made to the receiving facility prior to the transfer of any resident. (III)

e. When a resident is transferred or discharged, the appropriate record as set forth in 58.15(2)*"k"* of these rules will accompany the resident. (II, III)

f. Prior to the transfer or discharge of a resident to another health care facility, arrangements to provide for continuity of care shall be made with the facility to which the resident is being sent. (II, III)

481—58.13(135C) Contracts. Each contract shall:

58.13(1) State the base rate or scale per day or per month, the services included, and the method of payment; (III)

58.13(2) Contain a complete schedule of all offered services for which a fee may be charged in addition to the base rate. Furthermore, the contract shall: (III)

a. Stipulate that no further additional fees shall be charged for items not contained in complete schedule of services as set forth in 58.13(3); (III)

b. State the method of payment of additional charges; (III)

c. Contain an explanation of the method of assessment of such additional charges and an explanation of the method of periodic reassessment, if any, resulting in changing such additional charges; (III)

d. State that additional fees may be charged to the resident for nonprescription drugs, other personal supplies, and services by a barber, beautician, etc.; (III)

58.13(3) Contain an itemized list of those services, with the specific fee the resident will be charged and method of payment, as related to the resident's current condition, based on the nursing assessment at the time of admission, which is determined in consultation with the administrator; (III)

58.13(4) Include the total fee to be charged initially to the specific resident; (III)

58.13(5) State the conditions whereby the facility may make adjustments to the facility's overall fees for resident care as a result of changing costs. (III) Furthermore, the contract shall provide that the facility shall give:

a. Written notification to the resident, or responsible party when appropriate, of changes in the overall rates of both base and additional charges at least 30 days prior to effective date of such changes; (III)

b. Notification to the resident, or responsible party when appropriate, of changes in additional charges, based on a change in the resident's condition. Notification must occur prior to the date such revised additional charges begin. If notification is given orally, subsequent written notification must also be given within a reasonable time, not to exceed one week, listing specifically the adjustments made; (III)

58.13(6) State the terms of agreement in regard to refund of all advance payments in the event of transfer, death, voluntary or involuntary discharge; (III)

58.13(7) State the terms of agreement concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons. The terms shall contain a provision that the bed will be held at the request of the resident or the resident's responsible party.

a. The facility shall ask the resident or responsible party if the resident wants the bed held. This request shall be made before the resident leaves or within 48 hours after the resident leaves. The inquiry and the response shall be documented. (II)

b. The facility shall reserve the bed when requested for as long as payments are made in accordance with the contract. (II)

58.13(8) State the conditions under which the involuntary discharge or transfer of a resident would be effected; (III)

58.13(9) State the conditions of voluntary discharge or transfer; (III)

58.13(10) Set forth any other matters deemed appropriate by the parties to the contract. No contract or any provision thereof shall be drawn or construed so as to relieve any health care facility of any requirement or obligation imposed upon it by this chapter or any standards or rules in force pursuant to this chapter; (III)

58.13(11) Each party shall receive a copy of the signed contract. (III)

481—58.14(135C) Medical services.

58.14(1) Each resident in a nursing facility shall designate a licensed physician who may be called when needed. Professional management of a resident's care shall be the responsibility of the hospice program when:

a. The resident is terminally ill, and

b. The resident has elected to receive hospice services under the federal Medicare program from a Medicare-certified hospice program, and

c. The facility and the hospice program have entered into a written agreement under which the hospice program takes full responsibility for the professional management of hospice care.

58.24(9) *Paid nutritional assistants.* A paid nutritional assistant means an individual who meets the requirements of this subrule and who is an employee of the facility or an employee of a temporary employment agency employed by the facility. A facility may use an individual working in the facility as a paid nutritional assistant only if that individual has successfully completed a state-approved training program for paid nutritional assistants. (I, II, III)

a. Training program requirements.

(1) A state-approved training program for paid nutritional assistants must include, at a minimum, eight hours of training in the following areas:

1. Feeding techniques.
2. Assistance with feeding and hydration.
3. Communication and interpersonal skills.
4. Appropriate responses to resident behavior.
5. Safety and emergency procedures, including the Heimlich maneuver.
6. Infection control.
7. Resident rights.
8. Recognizing changes in residents that are inconsistent with their normal behavior and reporting these changes to the supervisory nurse.

(2) In addition to the training program requirements specified above, the training program must include at least four hours of classroom study, two hours of supervised laboratory work, and two hours of supervised clinical experience.

(3) A facility that offers a paid nutritional assistant training program must provide sufficient supplies in order to teach the objectives of the course.

(4) All paid nutritional assistant training program instructors shall be registered nurses. Other qualified health care professionals may assist the instructor in teaching the classroom portion and clinical or laboratory experiences. The ratio of students to instructor shall not exceed ten students per instructor in the clinical setting.

(5) Each individual enrolled in a paid nutritional assistant training program shall complete a 50-question multiple choice written test and must obtain a score of 80 percent or higher. In addition, the individual must successfully perform the feeding of a resident in a clinical setting. A registered nurse shall conduct the final competency determination.

(6) If an individual does not pass either the written test or competency demonstration, the individual may retest the failed portion a second time. If the individual does not pass either the written test or competency demonstration portion the second time, the individual shall not be allowed to retest.

b. Program approval. A facility or other entity may not offer or teach a paid nutritional assistant training program until the department has approved the program. Individuals trained in a program not approved by the department will not be allowed to function as paid nutritional assistants.

(1) A facility or other institution offering a paid nutritional assistant training program must provide the following information about the training program to the department before offering the program or teaching paid nutritional assistants:

1. Policies and procedures for program administration.
2. Qualifications of the instructors.
3. Maintenance of program records, including attendance records.
4. Criteria for determining competency.
5. Program costs and refund policies.
6. Lesson plans, including the objectives to be taught, skills demonstrations, assignments, quizzes, and classroom, laboratory and clinical hours.

(2) The facility or other institution offering a paid nutritional assistant training program must submit the materials specified above for department review. The department shall, within ten days of receipt of the material, advise the facility or institution whether the program is approved, or request additional information to assist the department in determining whether the curriculum meets the requirements for a paid nutritional assistant training program. Before approving any paid nutritional assistant training program, the department shall determine whether the curriculum meets the requirements specified in this subrule. The department shall maintain a list of facilities and institutions eligible to provide paid nutritional assistant training. (I, II, III)

(3) A facility shall maintain a record of all individuals who have successfully completed the required training program and are used by the facility as paid nutritional assistants. The individual shall complete the training program with a demonstration of knowledge and competency skills necessary to serve as a paid nutritional assistant. (I, II, III)

(4) Upon successful completion of the training program, the facility or other institution providing the training shall, within ten calendar days, provide the individual with a signed and dated certificate of completion. A facility that employs paid nutritional assistants shall maintain on file copies of the completed certificate and skills checklist for each individual who has successfully completed the training program. (I, II, III)

c. Working restrictions.

(1) A paid nutritional assistant must work under the supervision of a registered nurse or a licensed practical nurse. In an emergency, a paid nutritional assistant must call a supervisory nurse for help on the resident call system. (I, II, III)

(2) A facility must ensure that a paid nutritional assistant feeds only residents who have no complicated feeding problems. Complicated feeding problems include, but are not limited to, difficulty swallowing, recurrent lung aspirations, and tube, parenteral or intravenous feedings. The facility must base resident selection on the charge nurse's assessment and the resident's latest assessment and plan of care. (I, II, III)

481—58.25(135C) Social services program.

58.25(1) The administrator or designee shall be responsible for developing a written, organized orientation program for all residents. (III)

58.25(2) The program shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the medical or health care, recovery, and rehabilitation of the individual. (III)

58.25(3) The social services plan, including specific goals and regular evaluation of progress, shall be incorporated into the overall plan of care. (III)

481—58.26(135C) Resident activities program.

58.26(1) *Organized activities.* Each nursing facility shall provide an organized resident activity program for the group and for the individual resident which shall include suitable activities for evenings and weekends. (III)

a. The activity program shall be designed to meet the needs and interests of each resident and to assist residents in continuing normal activities within limitations set by the resident's physician. This shall include helping residents continue in their individual interests or hobbies. (III)

b. The program shall include individual goals for each resident. (III)

c. The program shall include both group and individual activities. (III)

d. No resident shall be forced to participate in the activity program. (III)

e. The activity program shall include suitable activities for those residents unable to leave their rooms. (III)

f. The program shall be incorporated into the overall health plan and shall be designed to meet the goals as written in the plan.

58.26(2) *Coordination of activities program.*

a. Each nursing facility shall employ a person to direct the activities program. (III)

b. *†Staffing for the activity program shall be provided on the minimum basis of 35 minutes per licensed bed per week. (II, III)

*Emergency, pursuant to Iowa Code section 17A.5(2)"*b*"(2).
†Objection filed 2/14/79, see insert IAC 3/7/79 following Ch 57.

c. The activity coordinator shall have completed the activity coordinators' orientation course offered through the department within six months of employment or have comparable training and experience as approved by the department. (III)

d. The activity coordinator shall attend workshops or educational programs which relate to activity programming. These shall total a minimum of ten contact hours per year. These programs shall be approved by the department. (III)

e. There shall be a written plan for personnel coverage when the activity coordinator is absent during scheduled working hours. (III)

58.26(3) *Duties of activity coordinator.* The activity coordinator shall:

a. Have access to all residents' records excluding financial records; (III)

b. Coordinate all activities, including volunteer or auxiliary activities and religious services; (III)

c. Keep all necessary records including:

(1) Attendance; (III)

(2) Individual resident progress notes recorded at regular intervals (at least every two months). A copy of these notes shall be placed in the resident's clinical record; (III)

(3) Monthly calendars, prepared in advance. (III)

d. Coordinate the activity program with all other services in the facility; (III)

e. Participate in the in-service training program in the facility. This shall include attending as well as presenting sessions. (III)

58.26(4) *Supplies, equipment, and storage.*

a. Each facility shall provide a variety of supplies and equipment of a nature calculated to fit the needs and interests of the residents. (III) These may include: books (standard and large print), magazines, newspapers, radio, television, and bulletin boards. Also appropriate would be box games, game equipment, songbooks, cards, craft supplies, record player, movie projector, piano, outdoor equipment, etc.

b. Storage shall be provided for recreational equipment and supplies. (III)

c. Locked storage should be available for potentially dangerous items such as scissors, knives, and toxic materials. (III)

481—58.27(135C) Care review committee. Each facility shall have a care review committee in accordance with Iowa Code section 135C.25, which shall operate within the scope of the rules for care review committees promulgated by the department of elder affairs. (II)

58.27(1) Role of committee in complaint investigations.

a. The department shall notify the facility's care review committee of a complaint from the public. The department shall not disclose the name of a complainant.

b. The department may refer complaints to the care review committee for initial evaluation or investigation by the committee pursuant to rules promulgated by the department of elder affairs. Within ten days of completion of the investigation, the committee shall report to the department in writing the results of the evaluation of the investigation.

c. When the department investigates a complaint, upon conclusion of its investigation, it shall notify the care review committee and the department of elder affairs of its findings, including any citations and fines issued.

d. Results of all complaint investigations addressed by the care review committee shall be forwarded to the department within ten days of completion of the investigation.

58.27(2) The care review committee shall, upon department request, be responsible for monitoring correction of substantiated complaints.

58.27(3) When requested, names, addresses and telephone numbers of family members shall be given to the care review committee, unless the family refuses. The facility shall provide a form on which a family member may refuse to have their name, address or telephone number given to the care review committee.

This rule is intended to implement Iowa Code section 135C.25.

481—58.28(135C) Safety. The licensee of a nursing facility shall be responsible for the provision and maintenance of a safe environment for residents and personnel. (III)

58.28(1) *Fire safety.*

a. All nursing facilities shall meet the fire safety rules and regulations as promulgated by the state fire marshal. (I, II)

b. The size of the facility and needs of the residents shall be taken into consideration in evaluating safety precautions and practices.

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CHAPTER 59
SKILLED NURSING FACILITIES

[Prior to 7/15/87, Health Department[470] Ch 59]
Rescinded IAB 12/1/99, effective 1/5/00

CHAPTER 64*
INTERMEDIATE CARE FACILITIES FOR THE MENTALLY RETARDED

[Prior to 7/15/87, Health Department[470] Ch 64]

481—64.1 Rescinded IAB 7/26/89, effective 7/7/89.

481—64.2(135C) Variances. Variances from these rules may be granted by the director of the department of inspections and appeals for good and sufficient reason when the need for variance has been established; no danger to the health, safety, or welfare of any resident results; alternate means are employed or compensating circumstances exist and the variance will apply only to an individual intermediate care facility for the mentally retarded. Variances will be reviewed at the discretion of the director of the department of inspections and appeals.

64.2(1) To request a variance, the licensee must:

a. Apply for variance in writing on a form provided by the department;

b. Cite the rule or rules from which a variance is desired;

c. State why compliance with the rule or rules cannot be accomplished;

d. Explain alternate arrangements or compensating circumstances which justify the variance;

e. Demonstrate that the requested variance will not endanger the health, safety, or welfare of any resident.

64.2(2) Upon receipt of a request for variance, the director of the department of inspections and appeals will:

a. Examine the rule from which variance is requested to determine that the request is necessary and reasonable;

b. If the request meets the above criteria, evaluate the alternate arrangements or compensating circumstances against the requirement of the rules;

c. Examine the effect of the requested variance on the health, safety, or welfare of the residents;

d. Consult with the applicant if additional information is required.

64.2(3) Based upon these studies, approval of the variance will be either granted or denied within 120 days of receipt.

481—64.3(135C) Application for license.

64.3(1) Initial application. In order to obtain an initial intermediate care facility for the mentally retarded license for an intermediate care facility for the mentally retarded which is currently licensed, the applicant must:

a. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

b. Make application at least 30 days prior to the change of ownership of the facility on forms provided by the department;

c. Submit a floor plan of each floor of the intermediate care facility, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which room will be put and window and door location;

d. Submit a photograph of the front and side elevation of the intermediate care facility for the mentally retarded;

e. Submit the statutory fee for an intermediate care facility for the mentally retarded license;

f. Meet all of the rules, regulations and standards contained in 481—Chapter 64.

*See Interpretive Guidelines at end hereof

g. Comply with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and postmortem procedures;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

64.3(2) In order to obtain an initial intermediate care facility for the mentally retarded license for a facility not currently licensed as an intermediate care facility for the mentally retarded, the applicant must:

**a.* Meet all of the rules, regulations, and standards contained in 481—Chapters 61 and 64; exceptions noted in 481—subrule 61.1(2) shall not apply;

*Nullified by 1989 Iowa Acts, SJR 10

b. Submit a letter of intent and a written résumé of the resident care program and other services provided for departmental review and approval;

c. Make application at least 30 days prior to the proposed opening date of the facility on forms provided by the department;

d. Submit a floor plan of each floor of the intermediate care facility for the mentally retarded, drawn on 8½- × 11-inch paper showing room areas in proportion, room dimensions, room numbers for all rooms, including bathrooms, and designation of the use to which the rooms will be put and window and door locations;

e. Submit a photograph of the front and side elevation of the intermediate care facility for the mentally retarded;

f. Submit the statutory fee for an intermediate care facility for the mentally retarded;

g. Comply with federal, state, and local laws, codes, and regulations pertaining to health and safety, including procurement, dispensing, administration, safeguarding and disposal of medications and controlled substances; building, construction, maintenance and equipment standards; sanitation; communicable and reportable diseases; and postmortem procedures;

h. Have a certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations.

64.3(3) Renewal application. In order to obtain a renewal of the intermediate care facility for the mentally retarded license, the applicant must:

a. Submit the completed application form 30 days prior to annual license renewal date of intermediate care facility for the mentally retarded license;

b. Submit the statutory license fee for an intermediate care facility for the mentally retarded with the application for renewal;

c. Have an approved current certificate signed by the state fire marshal or deputy state fire marshal as to compliance with fire safety rules and regulations;

d. Submit appropriate changes in the résumé to reflect any changes in the resident care program or other services.

64.3(4) Licenses are issued to the person or governmental unit which has responsibility for the operation of the facility and authority to comply with all applicable statutes, rules or regulations.

The person or governmental unit must be the owner of the facility or, if the facility is leased, the lessee.

481—64.4(135C) General requirements.

64.4(1) The license shall be displayed in a conspicuous place in the facility which is viewed by the public. (III)

64.4(2) The license shall be valid only in the possession of the licensee to whom it is issued.

64.4(3) The posted license shall accurately reflect the current status of the intermediate care facility for the mentally retarded. (III)

64.4(4) Licenses expire one year after the date of issuance or as indicated on the license.

64.4(5) Each citation or a copy of each citation issued by the department for a Class I or Class II violation shall be prominently posted by the facility in plain view of the residents, visitors, and persons inquiring about placement in the facility. The citation or copy of the citation shall remain posted until the violation is corrected to the satisfaction of the department. (III)

64.4(6) The facility shall have in effect a transfer agreement with one or more hospitals sufficiently close to the facility to make feasible the transfer between them of residents and their records. (III) Any facility which does not have such an agreement in effect but has attempted in good faith to enter into such an agreement with a hospital shall be considered to have such an agreement so long as it is in the public interest and essential to ensuring intermediate care facility for the mentally retarded services for eligible persons in the community.

64.4(7) A resident's personal funds and property shall not be used without the written consent of the resident or the resident's guardian. (II)

64.4(8) A resident's personal funds and property shall be returned to the resident when the funds or property have been used without the written consent of the resident or the resident's guardian. The department may report findings that funds or property have been used without written consent to the audits division or the local law enforcement agency, as appropriate. (II)

64.4(9) A properly trained person shall be charged with the responsibility of administering non-parenteral medications.

a. The individual shall have knowledge of the purpose of the drugs, their dangers, and contraindications.

b. This person shall be a licensed nurse or physician or shall have successfully completed a department-approved medication aide course or passed a department-approved medication aide challenge examination administered by an area community college.

c. A person who is a nursing student or a graduate nurse may take the challenge examination in place of taking a medication aide course. This individual shall do all of the following before taking the medication aide challenge examination:

(1) Complete a clinical or nursing theory course within six months before taking the challenge examination;

(2) Successfully complete a nursing program pharmacology course within one year before taking the challenge examination;

(3) Provide to the community college a written statement from the nursing program's pharmacology or clinical instructor indicating the individual is competent in medication administration.

(4) Successfully complete a department-approved nurse aide competency evaluation.

d. A person who has written documentation of certification as a medication aide in another state may become a medication aide in Iowa by successfully completing a department-approved nurse aide competency examination and a medication aide challenge examination.

481—64.5(135C) Notifications required by the department. The department shall be notified:

64.5(1) Within 48 hours, by letter, any reduction or loss of direct care professional or dietary staff lasting more than seven days which places the staffing ratio of the intermediate care facility for the mentally retarded below that required for licensing. No additional residents shall be admitted until the minimum staffing requirements are achieved; (III)

64.5(2) Of any proposed change in the intermediate care facility for the mentally retarded's functional operation or addition or deletion of required services; (III)

64.5(3) Thirty days before addition, alteration, or new construction is begun in the intermediate care facility for the mentally retarded, or on the premises; (III)

64.5(4) Thirty days in advance of closure of the intermediate care facility for the mentally retarded; (III)

64.5(5) Within two weeks of any change in administrator; (III)

64.5(6) When any change in the category of license is sought; (III)

64.5(7) Prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the mentally retarded, the licensee shall:

a. Inform the department of the pending sale, transfer, assignment, or lease of the facility; (III)

b. Inform the department of the name and address of the prospective purchaser, transferee, assignee, or lessee at least 30 days before the sale, transfer, assignment, or lease is completed; (III)

c. Submit a written authorization to the department permitting the department to release all information of whatever kind from the department's files concerning the licensee's intermediate care facility for the mentally retarded to the named prospective purchaser, transferee, assignee, or lessee. (III)

64.5(8) Pursuant to the authorization submitted to the department by the licensee prior to the purchase, transfer, assignment, or lease of an intermediate care facility for the mentally retarded, the department shall upon request, send or give copies of all recent licensure surveys and of any other pertinent information relating to the facility's licensure status to the prospective purchaser, transferee, assignee, or lessee; costs for such copies shall be paid by the prospective purchaser.

481—64.6(135C) Veteran eligibility.

64.6(1) For all residents residing in a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A on July 1, 2003, and all others subsequently admitted, the facility shall collect and report information regarding the resident's eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs as requested by the Iowa commission on veterans affairs. The facility shall collect and report the information on forms and by the procedures prescribed by the Iowa commission on veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services. In the event that a resident is unable to assist the facility in obtaining the information, the facility shall seek the requested information from the resident's family members or responsible party.

64.6(2) For all new admissions, the facility shall collect and report the required information regarding a resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 30 days of the resident's admission. For residents residing in the facility as of July 1, 2003, and prior to May 5, 2004, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 90 days after May 5, 2004.

64.6(3) If a resident is eligible for benefits through the federal Department of Veterans Affairs or other third-party payor, the facility shall seek reimbursement from such benefits to the maximum extent available before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

64.6(4) The provisions of this rule shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

481—64.7(135C) Licenses for distinct parts.

64.7(1) Separate licenses may be issued for distinct parts of a health care facility which are clearly identifiable, containing contiguous rooms in a separate wing or building or on a separate floor of the facility and which provide care and services of separate categories.

64.7(2) The following requirements shall be met for a separate licensing of a distinct part:

a. The distinct part shall serve only residents who require the category of care and services immediately available to them within that part; (III)

b. The distinct part shall meet all the standards, rules, and regulations pertaining to the category for which a license is being sought;

c. The distinct part must be operationally and financially feasible;

d. A separate staff with qualifications appropriate to the care and services being rendered must be regularly assigned and working in the distinct part under responsible management; (III)

e. Separately licensed distinct parts may have certain services such as management, building maintenance, laundry, and dietary in common with each other.

64.63(4) Respite care services shall not be provided by a facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

These rules are intended to implement Iowa Code sections 10A.202, 10A.402, 135C.2(6), 135C.6(1), 135C.14, 135C.14(8), 135C.25, 135C.25(3), 135C.32, 135C.36, 227.4, 235B.1(6), and 235B.3(11).

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*See IAB, Inspections and Appeals Department.
†Two ARCs
◊Three ARCs

481—65.10(135C) General admission policies. There shall be admission policies which address the following:

1. No resident shall be admitted or retained who is in need of greater services than the facility can provide. (II, III)

2. Residents shall be admitted only on a written order signed by a physician. (II, III)

3. A preplacement visit shall be completed prior to admission, except in case of an emergency admission or readmission, to familiarize the applicant with the facility and services offered. The policies and procedures may allow for waiving the requirement at the request of a person seeking admission when the completion of the visit would create a hardship for the person seeking admission. If the distance to be traveled makes it impossible to complete the visit in an eight-hour day, this may be considered to create a hardship. (III)

4. Prior to admission of an applicant, the facility shall obtain sufficient information to determine if its program is appropriate and adequate to meet the person's needs. (III)

5. Admission criteria shall include, but not be limited to, age, sex, current diagnosis from an American Psychiatric Association Diagnostic and Statistical Manual of Mental Disorders, substance abuse, dual diagnosis and criteria that are consistent with the résumé of care. (III)

6. Each facility shall maintain a waiting list with selection priorities identified. (III)

7. No ICF/PMI may admit more residents than the number of beds for which it is licensed. (II, III)

8. There shall be a written, organized orientation program for all residents which shall be planned and implemented to resolve or reduce personal, family, business, and emotional problems that may interfere with the health care, recovery, and rehabilitation of the individual and which shall be available for review by the department. (III)

9. Infants and children under the age of 18 shall not be admitted as residents to an ICF/PMI for adults unless given prior written approval by the department. A distinct part of an ICF/PMI, segregated from the adult section, may be established based on a résumé of care submitted by the licensee or applicant which is commensurate with the needs of the residents of the health care facility and has received the department's review and approval. (III)

10. For all residents residing in a health care facility receiving reimbursement through the medical assistance program under Iowa Code chapter 249A on July 1, 2003, and all others subsequently admitted, the facility shall collect and report information regarding the resident's eligibility or potential eligibility for benefits through the federal Department of Veterans Affairs as requested by the Iowa commission on veterans affairs. The facility shall collect and report the information on forms and by the procedures prescribed by the Iowa commission on veterans affairs. Where appropriate, the facility may also report such information to the Iowa department of human services. In the event that a resident is unable to assist the facility in obtaining the information, the facility shall seek the requested information from the resident's family members or responsible party.

For all new admissions, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 30 days of the resident's admission. For residents residing in the facility as of July 1, 2003, and prior to May 5, 2004, the facility shall collect and report the required information regarding the resident's eligibility or potential eligibility to the Iowa commission on veterans affairs within 90 days after May 5, 2004.

If a resident is eligible for benefits through the federal Department of Veterans Affairs or other third-party payor, the facility shall seek reimbursement from such benefits to the maximum extent available before seeking reimbursement from the medical assistance program established under Iowa Code chapter 249A.

The provisions of this paragraph shall not apply to the admission of an individual as a resident to a state mental health institute for acute psychiatric care. (II, III)

This rule is intended to implement Iowa Code sections 135C.3 and 135C.23.

481—65.11(135C) Evaluation services. Each resident admitted shall have a physical examination and tuberculin test no more than 30 days before admission and a physical examination annually after that. Each annual examination shall be sufficient to ensure the resident has no physical condition which precludes living in the facility. If the resident is admitted directly from a hospital, a copy of the hospital admission physical and discharge summary may meet this requirement. (II, III)

65.11(1) In addition to the required initial physical examination, each resident shall be evaluated to identify physical health, current level of functioning and the need for services. This evaluation shall be completed within 30 days of admission and annually after that. Information from other sources may be used in the evaluation if the information meets the requirements of subrules 65.11(2) and 65.11(3). (II, III)

65.11(2) The portion of the evaluation which describes the resident's physical health shall:

a. Identify current illnesses and disabilities and include recommendations for physical and physiological treatment and services; (II, III)

b. Include a description of the resident's ability for health maintenance; (II)

c. Include a mental status examination and history of mental health and treatments; (II, III) and

d. Be performed by a physician with a valid license to practice medicine and surgery, osteopathic medicine and surgery or osteopathy in Iowa. If the evaluation is not conducted in Iowa, it must be by a physician who holds a current license in the state in which the examination is performed. If the doctor is not a psychiatrist, a psychiatrist or health service provider in psychology licensed under Iowa Code section 154B.7 shall be consulted regarding the results of the mental status examination. (II, III)

65.11(3) The portion of the evaluation which describes the resident's current functioning level and need for services shall:

a. Identify the functioning level and need for services in self-care, community living skills, psychotherapeutic treatment, vocational skills, and academic skills as appropriate; (II, III)

b. Contain sufficient detail about skills and needs to determine appropriate placement; (II, III)

c. Be made without regard to the availability of services; (III) and

d. Be performed by a QMHP, consulting with an interdisciplinary team. (III)

65.11(4) Results of all evaluations shall be in writing and maintained in resident records. After the initial evaluation, all subsequent evaluations shall contain sufficient detail to determine changes in the resident's physical and mental health, skills, and need for services. (II, III)

65.11(5) A narrative social history shall be completed for each resident within 30 days of admission. The social history shall be completed and approved by the qualified mental health professional before the IPP is developed. (III)

a. When a social history is secured from another provider, the information shall be reviewed within 30 days of admission. The date of the review and a summary of significant changes in the information shall be entered in the resident's record. The social worker who reviews the history shall sign it. (III)

b. An annual review of the social history information shall be incorporated in the individual program plan progress notes. (III)

c. The social history shall address at least the following areas:

(1) Referral source and reason for admission; (II, III)

(2) Legal status; (II, III)

(3) Previous living arrangements; (III)

(4) Services received previously and current service involvements; (II, III)

(5) Significant medical and mental health conditions including at least illnesses, hospitalizations, past and current drug therapy, and special diets; (II, III)

(6) Substance abuse history; (II, III)

(7) Work history; (III)

(8) Education history; (II)

(9) Relationship with family, significant others, and other support systems; (III)

(10) Cultural, ethnic and religious background; (II, III)

(11) Hobbies and leisure time activities; (III)
(12) Likes, dislikes, habits, and patterns of behavior; (II, III)
(13) History of aggressive or suicidal behavior; (I, II, III) and
(14) Impressions and recommendations. (II, III)
This rule is intended to implement Iowa Code section 135C.14(7).

481—65.12(135C) Individual program plan (IPP). An initial program plan shall be developed within 24 hours of admission. This plan shall be based on information gained from the resident, family, physician or referring facility. Services to be provided shall be addressed. Intervention to be provided, if and when the need arises, shall also be addressed in the IPP. The plan shall be followed until the IPP required in subrule 65.12(1) is complete. The initial plan shall be completed by a registered nurse, a qualified social worker or a QMHP. (II, III)

65.12(1) An individual program plan for each resident shall be developed by an interdisciplinary team. The resident or the resident's legal guardian has the ultimate authority to accept or reject the plan unless otherwise determined by the court. The IPP shall be approved and have implementation monitored by the QMHP. (II, III)

a. The IPP shall be based on the individual service plan of the referring agency, if available, the information contained in the social history, the need for services identified in the evaluation, and any other pertinent information. (III)

b. The facility shall assist the resident in obtaining access to academic services, community living skills training, legal services, self-care training, support services, transportation, treatment, and vocational education as needed. These services may be provided by the facility or obtained from other providers. (III)

c. Services to the resident shall be provided in the least restrictive environment and shall incorporate the principle of normalization. (III)

d. If needed services are not available and accessible, the facility shall document the actions taken to locate and obtain those services. The documentation shall identify needs which will not be met because of the lack of available services. (III)

e. The IPP shall be developed within 30 days following admission to the facility and renewed at least annually. (II, III)

f. The IPP shall be written, dated, signed by the interdisciplinary team members, and maintained in the resident's record. (III)

g. Written notice of the meeting to develop an IPP shall be mailed or delivered to everyone included in the interdisciplinary team conference at least two weeks before the scheduled meeting. (III)

65.12(2) The IPP shall include the following:

a. Goals, (III)
b. Objectives, (III)
c. Specific services to be provided, (III)
d. People or agency responsible for providing services, (III)
e. Beginning date, (III) and
f. Anticipated duration of services. (III)

65.12(3) The IPP shall set out the procedure to be used to evaluate whether objectives are achieved. This procedure shall incorporate a process for ongoing review and revision. (III)

65.12(4) The interdisciplinary team shall review the IPP at a team meeting at least quarterly and when the resident's condition changes. (II, III)

a. The interdisciplinary team shall develop a written report which addresses:
(1) The resident's progress toward objectives; (II, III)
(2) The need for continued services; (II, III)
(3) Recommendations concerning alternative services or living arrangements; (II, III) and
(4) Any recommended change in guardianship, conservatorship or commitment status. (II, III)

b. The report shall reflect those involved in the review, the date of the review, and be maintained in the resident's record. (III)

65.12(5) There shall be procedures for recording the activities of each service provider and a mechanism to coordinate the activities of all service providers. Resident response to all activities shall be recorded. (III)

a. Staff shall create a record at the time of a service required by the IPP. If this is not possible, the record shall be written no more than seven days later. (III)

b. When the services are provided more than once a week, staff may make a monthly summarized entry in the resident's record. (III)

c. Entries shall be dated and signed by the person who provides the service. (III)

d. Entries shall be made when incidents occur. (III)

e. Entries shall be written in terms of behavioral observations and specific activities. Entries that involve subjective interpretations of a resident's behavior or progress shall be clearly identified and shall be supplemented with descriptions of behavior upon which the interpretation was based. (III)

This rule is intended to implement Iowa Code section 135C.14.

481—65.13(135C) Activity program. Each ICF/PMI shall have an organized activity program which is directed by a person qualified as required by 65.9(3)*"d."*

65.13(1) An activity program plan for the facility shall be based on needs identified in IPPs and on other interests expressed by residents. The activity program shall include leisure time management. (III)

65.13(2) Activities shall be offered at least daily during the daytime hours if residents are present, twice weekly in the evening and twice on the weekend. (III)

65.13(3) Activities offered shall be varied and shall be planned for individuals, small groups or large groups. (III)

65.13(4) Monthly calendars shall be prepared in advance and shall be kept for review by the department. Substitutions and cancellations shall be noted. (III)

65.13(5) Activities department personnel shall coordinate programs with other facility personnel. (III)

481—65.14(135C) Crisis intervention. There shall be written policies and procedures concerning crisis intervention. (II) These policies and procedures shall be:

1. Directed to maximizing the growth and development of the individual by incorporating a hierarchy of available alternative methods that emphasize positive approaches; (II, III)
2. Available in each program area and living unit; (II, III)
3. Available to individuals and their families; (II, III) and
4. Developed with the participation, as appropriate, of individuals served. (II, III)

65.14(1) Corporal punishment, physical abuse, and verbal abuse, for example, shouting, screaming, swearing, name calling, or any other activity which might damage an individual's self-respect shall be prohibited. All residents shall be treated with fairness and respect as required by rule 65.25(135C). (II)

65.14(2) Medication shall not be used as punishment, for the convenience of staff, or as a substitute for a program. Direct care staff shall monitor residents on medication and notify the physician if a resident is too sedated to participate in the IPP. (I, II)

65.29(1) The following factors will be considered by the department in determining whether a business or activity will interfere with the use of the facility by residents, interfere with services provided to residents, or be disturbing to residents:

a. Health and safety risks for residents;

b. Compatibility of the proposed business or activity with the facility program;

c. Noise created by the proposed business or activity;

d. Odors created by the proposed business or activity;

e. Use of entrances and exits for the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

f. Use of the facility's corridors or rooms as thoroughfares to the business or activity in regard to safety and disturbance of residents and interference with delivery of services;

g. Proposed staffing for the business or activity;

h. Sharing of services and staff between the proposed business or activity and the facility;

i. Facility layout and design; and

j. Parking area utilized by the business or activity.

65.29(2) Approval of the state fire marshal shall be obtained before approval of the department will be considered.

65.29(3) A business or activity conducted in a health care facility or in the same physical structure as a health care facility shall not reduce space, services or staff available to residents below minimums required in these rules and 481—Chapter 61. (I, II, III)

481—65.30(135C) Respite care services. Respite care services means an organized program of temporary supportive care provided for 24 hours or more to a person in order to relieve the usual caregiver of the person from providing continual care to the person. A facility which chooses to provide respite care services must meet the following requirements related to respite care services and must be licensed as a health care facility.

65.30(1) A facility which chooses to provide respite care services is not required to obtain a separate license or pay a license fee.

65.30(2) Rules regarding involuntary discharge or transfer rights do not apply to residents who are being cared for under a respite care contract.

65.30(3) The facility shall have a contract with each resident in the facility. When the resident is there for respite care services, the contract shall specify the time period during which the resident will be considered to be receiving respite care services. At the end of that period, the contract may be amended to extend that period of time. The contract shall specifically state the resident may be involuntarily discharged while being considered as a respite care resident. The contract shall meet other requirements for contracts between a health care facility and resident, except the requirements concerning the holding and charging for a bed when a resident is hospitalized or leaves the facility temporarily for recreational or therapeutic reasons.

65.30(4) Respite care services shall not be provided by a facility to persons requiring a level of care which is higher than the level of care the facility is licensed to provide.

These rules are intended to implement Iowa Code sections 135C.2(6), 135C.4, 135C.6(2), 135C.6(3), 135C.7, 135C.8, 135C.14, 135C.16(2), 135C.23, 135C.24, 135C.25, 135C.31, and 227.4.

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LOTTERY AUTHORITY, IOWA[531]

[Created by 2003 Iowa Acts, Senate File 453, section 66]
[Prior to 9/17/03, see Lottery Division[705]]

CHAPTER 1
GENERAL OPERATION OF THE LOTTERY

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 1]
[Prior to 9/17/03, see 705—Ch 1]

531—1.1(17A) Purpose. The Iowa lottery authority was established by Iowa Code Supplement chapter 99G to operate the state lottery.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.2(17A) Organization. The lottery is administered by the lottery authority board. The lottery is directed and supervised by the chief executive officer of the lottery. The lottery authority board has rule-making authority for the lottery.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.3(17A) Location. Lottery headquarters is located at 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The lottery has regional offices located throughout the state offering some of the services available at the headquarters office. Information regarding lottery headquarters and regional offices can be obtained on the lottery Web site, www.ialottery.com, on point-of-sale game-play publications, and by contacting the lottery headquarters. The lottery authority board may be contacted through lottery headquarters. Office hours at all offices are 8 a.m. to 4:30 p.m., Monday through Friday. Prize redemption operations close at 4 p.m.

This rule is intended to implement Iowa Code section 17A.3(1).

531—1.4(17A) Board meetings. The lottery authority board shall meet at least quarterly and may meet more often if necessary. The chief executive officer, the chairperson of the board, or a majority of the board may call a special board meeting. Board meetings are generally held at lottery headquarters at 2015 Grand Avenue, Des Moines, Iowa 50312. Board meetings may be held by teleconference.

This rule is intended to implement Iowa Code section 17A.3(1)*"a."*

531—1.5(17A,22,99G,252J) Public records and fair information practices.

1.5(1) In general, the business records of the lottery shall be public to the extent described in Iowa Code chapter 22. However, under Iowa Code Supplement section 99G.34, the following records shall be kept confidential, unless otherwise ordered by a court, by the lawful custodian of the records, or by another person duly authorized to release such information:

a. Marketing plans, research data, and proprietary intellectual property owned or held by the lottery under contractual agreements.

b. Personnel, vendor, and player social security or tax identification numbers.

c. Computer system hardware, software, functional and system specifications, and game play data files.

d. Security records pertaining to investigations and intelligence-sharing information between lottery security officers and those of other lotteries and law enforcement agencies, the security portions or segments of lottery requests for proposals, proposals by vendors to conduct lottery operations, and records of the security division of the lottery pertaining to game security data, ticket validation tests, and processes.

e. Player name and address lists, provided that the names and addresses of prize winners shall not be withheld.

f. Operational security measures, systems, or procedures and building plans.

g. Security reports and other information concerning bids or other contractual data, the disclosure of which would impair the efforts of the lottery to contract for goods or services on favorable terms.

h. Information that is otherwise confidential obtained pursuant to investigations.

1.5(2) Records, documents, and information in the possession of the lottery received pursuant to an intelligence-sharing, reciprocal use, or restricted use agreement entered into by the lottery with a federal department or agency, any law enforcement agency, or the lottery regulation or gaming enforcement agency of any jurisdiction shall be considered investigative records of a law enforcement agency not subject to Iowa Code chapter 22 and shall not be released under any condition without the permission of the person or agency providing the record or information. Additionally, the results of background investigations conducted pursuant to Iowa Code Supplement section 99G.10(8) shall not be considered public records.

1.5(3) The lottery shall maintain and make available for public inspection at its offices during regular business hours a detailed listing of the estimated number of prizes of each particular denomination that are expected to be awarded in any game that is on sale or the estimated odds of winning the prizes and, after the end of the claim period, shall maintain and make available a listing of the total number of tickets or shares sold in a game and the number of prizes of each denomination that were awarded.

1.5(4) Notwithstanding any statutory confidentiality provision, the lottery may share information with the child support recovery unit through manual or automated means for the sole purpose of identifying licensees or applicants subject to enforcement under Iowa Code chapter 252J or 598.

1.5(5) Copies of public lottery business records may be obtained upon a written request made to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The lottery may charge reasonable fees, including staff research and copying time, for the processing of any public records production requests.

This rule is intended to implement Iowa Code sections 22.11 and 252J.2, Iowa Code Supplement sections 99G.9(3) and 99G.10(8) and Iowa Code chapter 598.

531—1.6(99G) Specific game rules. Specific game rules as authorized in Iowa Code Supplement section 99G.9(4) shall be made available by the lottery as necessary for the efficient conduct of specific lottery games. These rules may include, but are not limited to, descriptions of specific games, special promotions, and drawing procedures. Specific game rules shall be provided to board members as soon as is practical following issuance by the lottery. The promulgation of specific game rules is not subject to the requirements of Iowa Code chapter 17A.

This rule is intended to implement Iowa Code Supplement section 99G.9(4).

531—1.7(99G) Lottery contracting authority. The chief executive officer shall enter into contracts necessary for day-to-day operations, including without limitation contracts for accounting services, security services, annuity purchases, equipment and production, communications, auditing services, legal services, space planning, and remodeling. The chief executive officer may enter into these contracts without presenting these contracts to the board for approval or ratification. Contracts for consulting services that are expected to cost in excess of $25,000 and all contracts for major procurements as defined in Iowa Code Supplement section 99G.3(8), must be ratified by the board in order to be binding on the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(2), and 99G.21.

531—1.8(99G) Location of ticket sales by retailers. Tickets may be sold on premises specified on a lottery license. Tickets may be sold on premises where alcoholic beverages, beer, or wine are sold or served pursuant to Iowa Code chapter 123. Tickets may not be sold by a retailer through the mail or by any technological means except as the lottery may provide or authorize.

This rule is intended to implement Iowa Code Supplement section 99G.30.

531—1.9(99G) Distribution of tickets by lottery authority. The lottery itself may sell lottery tickets. Ticket sales may be made by the lottery at any location or event deemed appropriate by the lottery. The lottery may distribute lottery tickets or shares for promotional purposes.

This rule is intended to implement Iowa Code Supplement sections 99G.21 and 99G.30.

531—1.10(99G) Ticket purchase restrictions. Tickets shall not be purchased by those persons designated in Iowa Code Supplement section 99G.31(2)*"g"* and *"h"* or by the assistant attorney general assigned to the lottery. The lottery may restrict the purchase of tickets by lottery contractors through contractual provisions if the lottery determines that restrictions are appropriate.

This rule is intended to implement Iowa Code Supplement sections 99G.2(3) and 99G.31(2).

531—1.11(99G) Employee incentive programs. The lottery may design lottery employee incentive programs intended to increase lottery revenues. All employee incentive programs shall be approved by the board before implementation.

This rule is intended to implement Iowa Code Supplement section 99G.10(5).

531—1.12(99G) Advertising. Advertising for lottery games may include but is not limited to print advertisements, Internet, radio and television advertisements, billboards, and point-of-purchase display materials. Promotional and advertising items may be produced and distributed to the public, vendors, and retailers.

This rule is intended to implement Iowa Code Supplement sections 99G.2, 99G.7, and 99G.21.

531—1.13(99G) Promotional agreements with businesses. The chief executive officer may enter into agreements with business entities for the purpose of promoting any lottery game. Promotional agreements may require a business entity to fund or provide prizes or advertising.

This rule is intended to implement Iowa Code Supplement sections 99G.2, 99G.7, and 99G.21.

531—1.14(99G) Agreements for the sale of advertising. The lottery may enter into agreements with other units of state government or with individuals, corporations, or other entities outside of state government for the purpose of selling advertising space on such items as lottery tickets or equipment and in lottery publications or promotional materials. The lottery may also enter into such agreements to sell lottery tickets or merchandise marked with the lottery logo.

This rule is intended to implement Iowa Code Supplement sections 99G.2, 99G.7, 99G.9, and 99G.21.

531—1.15 to **1.27** Reserved.

531—1.28(99G) Promotional use of tickets by persons without lottery licenses. Other than the lottery, no person, business, or other organization may sell lottery tickets unless licensed by the lottery. Tickets may, however, be given away for promotional purposes. Tickets may be given away for promotional purposes in conjunction with the required purchase of a product or service or an admission fee without violating this provision provided that the actual cost of the product or service or admission fee is not calculated to include the ticket price, and the promotion is not designed, intended, or conducted to circumvent the lottery's licensing requirements.

This rule is intended to implement Iowa Code Supplement sections 99G.9, 99G.25, and 99G.30.

531—1.29(99G) Employee background investigation. The lottery shall require a background investigation by the department of public safety division of criminal investigation in connection with the employment of lottery personnel. Background investigations to be conducted are as follows:

1.29(1) *Standard background investigations.* The lottery may require a standard division of criminal investigation background investigation of any prospective lottery employee, consisting of a state criminal history background check, work history, and financial review.

1.29(2) *Sensitive position background investigations.* The board shall identify those sensitive positions that require full background investigations. Such positions shall include, at a minimum, any officer of the lottery, and any employee with operational management responsibilities, security duties, or system maintenance or programming responsibilities related to the lottery's data processing or network hardware, software, communication, or related systems. In addition to a work history and financial review, a full background investigation may include a national criminal history record check through the Federal Bureau of Investigation. The screening of employees through the Federal Bureau of Investigation shall be conducted by submission of fingerprints through the state criminal history record repository to the Federal Bureau of Investigation.

1.29(3) *Alternative sources for investigations.* In lieu of a division of criminal investigation standard or full background investigation, or any component thereof, the chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by the division of criminal investigation based on information furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.10.

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CHAPTER 2
PURCHASING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 5]
[Prior to 9/17/03, see 705—Ch 4]

531—2.1(99G) Applicability of competitive bidding. All "major procurements" shall be obtained as a result of competitive bidding, except in cases where a single vendor has an exclusive right to offer a particular product or service. Major procurements include consulting agreements and the major procurement contract with a business organization for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game.

Items, including goods or services, other than major procurements, that are expected to cost in the aggregate in excess of $50,000 will be obtained as a result of a formal or informal competitive bidding process conducted by the lottery or through the department of administrative services whenever such procurement is in the best interests of the lottery. Items, including goods or services, other than major procurements, that are expected to cost in the aggregate $50,000 or less may be obtained as a result of an informal competitive bidding process. Items, including goods or services, other than major procurements, expected to cost less than $50,000 in the aggregate may be obtained in any manner deemed appropriate by the lottery.

Notwithstanding the foregoing, the lottery may exempt an item from competitive bidding if the item is noncompetitive or is purchased in quantities too small to be effectively purchased through competitive bidding; if there is an immediate or emergency need for the item; if the purchase of the item facilitates compliance with set-aside procurement provisions; or if the lottery determines that its best interests will be served by exemption from the bidding process and the item to be purchased is not a major procurement.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.2(99G) Methods of obtaining bids or proposals used by the lottery. Formal or informal bids or proposals are to be obtained by one of the following methods. If more than one method is applicable to the purchase of a particular item, the lottery shall choose the method of bidding to be utilized.

2.2(1) Formal bids may be required for any item if cost is the major criterion for selection. If cost is the major criterion for selection, formal bids shall be required for all items costing in the aggregate more than $50,000.

The lottery shall prepare a written invitation-to-bid document and shall send it via the United States Postal Service or electronic mail to selected vendors in the business of providing the goods or services sought by the lottery. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery's Internet Web site.

The invitation to bid shall contain the due date and time of the bid opening, a complete description of the item needed, and any other necessary or proper items.

Formal bids, other than major procurement sealed bids, received prior to the submission deadline set in the bidding document shall be made available to any interested party on the date and hour designated on the bid form. As the bids are opened they will be tabulated, and the results of the tabulation shall be made available to any interested party. The original bids and the tabulations will be maintained at the lottery for one year following the date on which the bids were opened.

An award shall be made within 60 calendar days from the date of the bid opening unless a different time frame is stated by the lottery in the invitation to bid or subsequently agreed to by the vendors. The price quoted by the vendors shall remain binding throughout the applicable time period. If an award is not made within the applicable time frame, all bids shall be deemed rejected.

2.2(2) Informal bids may be required for any item if cost is the major criterion for selection and if the item is expected to cost in the aggregate $50,000 or less. Informal bids may be obtained by the lottery through use of a written bid form, over the telephone, via facsimile transmission, or in electronic format, including over the Internet or through electronic mail. When requesting informal bids, the lottery shall contact selected vendors supplying the goods or services sought by the lottery and shall communicate to each vendor the date on which bids must be received, a complete description of the item to be purchased, and the time period during which the bid must remain valid. Goods or services may also be obtained by the lottery using reverse auction methods via the lottery's Internet Web site.

Written informal bids shall be opened as received, and informal telephone, facsimile, or electronic bids shall be recorded as received. If a bid is received over the telephone, a telephone bid form shall be used to record the bid received. If an electronic bid is received, a screen print shall be used to record the bid received. Following the submission deadline, the lottery shall tabulate the bids received and make the award. The bids and the tabulations shall be available to interested parties after the submission deadline and shall be maintained by the lottery for one year following the submission deadline.

If an award is not made within the time frame indicated by the lottery when requesting bids, all bids shall be deemed rejected.

2.2(3) Whenever a requirement exists for an item or a major procurement and cost may not be the sole criterion for selection, the lottery may issue a request for proposals. The purpose of a request for proposals is to provide the vendor with sufficient information about the lottery's requirements and goals to allow the vendor to propose a solution to the lottery's requirements.

The lottery shall prepare a written request for proposals and shall send the proposal via the United States Postal Service or electronic mail to selected vendors in the business of supplying the goods or services sought by the lottery.

The lottery requires that bids submitted in response to a request for proposals in a major procurement for award of a contract for the printing of tickets or for the purchase or lease of equipment or services essential to the operation of a lottery game be submitted as sealed bids. The contents of sealed bids shall be made available to any interested party at the time designated in the request for proposals. A bidder shall identify with clear markings the pages, sections, or documents submitted as part of a proposal package that the bidder claims are exempt from disclosure because they contain sensitive business or trade secret information.

To ensure the fairness and integrity of the evaluation process, the lottery may elect to evaluate and score any of the technical, financial, security, and marketing components of major procurement sealed bid proposals prior to opening and integrating the scoring of the pricing component. When scoring has been completed, the evaluation team shall prepare a recommendation report for an award and, if applicable, for rejection of any or all proposals under consideration. The recommendation report shall be submitted to the chief executive officer and the lottery board for such action as the chief executive officer and board may deem appropriate. The report shall be made available to any interested person immediately upon transmittal to the chief executive officer and the board. Prior to making an award, the board and chief executive officer shall receive and consider the results of a background investigation conducted by the department of public safety division of criminal investigation.

An award shall be made within 60 calendar days from the date of the proposal opening unless a different time frame is stated by the lottery in the request for proposal or subsequently agreed to by the vendors. The terms quoted by the vendor shall remain binding throughout the applicable time frame. If an award is not made within the applicable time frame, all proposals shall be deemed rejected and not binding.

At a minimum, a request for proposals shall address the following criteria: the need for a proposal conference; the purpose and background of the request; important dates in the proposal and the award process including the submission deadline; administrative requirements for submitting the proposal and the format required by the lottery; the scope of the work to be performed and any specific requirements which the vendor must meet; and any contractual terms and conditions which the lottery anticipates may affect the terms of the vendor's proposal.

This rule is intended to implement Iowa Code section 72.3 and Iowa Code Supplement sections 99G.7, 99G.9, and 99G.21.

531—2.3(99G) Items purchased through the department of administrative services. Goods and services may be obtained by the lottery through the department of administrative services whenever procurement through administrative services is in the best interests of the lottery. Items procured through administrative services may be obtained by administrative services in any manner deemed appropriate by administrative services.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.4(99G) Advertising solicitations. Formal bids and requests for proposals issued by the lottery shall be advertised in a daily paper in Iowa. The advertisement shall indicate that it is a notice to prospective bidders, contain the bid due date and time of opening, describe the items to be purchased, and provide the name, address and telephone number of the person to be contacted to obtain official bidding documents.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.5(99G) Contract purchases. The lottery may enter into contract purchase agreements for items, groups of items, or services. Contract purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.6(99G) Blanket purchase agreements. If the lottery foresees a requirement for frequent purchases of off-the-shelf items, the lottery may establish blanket purchase agreements. A blanket purchase agreement is a formally approved charge account that is designed to reduce paperwork and the number of checks issued. Blanket purchase agreements are subject to the competitive bidding requirements previously outlined where applicable.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.7(99G) Prospective vendor selection.

2.7(1) Any firm or business legally conducting business within Iowa may request placement on the approved vendor list for a particular service or commodity by filing a vendor application form with the lottery. The lottery may mail copies of solicitation documents to vendors on the list for a particular item or to any other vendor that the lottery chooses to contact. A vendor may be refused placement on the list or suspended or permanently removed from the list for any of the following reasons: failure to respond to three consecutive solicitations; failure to deliver within specified delivery dates; failure to deliver in accordance with specifications; attempts to influence the decision of any state employee involved in the procurement process; evidence of agreements by the vendor to restrain trade or impede competitive bidding; and any other activities of the vendor which the lottery determines would render the vendor unsuitable.

The lottery shall notify a vendor in writing prior to refusing placement on the list, suspending the vendor from the list, or permanently removing the vendor from the list. The vendor shall be provided a reasonable opportunity to explain and cure any misconduct identified by the lottery. If the lottery ultimately refuses placement on the list or removes the vendor from the list, the vendor may appeal the lottery's action to the lottery board pursuant to the criteria for vendor appeals contained in these rules.

2.7(2) The lottery shall select vendors to receive solicitation documents based on the lottery's knowledge of the vendors in the particular market. The initial vendor selection shall be designed to promote the competitive bidding process, the set-aside procurement programs, and the best interests of the lottery. The lottery shall also provide solicitation documents to qualified vendors upon request when the request is made during the solicitation period. The vendor is solely responsible for ensuring that solicitation documents are received by the vendor.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.8(99G) Bids and proposals to conform with specifications. All bids and proposals must conform to the specifications indicated by the lottery. Bids and proposals that do not conform to the specifications stated may be rejected. The lottery reserves the right to waive deficiencies in the bids or proposals if in the judgment of the lottery its best interests would be served by the waiver.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.9(99G) Time of delivery. When evaluating bids or proposals, the lottery may consider the time of delivery when determining the successful vendor.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.10(99G) Cash discounts. When evaluating bids or proposals, the lottery may consider cash discounts.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.11(99G) Tie bids. The lottery shall resolve ties among bids or proposals which are equal in all respects by drawing lots unless only one of the tied bidders is an Iowa business. If only one of the bidders tied for an award is an Iowa business, the Iowa business shall be given preference over all tied out-of-state businesses.

If it is necessary to draw lots, the drawing shall be held in the presence of the vendors who submitted the tied bids or proposals whenever practical. If the tied vendors are not present, the drawing shall be held in front of at least two persons, and the lottery shall document the drawing.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.12(99G) Time of submission. All formal bids and proposals shall be submitted by the vendor in sufficient time to actually reach the lottery prior to the submission deadline specified in the bid document. All informal bids shall be submitted by the vendor in time to reach the lottery prior to the submission deadline indicated by the lottery. Formal bids and proposals shall be marked by the lottery with the date and time received by the lottery. Formal bids and proposals received after the submission deadline shall be returned to the vendor unopened. All vendors to whom invitations to bid or requests for proposals are sent shall be notified of any changes in submission deadline.

If a formal bid or request for proposals is canceled prior to the submission deadline, any responses already received shall be returned unopened. If an informal bid is canceled prior to the submission deadline, any bids already received shall be destroyed.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.13(99G) Modification or withdrawal of bids. Bids or proposals may be modified or withdrawn prior to the time and date set for the bid or proposal opening. Modifications or withdrawals shall be in writing and delivered in a sealed envelope that properly identifies the correct bid or proposal to be modified or withdrawn. A bid or proposal may be withdrawn after opening only with the approval of the lottery if the lottery finds that an honest error was made by the vendor that will cause undue financial hardship to the vendor and that will not cause undue financial hardship or inconvenience to the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

531—2.14(99G) Financial security. The lottery may require bid security, litigation security, and performance security on formal bids or proposals. When required, security may be by certified check, certificate of deposit, letter of credit made payable to the lottery, or any other form specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

531—2.15(99G) Rejection of bids and proposals. The lottery reserves the right to reject any or all bids or proposals. Bids and proposals may be rejected because of faulty specifications, abandonment of the project, insufficient funds, evidence of unfair or flawed bidding procedures, failure of a vendor to meet the lottery's requirements, or for any other reason if the lottery determines that its best interests will be served by rejecting any or all bids. Following the rejection of bids, new bids may be requested by the lottery at any time deemed convenient by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

531—2.16(99G) Background and informational statements.

2.16(1) *Criminal history and background checks.*

a. All bidders for major procurements, as defined in Iowa Code Supplement section 99G.3, and any other bidders that the chief executive officer, in the chief executive officer's sole discretion, may require (hereinafter "bidder") shall submit to lottery business entity criminal history checks and background investigations (hereinafter "bidder investigations") as conditions for submission of a bid.

b. Bidders for major procurements shall be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

c. Bidders that are not bidders for major procurements may be required to describe their organizational structure, identify key personnel, and subject key personnel to lottery bidder key personnel investigations.

d. For all bidders, any change in key personnel during the bidding process or during the contract term must be reported to the lottery authority before the change occurs. Replacement personnel will be subject to investigation.

e. If, during the course of any investigation, it is determined that either a bidder for a major procurement or any persons employed by or associated with a bidder for a major procurement who are the subjects of key personnel investigations in accordance with subrule 2.16(3) have been convicted of any state or federal felony related to the security or integrity of the lottery in Iowa or any other jurisdiction, the bidder will be automatically disqualified from the selection process without further investigation.

2.16(2) *Bidder investigations.*

a. General provisions. The Iowa lottery major procurement business entity background investigation form (Class L form) must be completed for each bid submitted in response to a lottery major procurement solicitation.

The Class L form shall be posted on the lottery's Web site and is intended to serve both as a vehicle for collection of information pertaining to bidders and as an overview of the scope of the bidder investigations to be conducted.

The department of public safety division of criminal investigation shall utilize the information provided in the Class L form as the basis for developing the initial scope of the bidder investigation and due diligence to be conducted with respect to a bidder. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the Class L form, the division of criminal investigation shall consult with the lottery chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

b. Class L form requirements. The Class L form shall solicit the following information:

(1) The names, addresses, and telephone numbers of all persons who gathered information and prepared the Class L form on behalf of the bidder; the name, address and type of business entity on whose behalf the Class L form is furnished; and the name and telephone number of a contact person for purposes of the procurement.

(2) The location of the bidder's business records; the state and date of incorporation or establishment of the bidder; the federal and state employer identification numbers of the bidder; the names and addresses of any parent companies, subsidiaries, or affiliates of the bidder; whether the bidder's stock is publicly or closely held; and a copy of the articles of incorporation or charter, bylaws, organizational chart, corporate certificate, or partnership agreement of the bidder, as may be applicable.

(3) The following information for each corporate officer and director and, if not a publicly held corporation, each partner (general or limited) or stockholder holding 5 percent or more of the outstanding stock of the bidder: name; positions held; business and residence addresses and telephone numbers; date of birth; social security number; percentage of stock held; amount of compensation received from the bidder in excess of $10,000, including but not limited to salary or wages, director's fees, and stock options and dividends; and designation as to whether the named person will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

(4) The identity of any other persons not named in subparagraph (3) above who will be empowered with signature authority to legally bind the bidder in the context of the procurement process with respect to which the disclosure of information is furnished.

(5) If the bidder is a publicly held corporation, a copy of the bidder's most recent annual report.

(6) The name and address of each officer, director, partner or stockholder actively involved in the conduct of the day-to-day operation of the bidder.

(7) The name and address of the internal certified public accountant employed by the bidder and the name, address, and telephone number of the external certified public accountant employed by the bidder.

(8) A list of all criminal proceedings and civil proceedings predicated in whole or part on alleged criminal activity involving the bidder during the ten-year period immediately preceding the submission date of the Class L form.

(9) Whether the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense within the last seven years. An explanation of any such occurrence shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

(10) Whether any officer or director of the bidder or any subsidiary, parent, intermediary, holding company or related corporation of the bidder is or has ever been the subject of a criminal or grand jury investigation, or has been indicted, convicted, or arrested for any criminal offense. An explanation of any such occurrences shall be furnished and shall include the dates of the occurrences, any governmental agencies involved, and descriptions of the nature and the dispositions of the investigations, indictments, convictions, or arrests.

(11) A list of any proceedings within the last five years involving allegations against the bidder or its officers or directors of antitrust violations, trade regulation violations, security judgments, and insolvency proceedings.

(12) A list of any license denials, suspensions, or revocations within the last seven years involving any officers or directors of the bidder.

(13) Whether the bidder has sustained a loss within the last ten years in which an insurance payment of $50,000 or more was received; if so, a detailed explanation listing the nature, date and disposition of the incident and the name and address of the insurance company that made the settlement.

(14) Whether the bidder sustained a loss by fire in which arson was suspected within the past ten years; if so, a detailed explanation listing circumstances surrounding the fire and the name and address of the investigating agency should also be included.

(15) A list of any application to or any permit, license, certificate or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the bidder or any subsidiary, parent, intermediary, holding company, or related corporation of the bidder has been involved. The list should include the date of application; the name and address of the licensing agency; the type and number of the license; and the disposition (approval, rejection, or withdrawal) of any such application. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino, and pari-mutuel operations.

(16) Whether the bidder has ever petitioned for or declared bankruptcy or insolvency within the last seven years; if so, the filing date, docket number, and name and address of the court in which the petition or declaration was filed, and the name and address of the filing party and of the trustee should also be included.

(17) Copies of any audited financial statements and auditors' reports for the bidder and any subsidiaries for each entity's last fiscal year or, if the entity does not normally have its financial statements audited, copies of unaudited financial statements for the last two fiscal years.

(18) A list of all holding companies, business organizations, other business entities, or individuals that hold any financial interest of 5 percent or more in the bidder. This list shall describe the nature, type, terms, covenants, and priorities of any outstanding bonds, loans, mortgages, trust deeds, notes, debentures, or other forms of indebtedness issued or executed, which mature more than one year from the date of issuance.

(19) A list and copies of all notes and mortgages or other instruments of outstanding long-term debt of the bidder, with the name and address of the entity owed and the amount and purpose of each such mortgage or debt.

(20) A list of all dormant or shell company names used or owned by the bidder within the past ten years.

(21) A list of any financial or ownership interest in any gambling venture in any jurisdiction that the bidder and any parent or subsidiary owns or holds and a description of the nature and the percentage of each interest owned or held. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

(22) A list of all political contributions made by or on behalf of the bidder and any parent or subsidiary to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. The list should include the candidate's name, the office or position for which the candidate is or was running, and the amount and date of the contribution.

(23) A list of all Iowa lobbyists and political consultants utilized by the bidder and any parent or subsidiary of the bidder, the names of individuals employed by the bidder and any parent or subsidiary who act as liaisons with the lobbyists or political consultants, and descriptions of fee arrangements made with the lobbyists or political consultants. Also included should be a statement identifying any cash fund established with respect to an Iowa lobbyist or political consultant, any pledge of any items of monetary value to a lobbyist or political consultant as a reward for obtaining commission approval of a contract, and any cash transferred in any manner to an attorney's trust account for disbursement to an Iowa lobbyist or political consultant.

(24) An organizational chart of the bidder showing its relationship to existing parent, subsidiary, and affiliated companies.

(25) A list of all persons or business entities with which the bidder has contracts or agreements worth $1 million or more that exceed one year in duration.

(26) Authorization, in any form or forms approved by the division of criminal investigation and executed by a competent signatory of the bidder, for a review, full disclosure, and release of any and all records concerning the bidder, including but not limited to verification of filing and outstanding balance status of federal income tax returns.

2.16(3) *Bidder key personnel investigations.*

a. General provisions. The chief executive officer may require a full lottery Class L-1 department of public safety division of criminal investigation background investigation for any person identified as an officer, director, trustee, partner, sole proprietor, employee or other person by the lottery or the division of criminal investigation as a key person in a sensitive position or relationship with a bidder in a major procurement, as defined in rule 2.1(99G).

The lottery Class L-1 form shall be posted on the lottery's Web site, and is intended to serve as a vehicle for collection of background information and as an overview of the scope of the background investigations to be conducted.

The division of criminal investigation shall utilize the information provided in the lottery Class L-1 form as the basis for developing the initial scope of the key personnel investigation and due diligence to be conducted. Should the division of criminal investigation desire to pursue avenues of inquiry beyond the parameters of the information requested by and furnished in the lottery Class L-1 form, the division of criminal investigation shall consult with the chief executive officer, or the chief executive officer's designee, who shall determine the scope and extent of any further investigation to be pursued.

b. Class L-1 form requirements. The lottery Class L-1 form shall solicit the following information about key personnel selected to be investigated (hereinafter "subject"):

(1) The subject's name, business and residence addresses and telephone numbers, date and place of birth, social security number, height, weight, eye color, sex, and any past or present aliases used.

(2) The name and address of the subject's present employer, the subject's job title and a summary of duties, and the subject's supervisor.

(3) The subject's citizenship or alien residence status.

(4) A ten-year residential history of the subject, including addresses, dates, ownership or rental status, and landlord's or mortgage holder's name(s), address(es), and telephone number(s).

(5) The subject's marital status and, if applicable, the subject's spouse's full name, including maiden (if applicable), business and residence addresses and telephone numbers, date and place of birth, occupation, and the name and address of the spouse's present employer.

(6) Whether the subject has been divorced, legally separated, or had a marriage annulled and, if applicable, the name, birth date, and current address, if known, of the subject's spouse or former spouse, the date and place of any applicable judicial order, and the nature of the action.

(7) The full names, including maiden (if applicable), dates of birth, and addresses of all the subject's children, including stepchildren and adopted children.

(8) The full names, including maiden (if applicable), dates of birth, most recent occupations, or retired status (if appropriate), and addresses of all parents, parents-in-law, legal guardians, and siblings of the subject. If any such person is deceased, that person's date of death, last address, and last occupation should also be given.

(9) The subject's educational background, including the names, types, and locations of any schools attended, dates of attendance, and graduation status, certificates, or degrees obtained. For purposes of this paragraph, "schools" includes all secondary, postsecondary, graduate, and professional educational institutions.

(10) If applicable, information regarding the subject's military service, including dates of service, type of discharge, and details of any court-martial proceedings in which the subject was involved.

(11) A list of all political contributions made by or on behalf of the subject to any candidate for any office or position in any jurisdiction in the state of Iowa during the last two years. Such list should include the candidate's name, the office or position for which the candidate ran or is running, and the amount and date of the contribution.

(12) The state, license number, date of expiration, and name and address shown on the subject's current driver's license.

(13) A list of three personal references, including a name, address, and telephone number for each reference as well as a brief statement describing the relationship between the subject and each reference and how long the subject has been acquainted with each reference.

(14) A summary of the subject's employment record for the last ten years, including names, addresses, and telephone numbers of prior employers, dates of employment, and positions held.

(15) A list of personal litigation during the last ten years other than divorce, legal separation, or annulment proceedings to which the subject has been a party.

(16) A list of any litigation within the past ten years wherein a business entity owned by the subject, or in which the subject held an ownership interest or served as an officer or director, was a defendant and in which the defendant's conduct was allegedly criminal.

(17) A description of any known criminal investigations and dispositions thereof regarding the subject or any business entity in which the subject holds or has held an ownership interest of 5 percent or more. The description should include the name and address of the investigating agency, the nature of the investigation, and the approximate dates on which the investigation commenced and concluded.

(18) A list of any arrest, indictment, charge or conviction, or any naming as an unindicted party or coconspirator in a criminal offense involving the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. The list should include the name of the family member (if applicable); the nature of the charge, conviction or proceeding; the name and address of the governmental agency or court involved; and the disposition.

(19) A list of any pardon for any criminal offense in Iowa or any other jurisdiction pertaining to the subject or any of the following family members of the subject: children, including stepchildren and adopted children; parents; parents-in-law; legal guardians; or siblings. This list should include the name of the family member (if applicable), the offense, the reason for and date of the pardon, and the name and address of the pardoning authority.

(20) A list of any personal or business loss within the past ten years involving an insurance payment of more than $10,000.

(21) A list of and explanation regarding any personal or business property owned by the subject that was destroyed by fire or an explosion.

(22) A list of any application to and any permit, license, certificate, or qualification from a licensing agency in Iowa or any other state or other jurisdiction in connection with any gambling venture in which the subject is or has been involved. The list should include the date of application, the name and address of the licensing agency, the type and number of licenses, and the disposition (approval, rejection or withdrawal) of any such application, together with a description of any financial or ownership interest in any such gambling venture. For purposes of this paragraph, "gambling venture" means all types of racing and gaming activities, including but not limited to dog track, horse track, greyhound racing, horse racing, lottery, casino and pari-mutuel operations.

(23) A description of the extent of involvement, if any, the subject has or anticipates having in participation in the management or operation of the bidder.

(24) Information regarding the filing and status of state and federal income tax returns for the previous three years. Copies of said returns should also be included.

(25) A statement regarding any financial or ownership interest of 5 percent or more that the subject has or had in any active or dormant companies and any failed or abandoned business projects in which the subject was invested in 5 percent or more of the business project or was a significant planner, to the extent that such interest or interests are within the scope of a gambling venture or with an Iowa lottery vendor.

(26) Such sworn consents and authorizations as may be requested by the division of criminal investigation to gain access to records pertaining to the subject for use in investigating the information furnished by the subject in the lottery Class L-1 form and any derivation thereof, including without limitation the subject's federal and state tax records and any other records, public or private, including confidential and criminal history records.

2.16(4) *Alternative sources for business entity investigations.* In lieu of a division of criminal investigation lottery business entity investigation or any component thereof, the lottery chief executive officer, at the chief executive officer's discretion and in cooperation with the division of criminal investigation, may accept a report furnished by authorities in another state of a recent, comparable investigation conducted by said authorities communicated between law enforcement agencies, which may be updated with any information reflecting changes during the interim between the Iowa and the earlier investigations.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, 99G.22, and 99G.23.

531—2.17(99G) Vendor appeals. Any vendor whose bid or proposal has been timely filed and who is aggrieved by the award of the lottery may appeal the decision by filing a written notice of appeal before the Iowa Lottery Authority Board, 2015 Grand Avenue, Des Moines, Iowa 50312, within three days of the date of the award, exclusive of Saturdays, Sundays, and state legal holidays. The notice of appeal must actually be received at this address within the time frame specified to be considered timely. The notice of appeal shall state the grounds upon which the vendor challenges the lottery's award. Following receipt of a notice of appeal which has been timely filed, the board shall notify the aggrieved vendor and the vendor who received the contract award of the procedures to be followed in the appeal. The board may appoint a designee to proceed with the appeal on its behalf.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9, 99G.21, and 99G.23.

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CHAPTER 3
PROCEDURE FOR RULE MAKING

[Prior to 9/17/03, see 705—Ch 14]

531—3.1(17A) Applicability. Except to the extent otherwise expressly provided by statute, all rules adopted by the Iowa lottery authority are subject to the provisions of Iowa Code chapter 17A, the Iowa administrative procedure Act, and the provisions of this chapter.

531—3.2(17A) Advice on possible rules before notice of proposed rule adoption. In addition to seeking information by other methods, the lottery may, before publication of a Notice of Intended Action under Iowa Code section 17A.4(1)*"a,"* solicit comments from the public on a subject matter of possible rule making by the lottery by causing notice to be published in the Iowa Administrative Bulletin of the subject matter and indicating where, when, and how persons may comment.

531—3.3(17A) Public rule-making docket.

3.3(1) *Docket maintained.* The lottery shall maintain a current public rule-making docket.

3.3(2) *Anticipated rule making.* The rule-making docket shall list each anticipated rule-making proceeding. A rule-making proceeding is deemed "anticipated" from the time a draft of proposed rules is distributed for internal discussion within the lottery. For each anticipated rule-making proceeding the docket shall contain a listing of the precise subject matter which may be submitted for consideration by the board for subsequent proposal under the provisions of Iowa Code section 17A.4(1)*"a,"* the name and address of agency personnel with whom persons may communicate with respect to the matter, and an indication of the present status within the lottery of that possible rule. The lottery may also include in the docket other subjects upon which public comment is desired.

3.3(3) *Pending rule-making proceedings.* The rule-making docket shall list each pending rule-making proceeding. A rule-making proceeding is pending from the time it is commenced, by publication in the Iowa Administrative Bulletin of a Notice of Intended Action pursuant to Iowa Code section 17A.4(1)*"a,"* to the time it is terminated, by publication of a Notice of Termination in the Iowa Administrative Bulletin or the rule becoming effective. For each rule-making proceeding, the docket shall indicate:

a. The subject matter of the proposed rule;

b. A citation to all published notices relating to the proceeding;

c. Where written submissions on the proposed rule may be inspected;

d. The time during which written submissions may be made;

e. The names of persons who have made written requests for an opportunity to make oral presentations on the proposed rule, where those requests may be inspected, and where and when oral presentations may be made;

f. Whether a written request for the issuance of a regulatory analysis, or a concise statement of reasons, has been filed; whether such an analysis or statement or a fiscal impact statement has been issued; and where any such written request, analysis, or statement may be inspected;

g. The current status of the proposed rule and any agency determinations with respect thereto;

h. Any known timetable for agency decisions or other action in the proceeding;

i. The date of the rule's adoption;

j. The date of the rule's filing, indexing, and publication;

k. The date on which the rule will become effective; and

l. Where the rule-making record may be inspected.

531—3.4(17A) Notice of proposed rule making.

3.4(1) *Contents.* At least 35 days before the adoption of a rule the lottery shall cause Notice of Intended Action to be published in the Iowa Administrative Bulletin. The Notice of Intended Action shall include:

a. A brief explanation of the purpose of the proposed rule;

b. The specific legal authority for the proposed rule;

c. Except to the extent impracticable, the text of the proposed rule;

d. Where, when, and how persons may present their views on the proposed rule; and

e. Where, when, and how persons may demand an oral proceeding on the proposed rule if the notice does not already provide for one.

Where inclusion of the complete text of a proposed rule in the Notice of Intended Action is impracticable, the lottery shall include in the notice a statement fully describing the specific subject matter of the omitted portion of the text of the proposed rule, the specific issues to be addressed by that omitted text of the proposed rule, and the range of possible choices being considered by the lottery for the resolution of each of those issues.

3.4(2) *Incorporation by reference.* A proposed rule may incorporate other materials by reference only if it complies with all of the requirements applicable to the incorporation by reference of other materials in an adopted rule that are contained in subrule 3.12(2) of this chapter.

3.4(3) *Copies of notices.* Persons desiring to receive copies of future Notices of Intended Action by subscription must file with the lottery a written request indicating the name and address to which such notices should be sent. Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the lottery shall mail or electronically transmit a copy of that notice to subscribers who have filed a written request for either mailing or electronic transmittal with the lottery for Notices of Intended Action. The written request shall be accompanied by payment of the subscription price which may cover the full cost of the subscription service, including its administrative overhead and the cost of copying and mailing the Notices of Intended Action for a period of six months.

531—3.5(17A) Public participation.

3.5(1) *Written comments.* For at least 20 days after publication of the Notice of Intended Action, persons may submit argument, data, and views, in writing, on the proposed rule. Such written submissions should identify the proposed rule to which they relate and should be submitted to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999, or the person designated in the Notice of Intended Action.

3.5(2) *Oral proceedings.* The lottery may, at any time, schedule an oral proceeding on a proposed rule. The lottery shall schedule an oral proceeding on a proposed rule if, within 20 days after the published Notice of Intended Action, a written request for an opportunity to make oral presentations is submitted to the lottery by the administrative rules review committee, a governmental subdivision, an agency, an association having not less than 25 members, or at least 25 persons. That request must also contain the following additional information:

a. A request by one or more individual persons must be signed by each person and include the address and telephone number of each person.

b. A request by an association must be signed by an officer or designee of the association and must contain a statement that the association has at least 25 members and the address and telephone number of the person signing that request.

c. A request by an agency or governmental subdivision must be signed by an official having authority to act on behalf of the entity and must contain the address and telephone number of the person signing that request.

3.5(3) *Conduct of oral proceedings.*

a. Applicability. This subrule applies only to those oral rule-making proceedings in which an opportunity to make oral presentations is authorized or required by Iowa Code section 17A.4(1)*"b"* or this chapter.

b. Scheduling and notice. An oral proceeding on a proposed rule may be held in one or more locations and shall not be held earlier than 20 days after notice of its location and time is published in the Iowa Administrative Bulletin. That notice shall also identify the proposed rule by ARC number and citation to the Iowa Administrative Bulletin.

c. Presiding officer. The lottery authority board, a member of the lottery authority board, or another person designated by the lottery authority board who will be familiar with the substance of the proposed rule, shall preside at the oral proceeding on a proposed rule. If the lottery authority board does not preside, the presiding officer shall prepare a memorandum for consideration by the board summarizing the contents of the presentations made at the oral proceeding unless the board determines that such a memorandum is unnecessary because the board will personally listen to or read the entire transcript of the oral proceeding.

d. Conduct of proceeding. At an oral proceeding on a proposed rule, persons may make oral statements and make documentary and physical submissions, which may include data, views, comments or arguments concerning the proposed rule. Persons wishing to make oral presentations at such a proceeding are encouraged to notify the lottery at least one business day prior to the proceeding and indicate the general subject of their presentations. At the proceeding, those who participate shall indicate their names and addresses, identify any persons or organizations they may represent, and provide any other information relating to their participation deemed appropriate by the presiding officer. Oral proceedings shall be open to the public and shall be recorded by stenographic or electronic means.

(1) At the beginning of the oral proceeding, the presiding officer shall give a brief synopsis of the proposed rule, a statement of the statutory authority for the proposed rule, and the reasons for the lottery authority board's decision to propose the rule. The presiding officer may place time limitations on individual oral presentations when necessary to ensure the orderly and expeditious conduct of the oral proceeding. To encourage joint oral presentations and to avoid repetition, additional time may be provided for persons whose presentations represent the views of other individuals as well as their own views.

(2) Persons making oral presentations are encouraged to avoid restating matters which have already been submitted in writing.

(3) To facilitate the exchange of information, the presiding officer may, where time permits, open the floor to questions or general discussion.

(4) The presiding officer shall have the authority to take any reasonable action necessary for the orderly conduct of the meeting.

(5) Physical and documentary submissions presented by participants in the oral proceeding shall be submitted to the presiding officer. Such submissions become the property of the lottery.

(6) The oral proceeding may be continued by the presiding officer to a later time without notice other than by announcement at the hearing.

(7) Participants in an oral proceeding shall not be required to take an oath or to submit to cross-examination. However, the presiding officer in an oral proceeding may question participants and permit the questioning of participants by other participants about any matter relating to that rule-making proceeding, including any prior written submissions made by those participants in that proceeding; but no participant shall be required to answer any question.

(8) The presiding officer in an oral proceeding may permit rebuttal statements and request the filing of written statements subsequent to the adjournment of the oral presentations.

3.5(4) *Additional information.* In addition to receiving written comments and oral presentations on a proposed rule according to the provisions of this rule, the lottery may obtain information concerning a proposed rule through any other lawful means deemed appropriate under the circumstances.

3.5(5) *Accessibility.* The lottery shall schedule oral proceedings in rooms accessible to and functional for persons with physical disabilities. Persons who have special requirements should contact the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999, telephone (515)281-7900 in advance to arrange access or other needed services.

531—3.6(17A) Regulatory analysis.

3.6(1) *Definition of small business.* A "small business" is defined in Iowa Code section 17A.4A(7).

3.6(2) *Mailing list.* Small businesses or organizations of small businesses may be registered on the lottery's small business impact list by making a written application addressed to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The application for registration shall state:

a. The name of the small business or organization of small businesses;

b. Its address;

c. The name of a person authorized to transact business for the applicant;

d. A description of the applicant's business or organization. An organization representing 25 or more persons who qualify as a small business shall indicate that fact.

e. Whether the registrant desires copies of Notices of Intended Action at cost, or desires advance notice of the subject of all or some specific category of proposed rule making affecting small business.

The lottery may at any time request additional information from the applicant to determine whether the applicant is qualified as a small business or as an organization of 25 or more small businesses. The lottery may periodically send a letter to each registered small business or organization of small businesses asking whether that business or organization wishes to remain on the registration list. The name of a small business or organization of small businesses will be removed from the list if a negative response is received, or if no response is received within 30 days after the letter is sent.

3.6(3) *Time of mailing.* Within seven days after submission of a Notice of Intended Action to the administrative rules coordinator for publication in the Iowa Administrative Bulletin, the lottery shall mail to all registered small businesses or organizations of small businesses, in accordance with their request, either a copy of the Notice of Intended Action or notice of the subject of that proposed rule making. In the case of a rule that may have an impact on small business adopted in reliance upon Iowa Code section 17A.4(2), the lottery shall mail notice of the adopted rule to registered businesses or organizations prior to the time the adopted rule is published in the Iowa Administrative Bulletin.

3.6(4) *Qualified requesters for regulatory analysis—economic impact.* The lottery shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2a), after a proper request from:

a. The administrative rules coordinator;

b. The administrative rules review committee.

3.6(5) *Qualified requesters for regulatory analysis—business impact.* The lottery shall issue a regulatory analysis of a proposed rule that conforms to the requirements of Iowa Code section 17A.4A(2b), after a proper request from:

a. The administrative rules review committee;

b. The administrative rules coordinator;

c. At least 25 or more persons who sign the request provided that each represents a different small business;

d. An organization representing at least 25 small businesses. That organization shall list the name, address and telephone number of not less than 25 small businesses it represents.

3.6(6) *Time period for analysis.* Upon receipt of a timely request for a regulatory analysis the lottery shall adhere to the time lines described in Iowa Code section 17A.4A(4).

3.6(7) *Contents of request.* A request for a regulatory analysis is made when it is mailed or delivered to the lottery. The request shall be in writing and satisfy the requirements of Iowa Code section 17A.4A(1).

3.6(8) *Contents of concise summary.* The contents of the concise summary shall conform to the requirements of Iowa Code section 17A.4A(4,5).

3.6(9) *Publication of a concise summary.* The lottery shall make available, to the maximum extent feasible, copies of the published summary in conformance with Iowa Code section 17A.4A(5).

3.6(10) *Regulatory analysis contents—rules review committee or rules coordinator.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, or the administrative rules coordinator, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2a), unless a written request expressly waives one or more of the items listed in the section.

3.6(11) *Regulatory analysis contents—substantial impact on small business.* When a regulatory analysis is issued in response to a written request from the administrative rules review committee, the administrative rules coordinator, at least 25 persons signing that request who each qualify as a small business or by an organization representing at least 25 small businesses, the regulatory analysis shall conform to the requirements of Iowa Code section 17A.4A(2b).

531—3.7(17A,25B) Fiscal impact statement.

3.7(1) A proposed rule that mandates additional combined expenditures exceeding $100,000 by all affected political subdivisions or agencies and entities which contract with political subdivisions to provide services must be accompanied by a fiscal impact statement outlining the costs associated with the rule. A fiscal impact statement must satisfy the requirements of Iowa Code section 25B.6.

3.7(2) If the lottery determines at the time it adopts a rule that the fiscal impact statement upon which the rule is based contains errors, the lottery shall, at the same time, issue a corrected fiscal impact statement and publish the corrected fiscal impact statement in the Iowa Administrative Bulletin.

531—3.8(17A) Time and manner of rule adoption.

3.8(1) *Time of adoption.* The lottery shall not adopt a rule until the period for making written submissions and oral presentations has expired. Within 180 days after the later of the publication of the Notice of Intended Action, or the end of oral proceedings thereon, the lottery shall adopt a rule pursuant to the rule-making proceeding or terminate the proceeding by publication of a notice to that effect in the Iowa Administrative Bulletin.

3.8(2) *Consideration of public comment.* Before the adoption of a rule, the lottery shall consider fully all of the written submissions and oral submissions received in that rule-making proceeding or any memorandum summarizing such oral submissions, and any regulatory analysis or fiscal impact statement issued in that rule-making proceeding.

3.8(3) *Reliance on agency expertise.* Except as otherwise provided by law, the lottery may use its own experience, technical competence, specialized knowledge, and judgment in the adoption of a rule.

531—3.9(17A) Variance between adopted rule and published notice of proposed rule adoption.

3.9(1) The lottery shall not adopt a rule that differs from the rule proposed in the Notice of Intended Action on which the rule is based unless:

a. The differences are within the scope of the subject matter announced in the Notice of Intended Action and are in character with the issues raised in that notice; and

b. The differences are a logical outgrowth of the contents of that Notice of Intended Action and the comments submitted in response thereto; and

c. The Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question.

3.9(2) In determining whether the Notice of Intended Action provided fair warning that the outcome of that rule-making proceeding could be the rule in question, the lottery shall consider the following factors:

a. The extent to which persons who will be affected by the rule should have understood that the rule-making proceeding on which it is based could affect their interests;

b. The extent to which the subject matter of the rule or the issues determined by the rule are different from the subject matter or issues contained in the Notice of Intended Action; and

c. The extent to which the effects of the rule differ from the effects of the proposed rule contained in the Notice of Intended Action.

3.9(3) The lottery shall commence a rule-making proceeding within 60 days of its receipt of a petition for rule making seeking the amendment or repeal of a rule that differs from the proposed rule contained in the Notice of Intended Action upon which the rule is based, unless the lottery finds that the differences between the adopted rule and the proposed rule are so insubstantial as to make such a rule-making proceeding wholly unnecessary. A copy of any such finding and the petition to which it responds shall be sent to petitioner, the administrative rules coordinator, and the administrative rules review committee, within three days of its issuance.

3.9(4) Concurrent rule-making proceedings. Nothing in this rule disturbs the discretion of the lottery to initiate, concurrently, several different rule-making proceedings on the same subject with several different published Notices of Intended Action.

531—3.10(17A) Exemptions from public rule-making procedures.

3.10(1) *Omission of notice and comment.* To the extent the lottery for good cause finds that public notice and participation are unnecessary, impracticable, or contrary to the public interest in the process of adopting a particular rule, the lottery may adopt that rule without publishing advance Notice of Intended Action in the Iowa Administrative Bulletin and without providing for written or oral public submissions prior to its adoption. The lottery shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.10(2) *Categories exempt.* The following narrowly tailored categories of rules are exempted from the usual public notice and participation requirements because those requirements are unnecessary, impracticable, or contrary to the public interest with respect to each and every member of the defined class:

a. Rules relating to lottery games.

b. Reserved.

3.10(3) *Public proceedings on rules adopted without them.* The lottery may, at any time, commence a standard rule-making proceeding for the adoption of a rule that is identical or similar to a rule it adopts in reliance upon subrule 3.10(1). Upon written petition by a governmental subdivision, the administrative rules review committee, an agency, the administrative rules coordinator, an association having not less than 25 members, or at least 25 persons, the lottery shall commence a standard rule-making proceeding for any rule specified in the petition that was adopted in reliance upon subrule 3.10(1). Such a petition must be filed within one year of the publication of the specified rule in the Iowa Administrative Bulletin as an adopted rule. The rule-making proceeding on that rule must be commenced within 60 days of the receipt of such a petition. After a standard rule-making proceeding commenced pursuant to this subrule, the lottery may either readopt the rule it adopted without benefit of all usual procedures on the basis of subrule 3.10(1), or may take any other lawful action, including the amendment or repeal of the rule in question, with whatever further proceedings are appropriate.

531—3.11(17A) Concise statement of reasons.

3.11(1) *General.* When requested by a person, either prior to the adoption of a rule or within 30 days after its publication in the Iowa Administrative Bulletin as an adopted rule, the lottery shall issue a concise statement of reasons for the rule. Requests for such a statement must be in writing and be delivered to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. The request should indicate whether the statement is sought for all or only a specified part of the rule. Requests will be considered made on the date received.

3.11(2) *Contents.* The concise statement of reasons shall contain:

a. The reasons for adopting the rule;

b. An indication of any change between the text of the proposed rule contained in the published Notice of Intended Action and the text of the rule as finally adopted, with the reasons for any such change;

c. The principal reasons urged in the rule-making proceeding for and against the rule, and the lottery's reasons for overruling the arguments made against the rule.

3.11(3) *Time of issuance.* After a proper request, the lottery shall issue a concise statement of reasons by the later of the time the rule is adopted or 35 days after receipt of the request.

531—3.12(17A) Contents, style, and form of rule.

3.12(1) *Contents.* Each rule adopted by the lottery shall contain the text of the rule and, in addition:

a. The date the lottery adopted the rule;

b. A brief explanation of the principal reasons for the rule-making action if such reasons are required by Iowa Code section 17A.4(1b) or the lottery in its discretion decides to include such reasons;

c. A reference to all rules repealed, amended, or suspended by the rule;

d. A reference to the specific statutory or other authority authorizing adoption of the rule;

e. Any findings required by any provision of law as a prerequisite to adoption or effectiveness of the rule;

f. A brief explanation of the principal reasons for the failure to provide for waivers to the rule if no waiver provision is included and a brief explanation of any waiver or special exceptions provided in the rule if such reasons are required by Iowa Code section 17A.4(1b), or the lottery in its discretion decides to include such reasons; and

g. The effective date of the rule.

3.12(2) *Incorporation by reference.* The lottery may incorporate by reference in a proposed or adopted rule, and without causing publication of the incorporated matter in full, all or any part of a code, standard, rule, or other matter if the lottery authority board finds that the incorporation of its text in the lottery's proposed or adopted rule would be unduly cumbersome, expensive, or otherwise inexpedient. The reference in the lottery's proposed or adopted rule shall fully and precisely identify the incorporated matter by location, title, citation, date, and edition, if any; shall briefly indicate the precise subject and the general contents of the incorporated matter; and shall state that the proposed or adopted rule does not include any later amendments or editions of the incorporated matter. The lottery may incorporate such matter by reference in a proposed or adopted rule only if the lottery makes copies of it readily available to the public. The rule shall state how and where copies of the incorporated matter may be obtained at cost from the lottery, and how and where copies may be obtained from an agency of the United States, this state, another state, or the organization, association, or persons originally issuing that matter. The lottery shall retain permanently a copy of any materials incorporated by reference in a rule of the lottery.

If the lottery adopts standards by reference to another publication, it shall provide a copy of the publication containing the standards to the administrative rules coordinator for deposit in the state law library and may make the standards available electronically.

3.12(3) *References to materials not published in full.* When the administrative code editor decides to omit the full text of a proposed or adopted rule because publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient, the lottery shall prepare and submit to the administrative code editor for inclusion in the Iowa Administrative Bulletin and Iowa Administrative Code a summary statement describing the specific subject matter of the omitted material. This summary statement shall include the title and a brief description sufficient to inform the public of the specific nature and subject matter of the proposed or adopted rules, and of significant issues involved in these rules. The summary statement shall also describe how a copy of the full text of the proposed or adopted rule, including any unpublished matter and any matter incorporated by reference, may be obtained from the lottery. The lottery will provide a copy of that full text (at actual cost) upon request and shall make copies of the full text available for review at the state law library and may make the standards available electronically.

At the request of the administrative code editor, the lottery shall provide a proposed statement explaining why publication of the full text would be unduly cumbersome, expensive, or otherwise inexpedient.

3.12(4) *Style and form.* In preparing its rules, the lottery shall follow the uniform numbering system, form, and style prescribed by the administrative rules coordinator.

531—3.13(17A) Agency rule-making record.

3.13(1) *Requirement.* The lottery shall maintain an official rule-making record for each rule it proposes by publication in the Iowa Administrative Bulletin of a Notice of Intended Action, or adopts. The rule-making record and materials incorporated by reference must be available for public inspection.

3.13(2) *Contents.* The lottery rule-making record shall contain:

a. Copies of all publications in the Iowa Administrative Bulletin with respect to the rule or the proceeding upon which the rule is based and any file-stamped copies of agency submissions to the administrative rules coordinator concerning that rule or the proceeding upon which it is based;

b. Copies of any portions of the lottery's public rule-making docket containing entries relating to the rule or the proceeding upon which the rule is based;

c. All written petitions, requests, and submissions received by the lottery, and all other written materials of a factual nature as distinguished from opinion that are relevant to the merits of the rule and that were created or compiled by the lottery and considered by the chief executive officer of the lottery, in connection with the formulation, proposal, or adoption of the rule or the proceeding upon which the rule is based, except to the extent the lottery is authorized by law to keep them confidential; provided, however, that when any such materials are deleted because they are authorized by law to be kept confidential, the lottery shall identify in the record the particular materials deleted and state the reasons for that deletion;

d. Any official transcript of oral presentations made in the proceeding upon which the rule is based or, if not transcribed, the stenographic record or electronic recording of those presentations, and any memorandum prepared by a presiding officer summarizing the contents of those presentations;

e. A copy of any regulatory analysis or fiscal impact statement prepared for the proceeding upon which the rule is based;

f. A copy of the rule and any concise statement of reasons prepared for that rule;

g. All petitions for amendments or repeal or suspension of the rule;

h. A copy of any objection to the issuance of that rule without public notice and participation that was filed pursuant to Iowa Code section 17A.4(2) by the administrative rules review committee, the governor, or the attorney general;

i. A copy of any objection to the rule filed by the administrative rules review committee, the governor, or the attorney general pursuant to Iowa Code section 17A.4(4), and any agency response to that objection;

j. A copy of any significant written criticism of the rule, including a summary of any petitions for waiver of the rule; and

k. A copy of any executive order concerning the rule.

3.13(3) *Effect of record.* Except as otherwise required by a provision of law, the lottery rule-making record required by this rule need not constitute the exclusive basis for agency action on that rule.

3.13(4) *Maintenance of record.*

a. The lottery shall maintain the rule-making record for a period of not less than five years from the later of the date the rule to which it pertains became effective or the date of the Notice of Intended Action.

b. The lottery will maintain a separate file of any written criticism received regarding any of its rules for a period of not less than five years from the date the first written criticism for a rule was received as described in 3.13(2)*"g," "h," "i,"* or *"j."*

531—3.14(17A) Filing of rules. The lottery shall file each rule it adopts in the office of the administrative rules coordinator. The filing must be executed as soon after adoption of the rule as is practicable. At the time of filing, each rule must have attached to it any fiscal impact statement and any concise statement of reasons that was issued with respect to that rule. If a fiscal impact statement or statement of reasons for that rule was not issued until a time subsequent to the filing of that rule, the note or statement must be attached to the filed rule within five working days after the note or statement is issued. In filing a rule, the lottery shall use the standard form prescribed by the administrative rules coordinator.

531—3.15(17A) Effectiveness of rules prior to publication.

3.15(1) *Grounds.* The lottery may make a rule effective after its filing at any stated time prior to 35 days after its indexing and publication in the Iowa Administrative Bulletin if it finds that a statute so provides, the rule confers a benefit or removes a restriction on some segment of the public, or that the effective date of the rule is necessary to avoid imminent peril to the public health, safety, or welfare. The lottery shall incorporate the required finding and a brief statement of its supporting reasons in each rule adopted in reliance upon this subrule.

3.15(2) *Special notice.* When the lottery makes a rule effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3), the lottery shall employ all reasonable efforts to make its contents known to the persons who may be affected by that rule prior to the rule's indexing and publication. The term "all reasonable efforts" requires the lottery to employ the most effective and prompt means of notice rationally calculated to inform potentially affected parties of the effectiveness of the rule that is justified and practical under the circumstances considering the various alternatives available for this purpose, the comparative costs to the lottery of utilizing each of those alternatives, and the harm suffered by affected persons from any lack of notice concerning the contents of the rule prior to its indexing and publication. The means that may be used for providing notice of such rules prior to their indexing and publication include, but are not limited to, any one or more of the following means: radio, newspaper, television, signs, mail, telephone, personal notice or electronic means.

A rule made effective prior to its indexing and publication in reliance upon the provisions of Iowa Code section 17A.5(2)*"b"*(3) shall include in that rule a statement describing the reasonable efforts that will be used to comply with the requirements of subrule 3.15(2).

531—3.16(17A) General statements of policy.

3.16(1) *Compilation, indexing, public inspection.* The lottery shall maintain an official, current, and dated compilation that is indexed by subject, containing all of its general statements of policy within the scope of Iowa Code section 17A.2(10)*"a," "c," "f," "g," "h,"* and *"k."* Each addition to, change in, or deletion from the official compilation must also be dated, indexed, and a record thereof kept. Except for those portions containing rules governed by Iowa Code section 17A.2(7)*"f,"* or otherwise authorized by law to be kept confidential, the compilation must be made available for public inspection and copying.

3.16(2) *Enforcement of requirements.* A general statement of policy subject to the requirements of this rule shall not be relied on by the lottery to the detriment of any person who does not have actual, timely knowledge of the contents of the statement until the requirements of subrule 3.16(1) are satisfied. This provision is inapplicable to the extent necessary to avoid imminent peril to the public health, safety, or welfare.

531—3.17(17A) Review by agency of rules.

3.17(1) Any interested person, association, agency, or political subdivision may submit a written request to the administrative rules coordinator requesting the lottery to conduct a formal review of a specified rule. Upon approval of that request by the administrative rules coordinator, the lottery shall conduct a formal review of a specified rule to determine whether a new rule should be adopted instead or the rule should be amended or repealed. The lottery may refuse to conduct a review if it has conducted such a review of the specified rule within five years prior to the filing of the written request.

3.17(2) In conducting the formal review, the lottery shall prepare within a reasonable time a written report summarizing its findings, its supporting reasons, and any proposed course of action. The report must include a concise statement of the lottery's findings regarding the rule's effectiveness in achieving its objectives, including a summary of any available supporting data. The report shall also concisely describe significant written criticisms of the rule received during the previous five years, including a summary of any petitions for waiver of the rule received by the lottery or granted by the lottery. The report shall describe alternative solutions to resolve the criticisms of the rule, the reasons any were rejected, and any changes made in the rule in response to the criticisms as well as the reasons for the changes. A copy of the lottery's report shall be sent to the administrative rules review committee and the administrative rules coordinator. The report must also be available for public inspection.

These rules are intended to implement Iowa Code chapter 17A.

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CHAPTER 4
WAIVER AND VARIANCE RULES

[Prior to 9/17/03, see 705—Ch 5]

531—4.1(99G) Waiver or variance of rules. These rules outline a uniform process for the granting of waivers or variances from rules adopted by the Iowa lottery authority.

531—4.2(99G) Definition. For purposes of this chapter, "a waiver or variance" means action by the lottery authority board that suspends in whole or in part the requirements or provisions of a rule as applied to an identified person on the basis of the particular circumstances of that person. For simplicity, the term "waiver" shall include both a "waiver" and a "variance."

531—4.3(99G) Scope of chapter. This chapter outlines generally applicable standards and a uniform process for the granting of individual waivers from rules adopted by the lottery authority board in situations where no other more specifically applicable law provides for waivers. To the extent another more specific provision of law governs the issuance of a waiver from a particular rule, the more specific provision shall supersede this chapter with respect to any waiver from that rule.

531—4.4(99G) Applicability of chapter. The lottery authority board may grant a waiver from a rule only if the board has jurisdiction over the rule and the requested waiver is consistent with applicable statutes, constitutional provisions, or other provisions of law. The board may not waive requirements created or imposed by statute.

531—4.5(99G) Criteria for waiver or variance. In response to a petition completed pursuant to rule 531—5.6(17A), the board may in its sole discretion issue an order waiving in whole or in part the requirements of a rule if the board finds, based on clear and convincing evidence, all of the following:

1. The application of the rule would impose an undue hardship on the person for whom the waiver is requested;
2. The waiver from the requirements of the rule in the specific case would not prejudice the substantial legal rights of any person;
3. The provisions of the rule subject to the petition for a waiver are not specifically mandated by statute or another provision of law; and
4. Substantially equivalent protection of public health, safety and welfare will be afforded by a means other than that prescribed in the particular rule for which the waiver is requested.

531—4.6(99G) Filing of petition. A petition for a waiver must be submitted in writing to the board, as follows:

4.6(1) *License application.* If the petition relates to a license application, the petition shall be made in accordance with the filing requirements for the license in question.

4.6(2) *Contested cases.* If the petition relates to a pending contested case, the petition shall be filed in the contested case proceeding, using the caption of the contested case.

4.6(3) *Other.* If the petition does not relate to a license application or a pending contested case, the petition may be submitted to the board's executive secretary.

531—4.7(99G) Content of petition. A petition for waiver shall include the following information where applicable and known to the requester:

1. The name, address, and telephone number of the person or entity for which a waiver is being requested and the case number of any related contested case;
2. A description and citation of the specific rule from which a waiver is requested;
3. The specific waiver requested, including the precise scope and duration;
4. The relevant facts that the petitioner believes would justify a waiver under each of the four criteria described in rule 531—4.5(99G). This statement shall include a signed statement from the petitioner attesting to the accuracy of the facts provided in the petition and a statement of reasons that the petitioner believes will justify a waiver;
5. A history of any prior contacts between the board and the petitioner relating to the activity or license affected by the proposed waiver, including a description of each affected license held by the requester, any notices of violation, contested case hearings, or investigative reports relating to the activity or license within the last five years;
6. Any information known to the requester regarding the board's treatment of similar cases;
7. The name, address, and telephone number of any public agency or political subdivision which also regulates the activity in question, or which might be affected by the granting of a waiver;
8. The name, address, and telephone number of any person or entity that would be adversely affected by the granting of a petition;
9. The name, address, and telephone number of any person with knowledge of the relevant facts relating to the proposed waiver;
10. Signed releases of information authorizing persons with knowledge regarding the petition to furnish the board with information relevant to the waiver.

531—4.8(99G) Additional information. Prior to issuing an order granting or denying a waiver, the board may request additional information from the petitioner relative to the petition and surrounding circumstances. If the petition was not filed in a contested case, the board may, on its own motion or at the petitioner's request, schedule a telephonic or in-person meeting between the petitioner and a quorum of the board.

531—4.9(99G) Notice. The board shall acknowledge a petition upon receipt. The board shall ensure that notice of the pendency of the petition and a concise summary of its contents have been provided to all persons to whom notice is required by any provision of law within 30 days of the receipt of the petition. In addition, the board may give notice to other persons. To accomplish this notice provision, the board may require the petitioner to serve notice on all persons to whom notice is required by any provision of law and provide a written statement to the board attesting that notice has been provided.

531—4.10(99G) Hearing procedures. The provisions of Iowa Code sections 17A.10 to 17A.18A regarding contested case hearings shall apply to any petition for a waiver filed within a contested case and shall otherwise apply to agency proceedings for a waiver only when the board so provides by rule or order or is required to do so by statute.

531—4.11(99G) Ruling. An order granting or denying a waiver shall be in writing and shall contain a reference to the particular person and rule or portion thereof to which the order pertains, a statement of the relevant facts and reasons upon which the action is based, and a description of the precise scope and duration of the waiver if one is issued.

4.11(1) *Board discretion.* The final decision on whether the circumstances justify the granting of a waiver shall be made at the sole discretion of the board, upon consideration of all relevant factors. The board shall evaluate each fact based on the unique, individual circumstances set out in the petition for waiver.

4.11(2) *Burden of persuasion.* The burden of persuasion rests with the petitioner to demonstrate by clear and convincing evidence that the board should exercise its discretion to grant a waiver from a board rule.

4.11(3) *Narrowly tailored exception.* A waiver, if granted, shall provide the narrowest exception possible to the provisions of a rule.

4.11(4) *Administrative deadlines.* When the rule from which a waiver is sought establishes administrative deadlines, the board shall balance the special individual circumstances of the petitioner with the overall goal of uniform treatment of all similarly situated persons.

4.11(5) *Conditions.* The board may place any condition on a waiver that the board finds desirable to protect the public health, safety, and welfare.

4.11(6) *Time period of waiver.* A waiver shall not be permanent unless the petitioner can show that a temporary waiver would be impracticable. If a temporary waiver is granted, there is no automatic right to renewal. At the sole discretion of the board, a waiver may be renewed if the board finds that grounds for a waiver continue to exist.

4.11(7) *Time for ruling.* The board shall grant or deny a petition for a waiver as soon as practicable but, in any event, shall do so within 120 days of its receipt, unless the petitioner agrees to a later date. However, if a petition is filed in a contested case, the board shall grant or deny the petition no later than the time at which the final decision in that contested case is issued.

4.11(8) *When deemed denied.* Failure of the board to grant or deny a petition within the required time period shall be deemed a denial of that petition by the board. However, the board shall remain responsible for issuing an order denying a waiver.

4.11(9) *Service of order.* Within seven days of its issuance, any order issued under this chapter shall be transmitted to the petitioner or the person to whom the order pertains and to any other person entitled to such notice by any provision of law.

531—4.12(99G) Public availability. All orders granting or denying a waiver petition shall be indexed, filed, and available for public inspection as provided in Iowa Code section 17A.3. Petitions for a waiver and orders granting or denying waiver petitions are public records under Iowa Code chapter 22. Some petitions or orders may contain information the board is authorized or required to keep confidential. The board may accordingly redact confidential information from petitions or orders prior to public inspection.

531—4.13(99G) Summary reports. Semiannually, the board shall prepare a summary report identifying the rules for which a waiver has been granted or denied, the number of times a waiver was granted or denied for each rule, a citation to the statutory provisions implemented by the rules, and a general summary of the reasons justifying the board's actions on waiver requests. If practicable, the report shall detail the extent to which the granting of a waiver has affected the general applicability of the rule itself. Copies of this report shall be available for public inspection and shall be provided semiannually to the administrative rules coordinator and the administrative rules review committee.

531—4.14(99G) Cancellation of a waiver. A waiver issued by the board pursuant to this chapter may be withdrawn, canceled, or modified if, after appropriate notice and hearing, the board issues an order finding any of the following:

1. The person who was the subject of the waiver order withheld or misrepresented material facts relevant to the propriety or desirability of the waiver; or
2. The substantially equivalent means for ensuring that the public health, safety and welfare will be adequately protected after issuance of the waiver order have been demonstrated to be insufficient; or
3. The subject of the waiver order has failed to comply with all conditions contained in the order.

531—4.15(99G) Violations. Violation of a condition in a waiver order shall be treated as a violation of the particular rule for which the waiver was granted. As a result, the recipient of a waiver under this chapter who violates a condition of the waiver may be subject to the same remedies or penalties as a person who violates the rule at issue.

531—4.16(99G) Defense. After the board issues an order granting a waiver, the order is a defense within its terms and the specific facts indicated therein for the person to whom the order pertains in any proceeding in which the rule in question is sought to be invoked.

531—4.17(99G) Judicial review. Judicial review of the board's decision to grant or deny a waiver petition may be taken in accordance with Iowa Code chapter 17A.

These rules are intended to implement Iowa Code chapter 17A, Iowa Code Supplement chapter 99G, and Executive Order Number 11.

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CHAPTER 5
CONTESTED CASES

[Prior to 8/31/94, see 705—Ch 7]
[Prior to 9/17/03, see 705—Ch 6]

531—5.1(17A) Scope and applicability. This chapter applies to contested case proceedings related to lottery licensees and lottery licenses.

531—5.2(17A) Definitions. Except where otherwise specifically defined by law:

"Contested case" means a proceeding defined by Iowa Code subsection 17A.2(5) and includes any matter defined as a no factual dispute contested case under Iowa Code section 17A.10A.

"Hearing board" means the board designated to resolve license disputes pursuant to Iowa Code Supplement section 99G.27(3) and these rules.

"Issuance" means the date of mailing of a decision or order or date of delivery if service is by other means unless another date is specified in the order.

"Party" means each person or agency named or admitted as a party or properly seeking and entitled as of right to be admitted as a party.

"Presiding officer" means the administrative law judge.

"Proposed decision" means the presiding officer's recommended findings of fact, conclusions of law, decision, and order in a contested case in which the hearing board did not preside.

531—5.3(17A) Hearing board. A three-member hearing board for the purpose of conducting hearings relating to controversies concerning the issuance, suspension, or revocation of licenses is created. One member shall be a designee of the lottery authority board, one member shall be the lottery's chief financial officer or the chief financial officer's designee, and one member shall be the lottery vice-president of external relations or the vice-president of external relations' designee.

531—5.4(17A) Time requirements.

5.4(1) Time shall be computed as provided in Iowa Code subsection 4.1(34).

5.4(2) For good cause, the presiding officer may extend or shorten the time to take any action, except as precluded by statute or by rule. Except for good cause stated in the record, before extending or shortening the time to take any action, the presiding officer shall afford all parties an opportunity to be heard or to file written arguments.

531—5.5(17A) Requests for contested case proceeding. Any person claiming an entitlement to a contested case proceeding shall file a written request for such a proceeding within the time specified by the particular rules or statutes governing the subject matter or, in the absence of such law, the time specified in the agency action in question.

The request for a contested case proceeding should state the name and address of the requester, identify the specific agency action which is disputed, and where the requester is represented by a lawyer identify the provisions of law or precedent requiring or authorizing the holding of a contested case proceeding in the particular circumstances involved, and include a short and plain statement of the issues of material fact in dispute.

531—5.6(17A) Notice of hearing.

5.6(1) *Delivery.* Delivery of the notice of hearing constitutes the commencement of the contested case proceeding. Delivery may be executed by:

a. Personal service as provided in the Iowa Rules of Civil Procedure; or

b. Certified mail, return receipt requested; or

c. First-class mail; or

d. Publication, as provided in the Iowa Rules of Civil Procedure.

5.6(2) *Contents.* The notice of hearing shall contain the following information:

a. A statement of the time, place, and nature of the hearing;

b. A statement of the legal authority and jurisdiction under which the hearing is to be held;

c. A reference to the particular sections of the statutes and rules involved;

d. A short and plain statement of the matters asserted. If the lottery or other party is unable to state the matters in detail at the time the notice is served, the initial notice may be limited to a statement of the issues involved. Thereafter, upon application, a more definite and detailed statement shall be furnished;

e. Identification of all parties including the name, address and telephone number of the person who will act as advocate for the lottery or the state and of parties' counsel where known;

f. Reference to the procedural rules governing conduct of the contested case proceeding;

g. Reference to the procedural rules governing informal settlement;

h. Identification of the presiding officer, if known. If not known, a description of who will serve as presiding officer (e.g., the hearing board, the chief executive officer of the lottery, members of the lottery authority board, administrative law judge from the department of inspections and appeals); and

i. Notification of the time period in which a party may request, pursuant to Iowa Code section 17A.11(1) and rule 5.6(17A), that the presiding officer be an administrative law judge.

531—5.7(17A) Presiding officer.

5.7(1) Any party who wishes to request that the presiding officer assigned to render a proposed decision be an administrative law judge employed by the department of inspections and appeals must file a written request within 20 days after service of a notice of hearing that identifies or describes the presiding officer as the agency head or members of the agency.

5.7(2) The chief executive officer of the lottery may deny the request only upon a finding that one or more of the following apply:

a. Neither the agency nor any officer of the agency under whose authority the contested case is to take place is a named party to the proceeding or a real party in interest to that proceeding.

b. There is a compelling need to expedite issuance of a final decision in order to protect the public health, safety, or welfare.

c. The case involves significant policy issues of first impression that are inextricably intertwined with the factual issues presented.

d. The demeanor of the witnesses is likely to be dispositive in resolving the disputed factual issues.

e. Funds are unavailable to pay the costs of an administrative law judge and an interagency appeal.

f. The request was not timely filed.

g. The request is not consistent with a specified statute.

h. The contested case involves a license dispute which must be decided by the hearing board pursuant to Iowa Code Supplement section 99G.27 and these rules.

5.7(3) The chief executive officer of the lottery shall issue a written ruling specifying the grounds for its decision within 20 days after a request for an administrative law judge is filed. If the ruling is contingent upon the availability of an administrative law judge, the parties shall be notified at least 10 days prior to hearing if a qualified administrative law judge will not be available.

5.7(4) Except as provided otherwise by another provision of law, all rulings by an administrative law judge acting as presiding officer are subject to appeal to the lottery. A party must seek any available appeal with the lottery in order to exhaust adequate administrative remedies.

5.7(5) Unless otherwise provided by law, the chief executive officer or a designee, and members of the lottery authority board, when reviewing a proposed decision upon appeal to the lottery, shall have the powers of and shall comply with the provisions of this chapter which apply to presiding officers.

531—5.8(17A) Telephone proceedings. The presiding officer may resolve preliminary procedural motions by telephone conference in which all parties have an opportunity to participate. Other telephone proceedings may be held with the consent of all parties. The presiding officer will determine the location of the parties and witnesses for telephone hearings. The convenience of the witnesses or parties, as well as the nature of the case, will be considered when location is chosen.

531—5.9(17A) Disqualification.

5.9(1) A presiding officer or other person shall withdraw from participation in the making of any proposed or final decision in a contested case if that person:

a. Has a personal bias or prejudice concerning a party or a representative of a party;

b. Has personally investigated, prosecuted or advocated in connection with that case, the specific controversy underlying that case, another pending factually related contested case, or a pending factually related controversy that may culminate in a contested case involving the same parties;

c. Is subject to the authority, direction or discretion of any person who has personally investigated, prosecuted or advocated in connection with that contested case, the specific controversy underlying that contested case, or a pending factually related contested case or controversy involving the same parties;

d. Has acted as counsel to any person who is a private party to that proceeding within the past two years;

e. Has a personal financial interest in the outcome of the case or any other significant personal interest that could be substantially affected by the outcome of the case;

f. Has a spouse or relative within the third degree of relationship that: (1) is a party to the case, or an officer, director or trustee of a party; (2) is a lawyer in the case; (3) is known to have an interest that could be substantially affected by the outcome of the case; or (4) is likely to be a material witness in the case; or

g. Has any other legally sufficient cause to withdraw from participation in the decision making in that case.

5.9(2) The term "personally investigated" means taking affirmative steps to interview witnesses directly or to obtain documents or other information directly. The term "personally investigated" does not include general direction and supervision of assigned investigators, unsolicited receipt of information which is relayed to assigned investigators, review of another person's investigative work product in the course of determining whether there is probable cause to initiate a proceeding, or exposure to factual information while performing other agency functions, including fact gathering for purposes other than investigation of the matter which culminates in a contested case. Factual information relevant to the merits of a contested case received by a person who later serves as presiding officer in that case shall be disclosed if required by Iowa Code section 17A.17 and subrules 5.9(3) and 5.23(9).

5.9(3) In a situation where a presiding officer or other person knows of information which might reasonably be deemed to be a basis for disqualification and decides voluntary withdrawal is unnecessary, that person shall submit the relevant information for the record by affidavit and shall provide for the record a statement of the reasons for the determination that withdrawal is unnecessary.

5.9(4) If a party asserts disqualification on any appropriate grounds, including those listed in subrule 5.9(1), the party shall file a motion supported by an affidavit pursuant to Iowa Code subsection 17A.17(7). The motion must be filed as soon as practicable after the reason alleged in the motion becomes known to the party.

If, during the course of the hearing, a party first becomes aware of evidence of bias or other grounds for disqualification, the party may move for disqualification but must establish the grounds by the introduction of evidence into the record.

If the presiding officer determines that disqualification is appropriate, the presiding officer or other person shall withdraw. If the presiding officer determines that withdrawal is not required, the presiding officer shall enter an order to that effect. A party asserting disqualification may seek an interlocutory appeal under rule 5.25(17A) and seek a stay under rule 5.29(17A).

531—5.10(17A) Consolidation and severance.

5.10(1) *Consolidation.* The presiding officer may consolidate any or all matters at issue in two or more contested case proceedings where: (a) the matters at issue involve common parties or common questions of fact or law; (b) consolidation would expedite and simplify consideration of the issues involved; and (c) consolidation would not adversely affect the rights of any of the parties to those proceedings.

5.10(2) *Severance.* The presiding officer may, for good cause shown, order any contested case proceedings or portions thereof severed.

531—5.11(17A) Pleadings.

5.11(1) *Requirement.* Pleadings may be required by rule, by the notice of hearing, or by order of the presiding officer.

5.11(2) *Petition.*

a. Any petition required in a contested case proceeding shall be filed within 20 days of delivery of the notice of hearing or subsequent order of the presiding officer, unless otherwise ordered.

b. A petition shall state in separately numbered paragraphs the following:

(1) The persons or entities on whose behalf the petition is filed;

(2) The particular provisions of statutes and rules involved;

(3) The relief demanded and the facts and laws relied upon for such relief; and

(4) The name, address and telephone number of the petitioner and the petitioner's attorney, if any.

5.11(3) *Answer.* An answer shall be filed within 20 days of service of the petition unless otherwise ordered. A party may move to dismiss or apply for a more definite and detailed statement when appropriate.

An answer shall show on whose behalf it is filed and specifically admit, deny, or otherwise answer all material allegations of the pleading to which it responds. It shall state any facts deemed to show an affirmative defense and contain as many additional defenses as the pleader may claim.

An answer shall state the name, address and telephone number of the person filing the answer, the person or entity on whose behalf it is filed, and the attorney representing that person, if any.

Any allegation in the petition not denied in the answer is considered admitted. The presiding officer may refuse to consider any defense not raised in the answer which could have been raised on the basis of facts known when the answer was filed if any party would be prejudiced.

5.11(4) *Amendment.* Any notice of hearing, petition, or other charging document may be amended before a responsive pleading has been filed. Amendments to pleadings after a responsive pleading has been filed and to an answer may be allowed with the consent of the other parties or in the discretion of the presiding officer who may impose terms or grant a continuance.

531—5.12(17A) Service and filing of pleadings and other papers.

5.12(1) *When service required.* Except where otherwise provided by law, every pleading, motion, document, or other paper filed in a contested case proceeding and every paper relating to discovery in such a proceeding shall be served upon each of the parties of record to the proceeding, including the person designated as advocate or prosecutor for the state or the agency, simultaneously with their filing. Except for the original notice of hearing and an application for rehearing as provided in Iowa Code subsection 17A.16(2), the party filing a document is responsible for service on all parties.

5.12(2) *Service—how made.* Service upon a party represented by an attorney shall be made upon the attorney unless otherwise ordered. Service is made by delivery or by mailing a copy to the person's last-known address. Service by mail is complete upon mailing, except where otherwise specifically provided by statute, rule or order.

5.12(3) *Filing—when required.* After the notice of hearing, all pleadings, motions, documents or other papers in a contested case proceeding shall be filed with the Office of the Chief Executive Officer, Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. All pleadings, motions, documents or other papers that are required to be served upon a party shall be filed simultaneously in the office of the chief executive officer.

5.12(4) *Filing—when made.* Except where otherwise provided by law, a document is deemed filed at the time it is delivered to the chief executive officer's office, delivered to an established courier service for immediate delivery to that office, or mailed by first-class mail or state interoffice mail to that office, so long as there is proof of mailing.

5.12(5) *Proof of mailing.* Proof of mailing includes either: a legible United States Postal Service postmark on the envelope, a certificate of service, a notarized affidavit, or a certification in substantially the following form:

> I certify under penalty of perjury and pursuant to the laws of Iowa that, on (date of mailing), I mailed copies of (describe document) addressed to the (agency office and address) and to the names and addresses of the parties listed below by depositing the same in (a United States Post Office mail box with correct postage properly affixed or state interoffice mail).
> (Date) (Signature)

531—5.13(17A) Discovery.

5.13(1) Discovery procedures applicable in civil actions are applicable in contested cases. Unless lengthened or shortened by these rules or by order of the presiding officer, time periods for compliance with discovery shall be provided in the Iowa Rules of Civil Procedure.

5.13(2) Any motion relating to discovery shall allege that the moving party has previously made a good faith attempt to resolve the discovery issues involved with the opposing party. Motions in regard to discovery shall be ruled upon by the presiding officer. Opposing parties shall be afforded the opportunity to respond within ten days of the filing of the motion unless the time is shortened as provided in subrule 5.13(1). The presiding officer may rule on the basis of the written motion and any response, or may order argument on the motion.

5.13(3) Evidence obtained in discovery may be used in the contested case proceeding if that evidence would otherwise be admissible in that proceeding.

531—5.14(17A) Subpoenas.

5.14(1) *Issuance.*

a. An agency subpoena shall be issued to a party on request. Such a request must be in writing. In the absence of good cause for permitting later action, a request for a subpoena must be received at least three days before the scheduled hearing. The request shall include the name, address, and telephone number of the requesting party.

b. Except to the extent otherwise provided by law, parties are responsible for service of their own subpoenas and payment of witness fees and mileage expenses.

5.14(2) *Motion to quash or modify.* The presiding officer may quash or modify a subpoena for any lawful reason upon motion in accordance with the Iowa Rules of Civil Procedure. A motion to quash or modify a subpoena shall be set for argument promptly.

531—5.15(17A) Motions.

5.15(1) No technical form for motions is required. However, prehearing motions must be in writing, state the grounds for relief, and state the relief sought.

5.15(2) Any party may file a written response to a motion within ten days after the motion is served, unless the time period is extended or shortened by rules of the lottery or the presiding officer. The presiding officer may consider a failure to respond within the required time period in ruling on a motion.

5.15(3) The presiding officer may schedule oral argument on any motion.

5.15(4) Motions pertaining to the hearing, except motions for summary judgment, must be filed and served at least ten days prior to the date of hearing unless there is good cause for permitting later action or the time for such action is lengthened or shortened by rule of the lottery or an order of the presiding officer.

5.15(5) Motions for summary judgment. Motions for summary judgment shall comply with the requirements of Iowa Rule of Civil Procedure 1.981 and shall be subject to disposition according to the requirements of that rule to the extent such requirements are not inconsistent with the provisions of this rule or any other provision of law governing the procedure in contested cases.

Motions for summary judgment must be filed and served at least 45 days prior to the scheduled hearing date, or other time period determined by the presiding officer. Any party resisting the motion shall file and serve a resistance within 15 days, unless otherwise ordered by the presiding officer, from the date a copy of the motion was served. The time fixed for hearing or nonoral submission shall be not less than 20 days after the filing of the motion, unless a shorter time is ordered by the presiding officer. A summary judgment order rendered on all issues in a contested case is subject to rehearing pursuant to rule 5.28(17A) and appeal pursuant to rule 5.27(17A).

531—5.16(17A) Prehearing conference.

5.16(1) Any party may request a prehearing conference. A written request for prehearing conference or an order for prehearing conference on the presiding officer's own motion shall be filed not less than 15 days prior to the hearing date. A prehearing conference shall be scheduled not less than 10 business days prior to the hearing date. Written notice of the prehearing conference shall be given by the presiding officer to all parties. For good cause the presiding officer may permit variances from this rule.

5.16(2) Each party shall bring to the prehearing conference:

a. A final list of the witnesses who the party anticipates will testify at hearing. Witnesses not listed may be excluded from testifying unless there was good cause for the failure to include their names; and

b. A final list of exhibits which the party anticipates will be introduced at hearing. Exhibits other than rebuttal exhibits that are not listed may be excluded from admission into evidence unless there was good cause for the failure to include them.

c. Witness or exhibit lists may be amended subsequent to the prehearing conference within the time limits established by the presiding officer at the prehearing conference. Any such amendments must be served on all parties.

5.16(3) In addition to the requirements of subrule 5.16(2), the parties at a prehearing conference may:

a. Enter into stipulations of law or fact;

b. Enter into stipulations on the admissibility of exhibits;

c. Identify matters which the parties intend to request be officially noticed;

d. Enter into stipulations for waiver of any provision of law; and

e. Consider any additional matters which will expedite the hearing.

5.16(4) Prehearing conferences shall be conducted by telephone unless otherwise ordered. Parties shall exchange and receive witness and exhibit lists in advance of a telephone prehearing conference.

531—5.17(17A) Continuances. Unless otherwise provided, applications for continuances shall be made to the presiding officer.

5.17(1) A written application for continuance shall:

a. Be made at the earliest possible time and no less than ten days before the hearing except in case of unanticipated emergencies;

b. State the specific reasons for the request; and

c. Be signed by the requesting party or the party's representative.

An oral application for a continuance may be made if the presiding officer waives the requirement for a written motion. However, a party making such an oral application for a continuance must confirm that request by written application within five days after the oral request unless that requirement is waived by the presiding officer. No application for continuance shall be made or granted without notice to all parties except in an emergency where notice is not feasible. The agency may waive notice of such requests for a particular case or an entire class of cases.

5.17(2) In determining whether to grant a continuance, the presiding officer may consider:

a. Prior continuances;

b. The interests of all parties;

c. The likelihood of informal settlement;

d. The existence of an emergency;

e. Any objection;

f. Any applicable time requirements;

g. The existence of a conflict in the schedules of counsel, parties, or witnesses;

h. The timeliness of the request; and

i. Other relevant factors.

The presiding officer may require documentation of any grounds for continuance.

531—5.18(17A) Withdrawals. A party requesting a contested case proceeding may withdraw that request prior to the hearing only in accordance with agency rules. Unless otherwise provided, a withdrawal shall be with prejudice.

531—5.19(17A) Intervention.

5.19(1) *Motion.* A motion for leave to intervene in a contested case proceeding shall state the grounds for the proposed intervention, the position and interest of the proposed intervenor, and the possible impact of intervention on the proceeding. A proposed answer or petition in intervention shall be attached to the motion. Any party may file a response within 14 days of service of the motion to intervene unless the time period is extended or shortened by the presiding officer.

5.19(2) *When filed.* Motion for leave to intervene shall be filed as early in the proceeding as possible to avoid adverse impact on existing parties or the conduct of the proceeding. Unless otherwise ordered, a motion for leave to intervene shall be filed before the prehearing conference, if any, or at least 20 days before the date scheduled for hearing. Any later motion must contain a statement of good cause for the failure to file in a timely manner. Unless inequitable or unjust, an intervenor shall be bound by any agreement, arrangement, or other matter previously raised in the case. Requests by untimely intervenors for continuances which would delay the proceeding will ordinarily be denied.

5.19(3) *Grounds for intervention.* The movant shall demonstrate that: (a) intervention would not unduly prolong the proceedings or otherwise prejudice the rights of existing parties; (b) the movant is likely to be aggrieved or adversely affected by a final order in the proceeding; and (c) the interests of the movant are not adequately represented by existing parties.

5.19(4) *Effect of intervention.* If appropriate, the presiding officer may order consolidation of the petitions and briefs of different parties whose interests are aligned with each other and limit the number of representatives allowed to participate actively in the proceedings. A person granted leave to intervene is a party to the proceeding. The order granting intervention may restrict the issues that may be raised by the intervenor or otherwise condition the intervenor's participation in the proceeding.

531—5.20(17A) Hearing procedures.

5.20(1) The presiding officer presides at the hearing and may rule on motions, require briefs, issue a proposed decision, and issue such orders and rulings as will ensure the orderly conduct of the proceedings.

5.20(2) All objections shall be timely made and stated on the record.

5.20(3) Parties have the right to participate or to be represented in all hearings or prehearing conferences related to their case. Partnerships, corporations, or associations may be represented by any member, officer, director, or duly authorized agent. Any party may be represented by an attorney or another person authorized by law.

5.20(4) Subject to terms and conditions prescribed by the presiding officer, parties have the right to introduce evidence on issues of material fact, cross-examine witnesses present at the hearing as necessary for a full and true disclosure of the facts, present evidence in rebuttal, and submit briefs and engage in oral argument.

5.20(5) The presiding officer shall maintain the decorum of the hearing and may refuse to admit or may expel anyone whose conduct is disorderly.

5.20(6) Witnesses may be sequestered during the hearing.

5.20(7) The presiding officer shall conduct the hearing in the following manner:

a. The presiding officer shall give an opening statement briefly describing the nature of the proceedings;

b. The parties shall be given an opportunity to present opening statements;

c. Parties shall present their cases in the sequence determined by the presiding officer;

d. Each witness shall be sworn or affirmed by the presiding officer or the court reporter and be subject to examination and cross-examination. The presiding officer may limit questioning in a manner consistent with law;

e. When all parties and witnesses have been heard, parties may be given the opportunity to present final arguments.

531—5.21(17A) Evidence.

5.21(1) The presiding officer shall rule on admissibility of evidence and may, where appropriate, take official notice of facts in accordance with all applicable requirements of law.

5.21(2) Stipulation of facts is encouraged. The presiding officer may make a decision based on stipulated facts.

5.21(3) Evidence in the proceeding shall be confined to the issues as to which the parties received notice prior to the hearing unless the parties waive their right to such notice or the presiding officer determines that good cause justifies expansion of the issues. If the presiding officer decides to admit evidence on issues outside the scope of the notice over the objection of a party who did not have actual notice of those issues, that party, upon timely request, shall receive a continuance sufficient to amend pleadings and to prepare on the additional issue.

5.21(4) The party seeking admission of an exhibit must provide opposing parties with an opportunity to examine the exhibit prior to the ruling on its admissibility. Copies of documents should normally be provided to opposing parties.

All exhibits admitted into evidence shall be appropriately marked and be made part of the record.

5.21(5) Any party may object to specific evidence or may request limits on the scope of any examination or cross-examination. Such an objection shall be accompanied by a brief statement of the grounds upon which it is based. The objection, the ruling on the objection, and the reasons for the ruling shall be noted in the record. The presiding officer may rule on the objection at the time it is made or may reserve a ruling until the written decision.

5.21(6) Whenever evidence is ruled inadmissible, the party offering that evidence may submit an offer of proof on the record. The party making the offer of proof for excluded oral testimony shall briefly summarize the testimony or, with permission of the presiding officer, present the testimony. If the excluded evidence consists of a document or exhibit, it shall be marked as part of an offer of proof and inserted in the record.

531—5.22(17A) Default.

5.22(1) If a party fails to appear or participate in a contested case proceeding after proper service of notice, the presiding officer may, if no adjournment is granted, enter a default decision or proceed with the hearing and render a decision in the absence of the party.

5.22(2) Where appropriate and not contrary to law, any party may move for default against a party who has requested the contested case proceeding and has failed to file a required pleading or has failed to appear after proper service.

5.22(3) Default decisions or decisions rendered on the merits after a party has failed to appear or participate in a contested case proceeding become final agency action unless, within 15 days after the date of notification or mailing of the decision, a motion to vacate is filed and served on all parties or an appeal of a decision on the merits is timely initiated within the time provided by rule 5.27(17A). A motion to vacate must state all facts relied upon by the moving party which establish that good cause existed for that party's failure to appear or participate at the contested case proceeding. Each fact so stated must be substantiated by at least one sworn affidavit of a person with personal knowledge of each such fact, which affidavit(s) must be attached to the motion.

5.22(4) The time for further appeal of a decision for which a timely motion to vacate has been filed is stayed pending a decision on the motion to vacate.

5.22(5) Properly substantiated and timely filed motions to vacate shall be granted only for good cause shown. The burden of proof as to good cause is on the moving party. Adverse parties shall have ten days to respond to a motion to vacate. Adverse parties shall be allowed to conduct discovery as to the issue of good cause and to present evidence on the issue prior to a decision on the motion, if a request to do so is included in that party's response.

5.22(6) "Good cause" for purposes of this rule shall have the same meaning as "good cause" for setting aside a default judgment under Iowa Rule of Civil Procedure 1.977.

5.22(7) A decision denying a motion to vacate is subject to further appeal within the time limit allowed for further appeal of a decision on the merits in the contested case proceeding. A decision granting a motion to vacate is subject to interlocutory appeal by the adverse party pursuant to rule 5.25(17A).

5.22(8) If a motion to vacate is granted and no timely interlocutory appeal has been taken, the presiding officer shall issue another notice of hearing and the contested case shall proceed accordingly.

5.22(9) A default decision may award any relief consistent with the request for relief made in the petition and embraced in its issues; but unless the defaulting party has appeared, it cannot exceed the relief demanded.

5.22(10) A default decision may provide either that the default decision is to be stayed pending a timely motion to vacate or that the default decision is to take effect immediately, subject to a request for stay under rule 5.29(17A).

531—5.23(17A) Ex parte communication.

5.23(1) Prohibited communications. Unless required for the disposition of ex parte matters specifically authorized by statute, following issuance of the notice of hearing, there shall be no communications, directly or indirectly, between the presiding officer and any party or representative of any party or any other person with a direct or indirect interest in such case in connection with any issue of fact or law in the case except upon notice and opportunity for all parties to participate. This does not prohibit persons jointly assigned such tasks from communicating with each other. Nothing in this provision is intended to preclude the presiding officer from communicating with members of the lottery or seeking the advice or help of persons other than those with a personal interest in, or those engaged in personally investigating as defined in subrule 5.9(2), prosecuting, or advocating in, either the case under consideration or a pending factually related case involving the same parties as long as those persons do not directly or indirectly communicate to the presiding officer any ex parte communications they have received of a type that the presiding officer would be prohibited from receiving or that furnish, augment, diminish, or modify the evidence in the record.

5.23(2) Prohibitions on ex parte communications commence with the issuance of the notice of hearing in a contested case and continue for as long as the case is pending.

5.23(3) Written, oral or other forms of communication are "ex parte" if made without notice and opportunity for all parties to participate.

5.23(4) To avoid prohibited ex parte communications, notice must be given in a manner reasonably calculated to give all parties a fair opportunity to participate. Notice of written communications shall be provided in compliance with rule 5.12(17A) and may be supplemented by telephone, facsimile, electronic mail or other means of notification. Where permitted, oral communications may be initiated through conference telephone call including all parties or their representatives.

5.23(5) Persons who jointly act as presiding officer in a pending contested case may communicate with each other without notice or opportunity for parties to participate.

5.23(6) The executive director or other persons may be present in deliberations or otherwise advise the presiding officer without notice or opportunity for parties to participate as long as they are not disqualified from participating in the making of a proposed or final decision under any provision of law and they comply with subrule 5.23(1).

5.23(7) Communications with the presiding officer involving uncontested scheduling or procedural matters do not require notice or opportunity for parties to participate. Parties should notify other parties prior to initiating such contact with the presiding officer when feasible, and shall notify other parties when seeking to continue hearings or other deadlines pursuant to rule 5.17(17A).

5.23(8) Disclosure of prohibited communications. A presiding officer who receives a prohibited ex parte communication during the pendency of a contested case must initially determine if the effect of the communication is so prejudicial that the presiding officer should be disqualified. If the presiding officer determines that disqualification is warranted, a copy of any prohibited written communication, all written responses to the communication, a written summary stating the substance of any prohibited oral or other communication not available in written form for disclosure, all responses made, and the identity of each person from whom the presiding officer received a prohibited ex parte communication shall be submitted for inclusion in the record under seal by protective order. If the presiding officer determines that disqualification is not warranted, such documents shall be submitted for inclusion in the record and served on all parties. Any party desiring to rebut the prohibited communication must be allowed the opportunity to do so upon written request filed within ten days after notice of the communication.

5.23(9) Promptly after being assigned to serve as presiding officer at any stage in a contested case proceeding, a presiding officer shall disclose to all parties material factual information received through ex parte communication prior to such assignment unless the factual information has already been or shortly will be disclosed pursuant to Iowa Code section 17A.13(2) or through discovery. Factual information contained in an investigative report or similar document need not be separately disclosed by the presiding officer as long as such documents have been or will shortly be provided to the parties.

5.23(10) The presiding officer may render a proposed or final decision imposing appropriate sanctions for violations of this rule including default, a decision against the offending party, censure, or suspension or revocation of the privilege to practice before the lottery. Violation of ex parte communication prohibitions by agency personnel shall be reported to the chief executive officer of the lottery for possible sanctions including censure, suspension, dismissal, or other disciplinary action.

531—5.24(17A) Record costs. Upon request, the Iowa lottery shall provide a copy of the whole or any portion of the record at cost. The cost of preparing a copy of the record or of transcribing the hearing record shall be paid by the requesting party.

Parties who request that a hearing be recorded by certified shorthand reporter rather than by electronic means shall bear the cost of that recordation, unless otherwise provided by law.

531—5.25(17A) Interlocutory appeals. Upon written request of a party or on its own motion, the hearing board may review an interlocutory order of the presiding officer. In determining whether to do so, the hearing board shall weigh the extent to which its granting the interlocutory appeal would expedite final resolution of the case and the extent to which review of that interlocutory order by the agency at the time it reviews the proposed decision of the presiding officer would provide an adequate remedy. Any request for interlocutory review must be filed within 14 days of issuance of the challenged order, but no later than the time for compliance with the order or the date of hearing, whichever is first.

531—5.26(17A) Final decision.

5.26(1) When the hearing board presides over the reception of evidence at the hearing, its decision is a final decision.

5.26(2) When the hearing board does not preside at the reception of evidence, the presiding officer shall make a proposed decision. The proposed decision becomes the final decision of the agency without further proceedings unless there is an appeal to, or review on motion of, the hearing board within the time provided in rule 5.27(17A).

531—5.27(17A) Appeals and review.

5.27(1) *Appeal by party.* Any adversely affected party may appeal a proposed decision to the hearing board within 30 days after issuance of the proposed decision.

5.27(2) *Review.* The hearing board may initiate review of a proposed decision on its own motion at any time within 30 days following the issuance of such a decision.

5.27(3) *Notice of appeal.* An appeal of a proposed decision is initiated by filing a timely notice of appeal with the Iowa lottery. The notice of appeal must be signed by the appealing party or a representative of that party and contain a certificate of service. The notice shall specify:

a. The parties initiating the appeal;

b. The proposed decision or order appealed from;

c. The specific findings or conclusions to which exception is taken and any other exceptions to the decision or order;

d. The relief sought;

e. The grounds for relief.

5.27(4) *Requests to present additional evidence.* A party may request the taking of additional evidence only by establishing that the evidence is material, that good cause existed for the failure to present the evidence at the hearing, and that the party has not waived the right to present the evidence. A written request to present additional evidence must be filed with the notice of appeal or, by a non-appealing party, within 14 days of service of the notice of appeal. The hearing board may remand a case to the presiding officer for further hearing or may itself preside at the taking of additional evidence.

5.27(5) *Scheduling.* The presiding officer shall issue a schedule for consideration of the appeal.

5.27(6) *Briefs and arguments.* Unless otherwise ordered, within 20 days of the notice of appeal or order for review, each appealing party may file exceptions and briefs. Within 20 days thereafter any party may file a responsive brief. Briefs shall cite any applicable legal authority and specify relevant portions of the record in that proceeding. Written requests to present oral argument shall be filed with the briefs.

The hearing board may resolve the appeal on the briefs or provide an opportunity for oral argument. The hearing board may shorten or extend the briefing period as appropriate.

531—5.28(17A) Applications for rehearing.

5.28(1) *By whom filed.* Any party to a contested case proceeding may file an application for rehearing from a final order.

5.28(2) *Content of application.* The application for rehearing shall state on whose behalf it is filed, the specific grounds for rehearing, and the relief sought. In addition, the application shall state whether the applicant desires reconsideration of all or part of the agency decision on the existing record and whether, on the basis of the grounds enumerated in subrule 5.27(4), the applicant requests an opportunity to submit additional evidence.

5.28(3) *Time of filing.* The application shall be filed with the Iowa lottery within 20 days after issuance of the final decision.

5.28(4) *Notice to other parties.* A copy of the application shall be timely mailed by the applicant to all parties of record not joining therein. If the application does not contain a certificate of service, the Iowa lottery shall serve copies on all parties.

5.28(5) *Disposition.* Any application for a rehearing shall be deemed denied unless the agency grants the application within 20 days after its filing.

531—5.29(17A) Stays of agency actions.

5.29(1) *When available.*

a. Any party to a contested case proceeding may petition the lottery for a stay of an order issued in that proceeding or for other temporary remedies, pending review by the agency. The petition shall be filed with the notice of appeal and shall state the reasons justifying a stay or other temporary remedy. The hearing board may rule on the stay or authorize the presiding officer to do so.

b. Any party to a contested case proceeding may petition the lottery for a stay or other temporary remedies pending judicial review of all or part of that proceeding. The petition shall state the reasons justifying a stay or other temporary remedy.

5.29(2) *When granted.* In determining whether to grant a stay, the presiding officer or hearing board shall consider the factors listed in Iowa Code section 17A.19(5).

5.29(3) *Vacation.* A stay may be vacated by the issuing authority upon application of the lottery or any other party.

531—5.30(17A) No factual dispute contested cases. If the parties agree that no dispute of material fact exists as to a matter that would be a contested case if such a dispute of fact existed, the parties may present all relevant admissible evidence either by stipulation or otherwise as agreed by the parties, without necessity for the production of evidence at an evidentiary hearing. If such agreement is reached, a jointly submitted schedule detailing the method and timetable for submission of the record, briefs and oral argument should be submitted to the presiding officer for approval as soon as practicable. If the parties cannot agree, any party may file and serve a motion for summary judgment pursuant to the rules governing such motions.

531—5.31(17A) Emergency adjudicative proceedings.

5.31(1) *Necessary emergency action.* To the extent necessary to prevent or avoid immediate danger to the public health, safety, or welfare, and consistent with the Constitution and other provisions of law, the lottery may issue a written order in compliance with Iowa Code section 17A.18 to suspend a license in whole or in part, order the cessation of any continuing activity, order affirmative action, or take other action within the jurisdiction of the lottery by emergency adjudicative order. Before issuing an emergency adjudicative order the lottery shall consider factors including, but not limited to, the following:

a. Whether there has been a sufficient factual investigation to ensure that the lottery is proceeding on the basis of reliable information;

b. Whether the specific circumstances which pose immediate danger to the public health, safety or welfare have been identified and determined to be continuing;

c. Whether the person required to comply with the emergency adjudicative order may continue to engage in other activities without posing immediate danger to the public health, safety or welfare;

d. Whether imposition of monitoring requirements or other interim safeguards would be sufficient to protect the public health, safety or welfare; and

e. Whether the specific action contemplated by the agency is necessary to avoid the immediate danger.

5.31(2) *Issuance of order.*

a. An emergency adjudicative order shall contain findings of fact, conclusions of law, and policy reasons to justify the determination of an immediate danger in the lottery's decision to take immediate action.

b. The written emergency adjudicative order shall be immediately delivered to persons who are required to comply with the order by utilizing one or more of the following procedures:

(1) Personal delivery;

(2) Certified mail, return receipt requested, to the last address on file with the agency;

(3) Certified mail to the last address on file with the agency;

(4) First-class mail to the last address on file with the agency; or

(5) Fax may be used as the sole method of delivery if the person required to comply with the order has filed a written request that agency orders be sent by fax and has provided a fax number for that purpose.

c. To the degree practicable, the agency shall select the procedure for providing written notice that best ensures prompt, reliable delivery.

5.31(3) *Oral notice.* Unless the written emergency adjudicative order is provided by personal delivery on the same day that the order issues, the agency shall make reasonable immediate efforts to contact by telephone the persons who are required to comply with the order.

5.31(4) *Completion of proceedings.* After the issuance of an emergency adjudicative order, the agency shall proceed as quickly as feasible to complete any proceedings that would be required if the matter did not involve an immediate danger.

Issuance of a written emergency adjudicative order shall include notification of the date on which agency proceedings are scheduled for completion. After issuance of an emergency adjudicative order, continuance of further agency proceedings to a later date will be granted only in compelling circumstances upon application in writing.

531—5.32(17A) Waiver of procedures. Unless otherwise precluded by law, the parties in a contested case proceeding may waive any provision of this chapter. However, the agency in its discretion may refuse to give effect to such a waiver when it deems the waiver to be inconsistent with the public interest.

These rules are intended to implement Iowa Code chapter 17A and Iowa Code Supplement section 99G.27(3).

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CHAPTER 6
DECLARATORY ORDERS

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 7]
[Prior to 9/17/03, see 705—Ch 7]

531—6.1(17A) Petition for declaratory order. Any person may file a petition with the lottery for a declaratory order as to the applicability to specified circumstances of a statute, rule, or order within the primary jurisdiction of the lottery, at the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. A petition is deemed filed when it is received by that office. The lottery shall provide the petitioner with a file-stamped copy of the petition if the petitioner provides the lottery an extra copy for this purpose. The petition must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

THE IOWA LOTTERY

Petition by (Name of Petitioner) for a Declaratory Order on (cite provisions of law involved).	}	PETITION FOR DECLARATORY ORDER

The petition must provide the following information:

1. A clear and concise statement of all relevant facts on which the order is requested.
2. A citation and the relevant language of the specific statutes, rules, policies, decisions, or orders, whose applicability is questioned, and any other relevant law.
3. The questions petitioner wants answered, stated clearly and concisely.
4. The answers to the questions desired by the petitioner and a summary of the reasons urged by the petitioner in support of those answers.
5. The reasons for requesting the declaratory order and disclosure of the petitioner's interest in the outcome.
6. A statement indicating whether the petitioner is currently a party to another proceeding involving the questions at issue and whether, to the petitioner's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
7. The names and addresses of other persons, or a description of any class of persons, known by petitioner to be affected by, or interested in, the questions presented in the petition.
8. Any request by petitioner for a meeting provided for by 6.7(17A).

The petition must be dated and signed by the petitioner or the petitioner's representative. It must also include the name, mailing address, and telephone number of the petitioner and petitioner's representative, and a statement indicating the person to whom communications concerning the petition should be directed.

531—6.2(17A) Notice of petition. Within 15 days after receipt of a petition for a declaratory order, the lottery shall give notice of the petition to all persons not served by the petitioner pursuant to 6.6(17A) to whom notice is required by any provision of law. The lottery may also give notice to any other persons.

531—6.3(17A) Intervention.

6.3(1) Persons who qualify under any applicable provision of law as an intervenor and who file a petition for intervention within 25 days of the filing of a petition for declaratory order shall be allowed to intervene in a proceeding for a declaratory order.

6.3(2) Any person who files a petition for intervention at any time prior to the issuance of an order may be allowed to intervene in a proceeding for a declaratory order at the discretion of the lottery.

6.3(3) A petition for intervention shall be filed at the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. Such a petition is deemed filed when it is received by that office. The lottery will provide the petitioner with a file-stamped copy of the petition for intervention if the petitioner provides an extra copy for this purpose. A petition for intervention must be typewritten or legibly handwritten in ink and must substantially conform to the following form:

THE IOWA LOTTERY

Petition by (Name of Petitioner) for a Declaratory Order on (cite provisions of law involved).	}	PETITION FOR INTERVENTION

The petition for intervention must provide the following information:

1. Facts supporting the intervenor's standing and qualifications for intervention.
2. The answers urged by the intervenor to the question or questions presented and a summary of the reasons urged in support of those answers.
3. Reasons for requesting intervention and disclosure of the intervenor's interest in the outcome.
4. A statement indicating whether the intervenor is currently a party to any proceeding involving the questions at issue and whether, to the intervenor's knowledge, those questions have been decided by, are pending determination by, or are under investigation by, any governmental entity.
5. The names and addresses of any additional persons, or a description of any additional class of persons, known by the intervenor to be affected by, or interested in, the questions presented.
6. Whether the intervenor consents to be bound by the determination of the matters presented in the declaratory order proceeding.

The petition must be dated and signed by the intervenor or the intervenor's representative. It must also include the name, mailing address, and telephone number of the intervenor and intervenor's representative, and a statement indicating the person to whom communications should be directed.

531—6.4(17A) Briefs. The petitioner or any intervenor may file a brief in support of the position urged. The lottery may request a brief from the petitioner, any intervenor, or any other person concerning the questions raised.

531—6.5(17A) Inquiries. Inquiries concerning the status of a declaratory order proceeding may be made to the Chief Executive Officer, Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

531—6.6(17A) Service and filing of petitions and other papers.

6.6(1) *When service required.* Except where otherwise provided by law, every petition for declaratory order, petition for intervention, brief, or other paper filed in a proceeding for a declaratory order shall be served upon each of the parties of record to the proceeding, and on all other persons identified in the petition for declaratory order or petition for intervention as affected by or interested in the questions presented, simultaneously with their filing. The party filing a document is responsible for service on all parties and other affected or interested persons.

6.6(2) *Filing—when required.* All petitions for declaratory orders, petitions for intervention, briefs, or other papers in a proceeding for a declaratory order shall be filed with the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. All petitions, briefs, or other papers that are required to be served upon a party shall be filed simultaneously with the lottery.

6.6(3) *Method of service, time of filing, and proof of mailing.* Method of service, time of filing, and proof of mailing shall be as provided by 531—5.11(17A).

531—6.7(17A) Consideration. Upon request by petitioner, the lottery must schedule a brief and informal meeting between the original petitioner, all intervenors, and the lottery, a member of the lottery authority board, or a member of the staff of the lottery, to discuss the questions raised. The lottery may solicit comments from any person on the questions raised. Also, comments on the questions raised may be submitted to the lottery by any person.

531—6.8(17A) Action on petition.

6.8(1) Within the time allowed by Iowa Code section 17A.9(5) after receipt of a petition for a declaratory order, the chief executive officer of the lottery or a designee shall take action on the petition as required by Iowa Code section 17A.9(5).

6.8(2) The date of issuance of an order or of a refusal to issue an order is as defined in rule 531—5.2(17A).

531—6.9(17A) Refusal to issue order.

6.9(1) The lottery shall not issue a declaratory order where prohibited by Iowa Code section 17A.9(1), and may refuse to issue a declaratory order on some or all questions raised for the following reasons:

1. The petition does not substantially comply with the required form.
2. The petition does not contain facts sufficient to demonstrate that the petitioner will be aggrieved or adversely affected by the failure of the lottery to issue an order.
3. The lottery does not have jurisdiction over the questions presented in the petition.
4. The questions presented by the petition are also presented in a current rule making, contested case, or other agency or judicial proceeding, that may definitively resolve them.
5. The questions presented by the petition would more properly be resolved in a different type of proceeding or by another body with jurisdiction over the matter.
6. The facts or questions presented in the petition are unclear, overbroad, insufficient, or otherwise inappropriate as a basis upon which to issue an order.
7. There is no need to issue an order because the questions raised in the petition have been settled due to a change in circumstances.
8. The petition is not based upon facts calculated to aid in the planning of future conduct but is, instead, based solely upon prior conduct in an effort to establish the effect of that conduct or to challenge an agency decision already made.
9. The petition requests a declaratory order that would necessarily determine the legal rights, duties, or responsibilities of other persons who have not joined in the petition, intervened separately, or filed a similar petition and whose position on the questions presented may fairly be presumed to be adverse to that of petitioner.
10. The petitioner requests the lottery to determine whether a statute is unconstitutional on its face.

6.9(2) A refusal to issue a declaratory order must indicate the specific grounds for the refusal and constitutes final agency action on the petition.

6.9(3) Refusal to issue a declaratory order pursuant to this provision does not preclude the filing of a new petition that seeks to eliminate the grounds for the refusal to issue an order.

531—6.10(17A) Contents of declaratory order—effective date. In addition to the order itself, a declaratory order must contain the date of its issuance, the name of petitioner and all intervenors, the specific statutes, rules, policies, decisions, or orders involved, the particular facts upon which it is based, and the reasons for its conclusion. A declaratory order is effective on the date of issuance.

531—6.11(17A) Copies of orders. A copy of all orders issued in response to a petition for a declaratory order shall be mailed promptly to the original petitioner and all intervenors.

531—6.12(17A) Effect of a declaratory order. A declaratory order has the same status and binding effect as a final order issued in a contested case proceeding. It is binding on the lottery, the petitioner, and any intervenors who consent to be bound and is applicable only in circumstances where the relevant facts and the law involved are indistinguishable from those on which the order was based. As to all other persons, a declaratory order serves only as precedent and is not binding on the lottery. The issuance of a declaratory order constitutes final agency action on the petition.

These rules are intended to implement Iowa Code chapter 17A.

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[Filed 3/12/04, Notice 9/17/03—published 3/31/04, effective 5/7/04]

CHAPTERS 7 to 10
Reserved

CHAPTER 11
PRIZES

531—11.1(99G) Claiming prizes.

11.1(1) A prize claim shall be entered in the name of a single individual or organization. A claim may be entered in the name of an organization only if the organization is a legal entity and possesses or has applied for a federal employer's identification number (FEIN) as issued by the Internal Revenue Service. Groups, family units, organizations, clubs, or other organizations that are not legal entities, do not possess a FEIN, or have not applied for a FEIN must designate one individual in whose name the claim will be entered.

11.1(2) By submitting a claim, a player agrees that the state, the lottery authority board, the lottery authority, and the officials, officers, and employees of each shall be discharged from all further liability upon payment of the prize.

11.1(3) By submitting a claim, the player also agrees that the prizewinner's name may be used for publicity purposes by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—11.2(99G) Claim period. A prize must be claimed within the time limit specifically designated in these rules or as specified by the lottery in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—11.3(99G) Invalid tickets not entitled to prize payment. If a ticket presented to the lottery is invalid pursuant to the terms of these rules or the specific game rules, the ticket is not entitled to prize payment.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—11.4(99G) Ticket is a bearer instrument. A ticket is a bearer instrument until signed in the space designated on the ticket for signature if a signature space is provided. The person who signs the ticket is thereafter considered the owner of the ticket. Payment of any prize may be made to the physical possessor of an unsigned ticket or to the person whose signature appears on the ticket. All liability of the state, the lottery authority board, the lottery authority, the chief executive officer, and the employees of the lottery terminates upon payment.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—11.5(99G) Assignment of prizes. Payments of prizes shall be made as follows:

11.5(1) The lottery shall pay all prizes to only one person or one legal entity per winning ticket.

11.5(2) If a prize is payable in installments, all future installments of the prize must be made to the person or legal entity that received the initial installment of the prize or to a person designated by the court to receive payment following the prizewinner's death, unless otherwise assigned according to these rules.

11.5(3) Payment of a prize may be made to the estate of a deceased prizewinner or to another person pursuant to an appropriate judicial order.

11.5(4) The right to control receipt of a lottery prize shall be substantially limited. See 26 U.S.C. 451 and Treas. Reg. 1.451-2(a). The right to receive payment of a lottery prize or a future installment of a lottery prize shall not be sold, assigned or otherwise transferred in any manner without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

11.5(5) In the event that a legal entity other than an individual is entitled to a lottery prize won jointly by more than one individual, the individuals originally entitled to share the prize cannot sell, assign or otherwise transfer their interest in the legal entity receiving prize payment or their right to receive future payments from the legal entity without an appropriate judicial order or statutory authorization. An appropriate judicial order is an order of a court of competent jurisdiction.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—11.6(99G) Prize payment to minors. If the person entitled to a prize is under the age of 18, the payment of the prize may be made by delivery of a draft payable to the order of the minor or to a parent or legal guardian of the minor. Claim forms submitted by minors must be signed by a parent or legal guardian of the minor.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.30(3), and 99G.31.

531—11.7(99G) Time of prize payment. All prizes shall be paid within a reasonable time after a claim is verified by the lottery and a winner is determined. The date of the first installment payment of any prize to be paid in installment payments shall be the date the claim is validated and processed unless a different date is specified for a particular game in these rules or the specific game rules. Subsequent installment payments shall be made approximately weekly, monthly, or annually, from the date the claim is processed and validated in accordance with the type of prize won and the rules applicable to the prize. The lottery may, at any time, delay any prize payment in order to review a change in circumstances relative to the prize awarded, the payee, or the claim.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.30.

531—11.8(99G) Prizes payable for the life of the winner. If any prize is payable for the life of the winner, only an individual may claim and receive the prize for life. If a group, corporation, or other organization is the winner, the life of the winner shall be deemed to be 20 years.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.31.

531—11.9(99G) Prizes payable after death of winner. All prizes and portions of prizes that remain unpaid at the time of the prizewinner's death shall be payable to the court-appointed representative of the prizewinner's estate or to a single individual pursuant to the terms of a final order closing the estate.

The lottery may withhold payment until it is satisfied that the proper payee has been identified, or it may petition the court to determine the proper payee. In making payment, the lottery may rely wholly on the presentation of a certified copy of the letters of appointment as an administrator, executor, or other personal representative for the prizewinner's estate or on a certified copy of the final order closing the estate. Payment to the representative of the estate of the deceased owner of any prize winnings or to another individual pursuant to a final order closing the estate shall absolve the lottery authority and employees of the lottery authority of any further liability for payment of prize winnings.

If the winner received an annuitized prize funded through the Multi-State Lottery Association (MUSL) or any other multijurisdictional lottery organization in which the Iowa lottery participates as a member, the MUSL board or other organization board, as may be appropriate, in its sole discretion, upon the petition of the estate of the lottery winner (the "estate"), may accelerate the payment of all of the remaining lottery proceeds to the estate. If the winner received an annuitized prize funded solely through the sales from the Iowa lottery, the lottery board, in its sole discretion, upon the petition of the estate of the lottery winner (the "estate"), may accelerate the payment of all of the remaining lottery proceeds to the estate. If such a determination is made, then securities or cash held for the deceased lottery winner, that represents the present value of that portion of the future lottery payments that are to be accelerated, shall be distributed to the estate. The valuation of the securities and determination of the present value of the accelerated lottery payments shall be at the sole discretion of the board granting the petition.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.31.

531—11.10(99G) Disability of prizewinner. The lottery may petition any court of competent jurisdiction for a determination of the rightful payee for the payment of any prize winnings which are or may become due a person under a disability because of, but not limited to, underage, mental deficiency, or physical or mental incapacity.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.31.

531—11.11(99G) Stolen or lost tickets. The lottery has no responsibility for paying prizes attributable to stolen or lost tickets.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.31.

531—11.12(99G) Effect of game rules. In purchasing a ticket, the player agrees to comply with Iowa Code Supplement chapter 99G, these rules, the specific game rules, lottery instructions and procedures, and the final decisions of the lottery. The lottery's decisions and judgments in respect to the determination of winning tickets or any other dispute arising from the payment or awarding of prizes shall be final and binding upon all participants in the lottery. If a dispute between the lottery and a player occurs as to whether a ticket is a winning ticket and the prize is not paid, the lottery may, solely at the lottery's option, replace the ticket with an unplayed ticket of equivalent price from any game or refund the price of the ticket. This shall be the sole and exclusive remedy of the player.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.31.

531—11.13(99G) Disputed prizes. If there is a dispute, or it appears that a dispute may occur relative to the payment of any prize, the lottery may refrain from making payment of the prize pending a final determination by the lottery or by a court of competent jurisdiction as to the proper payment of the prize.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.31.

531—11.14(99G) Prize payment for prizes paid over a term exceeding ten years.

11.14(1) A prizewinner who wins a prize that is payable over a term exceeding ten years may, not later than 60 days after the player became entitled to the prize, elect to have the prize paid in cash or by annuity consistent with 26 U.S.C. §451. If the payment election is not made by the prizewinner at the time of purchase or is not made within 60 days after the prizewinner becomes entitled to the prize, then the prize shall be paid as an annuity prize. An election for an annuity payment made by a prizewinner before the ticket purchase or by system default or design may be changed to a cash payment at the election of the prizewinner until the expiration of 60 days after the prizewinner becomes entitled to the prize. The election to take the cash payment may be made at the earlier of the following dates:

a. The time of the prize claim; or

b. Within 60 days after the prizewinner becomes entitled to the prize.

An election made after the prizewinner becomes entitled to the prize is final and cannot be revoked, withdrawn or otherwise changed.

11.14(2) In the event there is more than one prizewinner for a prize paid over a period exceeding ten years, the shares of the prize shall be determined by dividing the cash available in the prize pool equally among all the winners of the prize. Winners who elect a cash payment shall be paid their share in a single cash payment. The annuitized option prize shall be determined by multiplying a winner's share of the prize pool by the annuity factor used by the lottery. The lottery's annuity factor is determined by the best price obtained through a competitive bid of qualified, preapproved brokers or insurance companies made after it is determined that the prize is to be paid as an annuity prize or after the expiration of 60 days after the prizewinner becomes entitled to the prize.

11.14(3) The lottery shall not be responsible or liable for changes in the advertised or estimated annuity prize amount and the actual amount of the prize value purchased from the time the player becomes eligible for the prize and the time the prizewinner claims the prize.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.31.

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CHAPTER 12
LICENSING

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 3]
[Prior to 9/17/03, see 705—Ch 2]

531—12.1(99G,252J) License eligibility criteria.

12.1(1) A person, partnership, unincorporated association, authority, or other business entity shall not be selected as a lottery retailer if the person or entity meets any of the following conditions:

a. Has been convicted of a criminal offense related to the security or integrity of the lottery in Iowa or any other jurisdiction.

b. Has been convicted of any illegal gambling activity, false statements, perjury, fraud, or a felony in Iowa or any other jurisdiction.

c. Has been found to have violated the provisions of Iowa Code Supplement chapter 99G, or any regulation, policy, or procedure of the lottery, unless either ten years have passed since the violation or the board finds the violation both minor and unintentional in nature.

d. Is a vendor or any employee or agent of any vendor doing business with the lottery.

e. Resides in the same household as an officer of the lottery.

f. If an individual, is less than 18 years of age.

g. Does not demonstrate financial responsibility sufficient to adequately meet the requirements of the proposed enterprise.

h. Has not demonstrated that the applicant is the true owner of the business proposed to be licensed and that all persons holding at least a 10 percent ownership interest in the applicant's business have been disclosed.

i. Has knowingly made a false statement of material fact to the authority.

12.1(2) The applicant shall be current in filing all applicable tax returns to the state of Iowa and in payment of all taxes, interest, and penalties owed to the state of Iowa, excluding items under formal appeal pursuant to applicable statutes.

12.1(3) The lottery will deny a license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance.

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.7(1), 99G.9(3), 99G.21(2), and 99G.24.

531—12.2(99G,252J) Factors relevant to license issuance. The lottery may issue a license to any applicant to act as a licensed retailer who meets the eligibility criteria established by Iowa Code Supplement chapter 99G and these rules. In exercising its licensing discretion, the lottery shall consider the following factors: the background and reputation of the applicant in the community for honesty and integrity; the financial responsibility and security of the person and business or activity; the type of business owned or operated by the applicant to ensure consonance with the dignity of the state, the general welfare of the people, and the operation and integrity of the lottery; the accessibility of the applicant's place of business or activity to the public; the sufficiency of existing licenses to serve the public convenience; the volume of expected sales; the accuracy of the information supplied in the application for a license; the applicant's indebtedness to the state of Iowa, local subdivisions of the state, or the United States government; if an individual, indebtedness owed for child support payments; and any other criteria or information relevant to determining if a license should be issued.

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24(5).

531—12.3(99G) Applicant or person defined. For purposes of determining whether an applicant or person is eligible for a license, the term "applicant" or "person" shall include the owner of a sole proprietorship, all partners or participants in a partnership or joint venture, the officers of a fraternal organization, the officers and directors of a corporation, persons owning at least 10 percent or more of a corporation, persons owning at least 10 percent or more of a limited liability company, the manager or managers of a limited liability company, and any legal entity applying for a license.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.24.

531—12.4(99G,252J) Lottery licenses.

12.4(1) The lottery has discretion to license a qualified applicant to sell any one of the following lottery products or any combination of the following products: scratch tickets; pull-tab tickets; and computerized game tickets, if available. The lottery may require an applicant to sell one or more lottery products as a condition of selling any other lottery product. A lottery license authorizes the licensee to sell only the type of lottery products specified on the license.

12.4(2) Any eligible applicant may apply for a license to act as a retailer by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

12.4(3) All lottery license applications must be accompanied by a nonrefundable fee of $25.

12.4(4) Retailers who are currently licensed may apply for a license modification to allow the sale of additional lottery products. A current retailer may be required to complete an additional application or application supplements.

12.4(5) The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

12.4(6) A limited number of retailers may be selected as licensees from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve public convenience. The lottery may refuse to accept license applications for a period of time if the lottery determines that the number of existing licensees is adequate to market any lottery product.

12.4(7) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

531—12.5(99G) Transfer of licenses prohibited. Lottery licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than the licensed premises specified on the license.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), 99G.25, and 99G.30.

531—12.6(99G) Expiration of licenses. A license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. A license that does not have an expiration date will continue indefinitely until surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

531—12.7(99G,252J) Provisional licenses. The lottery may issue a provisional license to an applicant for a lottery license after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, and completion of a preliminary background check. The provisional license shall expire at the time of issuance of the requested license or 90 days from the date the provisional license was issued, whichever occurs first, unless the provisional license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

531—12.8(99G) Off-premises licenses. Any licensed retailer who has been issued a license or provisional license to sell tickets may apply for an off-premises license to sell tickets in locations other than that specified on the existing license. The lottery must specifically approve the geographical area in which sales are to be made and the types of locations at which off-premises sales are to be made prior to issuance of an off-premises license. Additional instructions and restrictions may be specified by the lottery to govern off-premises sales. An off-premises license shall expire at the time designated on the off-premises license. An off-premises license may be renewed at the lottery's discretion.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.30.

531—12.9(99G) Duplicate licenses. Upon the loss, mutilation, or destruction of any license issued by the lottery, application for a duplicate shall be made. A statement signed by the retailer which details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

531—12.10(99G) Reporting changes in circumstances of the retailer. Every change of business structure of a licensed business, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of a licensed business must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.27(1).

531—12.11(99G) License not a vested right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity is a privilege personal to that person and is not a legal right. The possession of a license issued by the lottery to any person to act as a retailer in any capacity does not automatically entitle that person to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.21(2), and 99G.27.

531—12.12(99G,252J) Suspension or revocation of a license.

12.12(1) The lottery may suspend or revoke any license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G, these rules, or the license terms and conditions.

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments that are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. If public convenience is adequately served by other licensees.

e. Failing to sell a minimum number of tickets as established by the lottery.

f. A history of thefts or other forms of losses of tickets or revenue from the business.

g. Violating federal, state, or local law or allowing the violation of any of these laws on premises occupied by or controlled by any person over whom the retailer has substantial control.

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

k. Failing to promptly produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

l. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is inimical to the proper operation of an authorized lottery.

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

p. For a licensee who is an individual, when the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

q. Allowing activities on the licensed premises that could compromise the dignity of the state.

r. Failing to accurately or timely account or pay for lottery products, lottery games, revenues, or prizes as required by the lottery.

s. Filing for or being placed in bankruptcy or receivership.

t. Engaging in any conduct likely to result in injury to the property, revenue, or reputation of the lottery.

u. Making any material change, as determined in the sole discretion of the lottery, in any matter considered by the lottery in executing the contract with the retailer.

12.12(2) The effective date of revocation or suspension of a license, or denial of the issuance or renewal of a license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

12.12(3) If a retailer's license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the retailer's license upon 15 days' notice served in conformance with 531—12.13(99G,252J).

12.12(4) Upon suspicion that a retailer has sold a ticket to an underage player, the lottery will investigate and provide a written warning to the retailer describing the report of the event and of the potential violation of Iowa Code Supplement section 99G.30(3). In the event a retailer sells a ticket to an underage player and the lottery can substantiate the claim, the lottery shall suspend the retailer's license for 7 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a second time in a period of one year from the date of the first event, the lottery shall suspend the retailer's license for a period of 30 days. When a retailer sells a ticket to an underage player and the lottery can substantiate the claim a third time in a period of one year from the date of the first event as described in this rule, the retailer's license shall be suspended for one year.

12.12(5) Upon revocation or suspension of a retailer's license of 30 days or longer, the retailer shall surrender to the lottery, by a date designated by the lottery, the license, lottery identification card, and all other lottery property. The lottery will settle the retailer's account as if the retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30(3), and 99G.35.

531—12.13(99G,252J) Methods of service. The notice required by Iowa Code section 252J.8 shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel.

Notice of a license revocation or a suspension for the reasons described in 531—12.12(99G,252J) shall be served upon the licensee by restricted certified mail, return receipt requested, or personal service in accordance with Iowa Rule of Civil Procedure 1.305. Alternatively, the licensee may accept service personally or through authorized counsel. The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. If requested by the licensee, a hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24.

531—12.14(99G,252J) Licensee's obligation. Licensees and license applicants shall keep the lottery informed of all court actions and all child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—12.15(99G,252J) Calculating the effective date. In the event a licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of a license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 252J.8 and 252J.9 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—12.16(99G) Financial responsibility. The lottery shall use the following guidelines to determine financial responsibility for a retailer seeking a license to sell lottery products.

12.16(1) *Sole proprietorship.* The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

12.16(2) *Partnership.* If the license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

12.16(3) *Fraternal or civic associations.* If the license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 12.16(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 12.16(1). If the credit history discloses that the requirements of subrule 12.16(1) are satisfied, the lottery will not require a bond.

12.16(4) *Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.* If the license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the license applicant must meet all of the following financial responsibility guidelines:

a. The license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation's or limited liability company's financial condition is fair or better.

If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

12.16(5) *Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.* If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 12.16(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 12.16(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

12.16(6) *Bonding requirements.* With respect to any license applicant whose credit history does not meet the guidelines described in subrules 12.16(1) through 12.16(5), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amounts generally described herein. The amount of the bond will vary depending on the type of lottery products sold by the license applicant, the sales history of the retail location or the average volume of sales of lottery products at the location, or a combination of the above factors. The following minimum amounts will be required:

a. Sale of pull-tab tickets only, $500.

b. Sale of instant tickets with or without pull-tab tickets, $1,500.

c. Sale of on-line games with or without instant and pull-tab tickets, $2,500.

12.16(7) *Holding period for bond.* The lottery will hold the bond provided by license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

531—12.17(99G) Monitor vending machine retailers. Unless specifically noted in 531—Chapter 14, the rules contained in this chapter do not apply to entities holding licenses pursuant to 531—Chapter 14.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

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CHAPTER 13
LICENSED RETAILERS

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 4]
[Prior to 9/17/03, see 705—Ch 3]

531—13.1(99G) Licensed retailers. All lottery retailers shall be licensed in the manner provided in Iowa Code Supplement chapter 99G and these rules. Retailers shall abide by all applicable laws and administrative rules, the terms and conditions of the license, and all other directives and instructions issued by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, 99G.25, 99G.27, 99G.30, and 99G.31.

531—13.2(99G) Requirements for the sale of tickets.

13.2(1) Retailers shall be knowledgeable about the lottery and lottery products and may be required to take training in the operation of lottery games. Retailers shall make the purchase of tickets convenient to the public.

13.2(2) Tickets shall be sold at the price designated by the lottery. Retailers shall not sell tickets for a price other than that specified by the lottery.

13.2(3) No retailer or any employee or member of a retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

13.2(4) Retailers shall pay all prizes that the lottery requires retailers to pay during normal business hours at the location designated on the license.

13.2(5) Retailers shall not purchase tickets previously sold by the retailer.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.30, and 99G.31.

531—13.3(99G) Display and availability of lottery license certificates, rules and promotional materials provided by the lottery.

13.3(1) Retailers shall display the lottery license certificates or a facsimile thereof in an area visible to the general public wherever tickets are being sold.

13.3(2) Retailers shall display brochures, flyers, or similar items provided by the lottery that are designed to provide the rules of lottery games near the point at which tickets are sold.

13.3(3) Retailers shall display point-of-sale material provided by the lottery in a manner that is readily seen by and available to the public. The lottery may require the removal of objectionable material or the discontinuance of objectionable advertising that may have an adverse impact on the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, and 99G.27.

531—13.4 Reserved.

531—13.5(99G) Ownership of tickets and other property. All instant tickets accepted by a licensed retailer are the property of the licensed retailer. Tickets that are erroneous or mutilated when received by a retailer may be returned to the lottery for credit. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets which become lost, stolen, or damaged. The lottery may credit retailers for lost, stolen, or damaged instant tickets if the lottery determines that the best interests of the lottery will be served by issuing a credit.

Unless otherwise indicated in writing, all lottery property provided to a licensed retailer for use in selling products, as opposed to property and tickets sold to a retailer, remains the property of the lottery. The retailer shall deliver lottery property to the lottery upon request.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.24, and 99G.27.

531—13.6(99G) Retailer costs and compensation.

13.6(1) Retailers shall purchase pull-tab tickets for a price equal to the retail price of the tickets less the value of prizes that the retailer is required to pay and any discounts or commissions authorized by the lottery. Retailers shall purchase scratch tickets at retail price and shall be credited for validations and commissions.

13.6(2) The lottery may impose a service fee on retailers to cover operational costs.

13.6(3) The lottery, with board approval, shall set the base amount of retailer compensation. The base amount of compensation shall be specified in the agreement between the retailer and the lottery. The lottery may increase the total amount of retailer compensation by implementing sales incentive programs.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.24.

531—13.7(99G) Retailer payment methods. Retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer from the retailer's account. The lottery may allow a retailer to make payments by another method if the retailer can show that the electronic funds transfer system imposes a significant hardship on the retailer or if the lottery determines that the retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.27, 99G.28, and 99G.40.

531—13.8(99G) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed retailer either by a check which is dishonored or by an electronic funds transfer (EFT) which is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The lottery may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or EFT. The lottery may also alter the payment terms of a retailer's license and require a retailer to reimburse the lottery for costs which occur as a result of a dishonored check or EFT.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, and 99G.27.

531—13.9(99G) Inspection of lottery materials and licensed premises. Retailers shall allow the lottery to enter upon the licensed premises in order to inspect lottery materials, tickets, and the premises. All books and records pertaining to the retailer's lottery activities shall be available to the lottery for inspection and copying during the normal business hours of the retailer and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the retailer's lottery activities are subject to seizure by the lottery without prior notice.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, 99G.27, and 99G.28.

531—13.10(99G) Individuals who may sell lottery tickets. Lottery tickets may be sold only by a licensed retailer or an employee of a licensed retailer who is authorized to sell lottery tickets. If the retailer is a nonprofit organization, members of the organization may also sell lottery tickets if authorized by the organization. The retailer is responsible for the conduct of its employees and members that is within the scope of the retailer's lottery license.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, 99G.25, and 99G.30.

531—13.11(99G) Ticket sales restrictions. The lottery reserves the right to limit or terminate the sale of computerized game tickets at any licensed retail location if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

13.11(1) Plays may only be entered manually using the lottery terminal keypad or touch screen or by means of a play slip provided by the lottery and hand-marked by the player or by such other means approved by the lottery. Retailers shall not permit any device to be connected to a lottery terminal to enter plays, except as approved by the lottery.

13.11(2) A ticket or combination of tickets which would guarantee such purchaser a jackpot win shall not directly and knowingly be sold to any person or entity.

13.11(3) An offer to buy and an offer to sell a ticket shall be made only at a location and only by a method which is licensed by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, 99G.24, 99G.27, and 99G.31.

531—13.12(99G) Placement of lottery equipment. The chief executive officer shall determine the need for and type of lottery equipment to be installed at licensee sales outlet locations. Decisions regarding placement of lottery equipment shall be at the sole discretion of the chief executive officer. In the exercise of discretion, the chief executive officer may consider any of the following:

1. The availability of equipment.
2. The suitability of the type of equipment for the specific retail outlet under consideration.
3. The location, equipment, business type and proximity of other extant retail outlets compared with an outlet under consideration.
4. The sufficiency of existing licensed outlets to serve the public convenience.
5. Such minimum sales criteria as may be appropriate based on current market conditions.
6. The cost of equipment and potential return on lottery investment.
7. Such other factors as the chief executive officer may deem appropriate to the exercise of prudent business judgment in reaching a decision.

The decision of the chief executive officer regarding placement of equipment is solely discretionary and final.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.7, and 99G.21.

531—13.13(99G) Monitor vending machine retailers. Unless specifically noted in 531—Chapter 14, the rules contained in this chapter do not apply to entities holding licenses pursuant to 531—Chapter 14.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

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CHAPTER 14
MONITOR VENDING MACHINES

531—14.1(99G,252J) License eligibility criteria. An applicant shall be eligible to hold a monitor vending machine (MVM) retailer license only if the applicant meets the requirements set forth in rule 531—12.1(99G,252J). An applicant shall be eligible to hold an MVM premises license only if the applicant meets the requirements set forth in rule 531—14.5(99G).

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.7(1), 99G.9(3), 99G.21(2), and 99G.24.

531—14.2(99G,252J) Factors relevant to license issuance. The lottery may issue an MVM license to any applicant who meets the eligibility criteria established by Iowa Code Supplement chapter 99G and these rules. In exercising its licensing discretion the lottery shall consider the factors identified in rule 531—12.2(99G,252J).

This rule is intended to implement Iowa Code section 252J.2 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24(5).

531—14.3(99G) Definitions. For purposes of this chapter, the following definitions shall apply:

"Applicant" and *"person"* shall have the definition set forth in rule 531—12.3(99G).

"Monitor vending machine" means a vending machine that dispenses or prints and dispenses lottery tickets that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets. Each monitor vending machine shall have a video monitor for display of ticket symbols and audio capabilities to aid in play of a game.

"MVM" means monitor vending machine.

"MVM distributor" means a person or entity, other than an MVM manufacturer or an MVM retailer, that possesses an MVM license and that purchases or leases MVMs and leases or sells MVMs to MVM retailers.

"MVM license" means either an MVM retailer license or an MVM premises license issued pursuant to these rules, or both.

"MVM premises" means a business establishment or other location where one or more MVMs are located or are proposed to be located.

"MVM premises operator" means the person who owns the primary business or enterprise conducted at the MVM premises.

"MVM retailer" means a person or entity that possesses an MVM retailer license and sells lottery products from one or more lottery-approved MVMs that are owned or leased by the person or entity and that are located on premises owned or managed by the MVM retailer or by an MVM premises operator.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—14.4(99G,252J) MVM retailer licenses.

14.4(1) Any MVM retailer or MVM distributor must possess an MVM retailer license before purchasing, selling, or leasing any MVMs in the state of Iowa.

14.4(2) The lottery has discretion to license a qualified applicant to sell lottery products from MVMs. An MVM retailer license authorizes the licensee to sell only the type of lottery products specified on the license and only from MVMs that have been certified by the chief executive officer of the lottery pursuant to rule 14.19(99G). MVM retailer licenses also allow the licensees to distribute lottery-certified MVMs. The lottery shall maintain a list of MVMs that have been certified by the chief executive officer as meeting lottery requirements.

14.4(3) An MVM retailer license is not limited to a specific location, but MVMs may only be used to sell lottery products on premises that have been licensed pursuant to rule 14.5(99G).

14.4(4) Any eligible applicant may apply for an MVM retailer license by first filing with the lottery an application form together with any supplements required. Supplements may include, but are not limited to, authorizations to investigate criminal history, financial records and financial resources, and authorizations to allow the lottery to conduct site surveys.

14.4(5) All lottery MVM license applications must be accompanied by a nonrefundable fee of $25.

14.4(6) The lottery may waive the payment of any license fee to facilitate an experimental program or a research project.

14.4(7) A limited number of MVM retailers may be selected from applications received. The selection shall be made based on criteria designed to produce the maximum amount of net revenue and serve the public convenience. The lottery may refuse to accept MVM retailer license applications for a period of time if the lottery determines that the number of existing MVM retailer licensees is adequate to market lottery products.

14.4(8) The lottery will grant, deny, or place on hold all applications within 60 days of acceptance of an application. Applications placed on hold shall be considered denied for purposes of appeal. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

14.4(9) A lottery licensee holding a lottery license pursuant to the rules contained in 531—Chapters 12 and 13 may sell lottery products from MVMs only if that licensee possesses a separate MVM license. Any premises on which MVMs will be located must be licensed pursuant to rule 14.5(99G), even if the premises operator holds a lottery license pursuant to the rules contained in 531—Chapters 12 and 13.

14.4(10) Notwithstanding any of the foregoing, licensees of the Iowa racing and gaming commission making application for an MVM retailer license will not be required to submit to the lottery's criminal background check.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

531—14.5(99G) MVM premises license.

14.5(1) Before an MVM may be used to vend lottery products, the premises on which the MVM is to be located must be licensed by the chief executive officer of the lottery. An MVM premises shall be licensed only after all of the following requirements have been met:

1. The MVM premises operator shall have passed a criminal background check.
2. The MVM premises shall have been demonstrated to be compatible with the dignity of the state.
3. The chief executive officer shall have determined that the MVM premises is an age-controlled environment. Examples of age-controlled environments are premises where the age of patrons is monitored by the employees of the establishment.
4. All lottery MVM premises license applications must be accompanied by a nonrefundable fee of $25.

14.5(2) The MVM premises operator shall post its MVM license, or a facsimile, at the MVM premises. The license or a facsimile thereof may be affixed to the MVM.

14.5(3) Any premises on which MVMs will be located must be licensed pursuant to rule 14.5(99G), even if the premises operator holds a lottery license pursuant to the rules contained in 531—Chapters 12 and 13.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.30, and 99G.31.

531—14.6(99G) Transfer of MVM licenses prohibited. MVM licenses may not be transferred to any other person or entity and do not authorize the sale of lottery products at any location other than those permitted by lottery rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), 99G.25, and 99G.30.

531—14.7(99G) Expiration of MVM licenses. An MVM license is valid until it expires, is terminated by a change of circumstances, is surrendered by the licensee, or is revoked by the lottery. An MVM license that does not have an expiration date will continue indefinitely until it is surrendered, revoked, or terminated by a change in circumstances.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24(3), and 99G.27.

531—14.8(99G,252J) Provisional MVM licenses. The lottery may issue a provisional MVM license to an applicant after receipt of a fully completed license application, the authorization for a complete personal background check, completion of a credit check, if applicable, and completion of a preliminary background check. The provisional MVM license shall expire at the time of issuance of the requested MVM license or 90 days from the date the provisional MVM license was issued, whichever occurs first, unless the provisional MVM license is extended by the lottery.

Notwithstanding the foregoing, the lottery will deny a provisional MVM license to any applicant who is an individual if the lottery has received a certificate of noncompliance from the child support recovery unit with regard to the individual, until the unit furnishes the lottery with a withdrawal of the certificate of noncompliance. If an application is denied because the lottery has received a certificate of noncompliance from the child support recovery unit in regard to an individual, the effective date of denial of the issuance of the MVM license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the applicant.

This rule is intended to implement Iowa Code sections 252J.2 and 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.25, and 99G.27.

531—14.9(99G) MVM placement and operation. Licensed MVM retailers shall locate their MVMs at their discretion, subject to the following requirements:

1. All MVMs shall be located only on licensed MVM premises.
2. No MVM shall be located in any establishment that is incompatible with the dignity of the state.
3. Only MVMs certified by the lottery's chief executive officer pursuant to rule 14.19(99G) may be placed in licensed MVM premises. A list of such certified MVMs may be obtained from the lottery.
4. Only graphics displays and audio authorized by the lottery shall be used on MVMs. MVM retailers shall make no changes, alterations, or additions to the lottery-authorized graphics displays, the lottery-authorized audio played by the MVMs, or to the cabinet exteriors of MVMs.
5. In cases where an MVM is located on an MVM premises not owned by the MVM retailer, the MVM retailer shall be solely responsible for securing the rights necessary to locate the MVM on such premises and shall provide proof of such rights to the lottery upon request. Under no circumstances shall the lottery be responsible to the MVM premises operator or owner as a consequence of the placement of an MVM by an MVM retailer.
6. Under no circumstances shall the lottery be responsible for the expense of installing electrical circuits or telecommunications lines or for any power or telecommunications services necessary to operate an MVM.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), and 99G.21.

531—14.10(99G) Duplicate licenses. Upon the loss, mutilation, or destruction of any MVM license issued by the lottery, application for a duplicate shall be made. A statement signed by the MVM retailer, distributor, or premises operator that details the circumstances under which the license was lost, mutilated, or destroyed may be required by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.30.

531—14.11(99G) Reporting changes in circumstances of the MVM licensee. Every change in business structure of an MVM licensee, such as from a sole proprietorship to a corporation, and every change in the name of a business must be reported to the lottery prior to the change. Substantial changes in the ownership of an MVM licensee must also be reported to the lottery prior to the change. A substantial change of ownership is defined as the transfer of 10 percent or more equity in the licensed business from or to another single individual or legal entity. If a change involves the addition or deletion of one or more existing owners or officers, the licensee shall submit a license application reflecting the change and any other documentation the lottery may require. All changes will be reviewed by the lottery to determine if the existing license should be continued.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.27(1).

531—14.12(99G) MVM license not a vested right. The possession of an MVM license issued by the lottery to any person or entity to act as an MVM retailer, MVM distributor, or MVM premises operator is a privilege personal to that person or entity and is not a legal right. The possession of an MVM license issued by the lottery does not automatically entitle that person or entity to lease or purchase an MVM or to sell tickets or obtain materials for any particular game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.7.

531—14.13(99G,252J) Suspension or revocation of an MVM retailer license.

14.13(1) The lottery may suspend or revoke any MVM retailer license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for MVM retailer license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G, these rules, or the MVM license terms and conditions.

c. Failing to file any return or report or to keep records required by the lottery; failing to maintain an acceptable level of financial responsibility as evidenced by the financial condition of the business, incidents of failure to pay taxes or other debts, or by the giving of financial instruments which are dishonored or electronic funds transfers that are not paid; fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. If public convenience is adequately served by other licensed MVM retailers.

e. Failing to sell a minimum number of tickets as established by the lottery.

f. The MVM retailer has a history of thefts or other forms of losses of tickets or revenue.

g. Violating federal, state, or local law or allowing the violation of any of these laws in connection with the operation of MVMs.

h. Obtaining a license by fraud, misrepresentation, concealment or through inadvertence or mistake.

i. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

j. Denying the lottery or its authorized representative, including authorized local law enforcement agencies, access to any place where a licensed activity is conducted.

k. Failing promptly to produce for inspection or audit any book, record, document, or other item required to be produced by law, these rules, or the terms of the license.

l. Systematically pursuing economic gain in an occupational manner or context that is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.

m. Failing to follow the instructions of the lottery for the conduct of any particular game or special event.

n. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

o. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

p. For a licensee who is an individual, when the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the licensee, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

14.13(2) The effective date of revocation or suspension of an MVM retailer license, or denial of the issuance or renewal of an MVM retailer license, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice upon the licensee. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

14.13(3) If an MVM retailer license is suspended for more than 180 days from the effective date of the suspension, the lottery will revoke the license upon 15 days' notice served in conformance with rule 531—12.13(99G,252J).

14.13(4) Upon revocation or suspension of an MVM retailer license of 30 days or longer, the MVM retailer shall surrender to the lottery, by a date designated by the lottery, the MVM license, lottery identification card, and all other lottery property. The lottery will settle the MVM retailer's account as if the MVM retailer had terminated its relationship with the lottery voluntarily.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30(3), and 99G.35.

531—14.14(99G,252J) Suspension or revocation of an MVM premises license.

14.14(1) The lottery may suspend or revoke any MVM premises license issued pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the eligibility criteria for MVM premises license application and issuance established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G or these rules.

c. Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. Violating federal, state, or local law or allowing the violation of any laws in connection with the production or operation of MVMs.

e. Obtaining an MVM premises license by fraud, misrepresentation, concealment or through inadvertence or mistake.

f. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

g. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.

h. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

i. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

j. When the lottery receives a certificate of noncompliance from the child support recovery unit in regard to the MVM premises operator who is an individual, unless the unit furnishes the department with a withdrawal of the certificate of noncompliance.

k. A history of thefts or other forms of losses of tickets or revenue occurs at the MVM premises.

l. Conduct or business activities on the premises which would undermine the public confidence in the lottery.

m. Substantiated instances of purchases of lottery tickets by underage persons on the MVM premises.

14.14(2) The effective date of revocation or suspension of a certification, or denial of the issuance or renewal of a certification, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice. All other notices of revocation or suspension shall be 20 days following service upon a licensee.

14.14(3) Upon suspicion that an underage player has purchased one or more lottery products from an MVM, the lottery will investigate and provide a written warning to the MVM retailer and the MVM premises operator describing the report of the event and of the potential violation of Iowa Code Supplement section 99G.24(9). In the event the lottery can substantiate the claim that an underage player has purchased a product from an MVM, the lottery shall suspend the license of the MVM premises in question for 7 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM a second time in a period of one year from the date of the first event on the same MVM premises, the lottery shall suspend the MVM premises license for a period of 30 days. If the lottery can substantiate the claim that an underage player has purchased a product from an MVM at a given MVM premises a third time in a period of one year from the date of the first event as described in this rule, the lottery shall suspend the license of the MVM premises in question for one year.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

531—14.15(99G,252J) Methods of service. Notice required by Iowa Code section 252J.8 and notice of a license revocation or a suspension for the reasons described in rules 14.13(99G,252J) and 14.14 (99G,252J) shall be as set forth in rule 531—12.13(99G,252J). The notice shall set forth the reasons for the suspension or revocation and provide for an opportunity for a hearing. A hearing on the suspension or revocation shall be held within 180 days or less after the notice has been served.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), and 99G.24.

531—14.16(99G,252J) Licensee's obligation. MVM retailers, distributors, premises operators, and license applicants shall keep the lottery informed of all court actions and all relevant child support recovery unit actions taken under or in connection with Iowa Code chapter 252J and shall provide the lottery with copies, within seven days of filing or issuance, of all applications filed with the district court pursuant to Iowa Code section 252J.9, all court orders entered in such actions, and withdrawals of certificates of noncompliance by the child support recovery unit.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—14.17(99G,252J) Calculating the effective date. In the event an MVM licensee or applicant files a timely district court action following service of a lottery notice pursuant to Iowa Code sections 252J.8 and 252J.9, the lottery shall continue with the intended action described in the notice upon the receipt of a court order lifting the stay, dismissing the action, or otherwise directing the lottery to proceed. For purposes of determining the effective date of revocation or suspension, or denial of the issuance or renewal of an MVM license, the lottery shall count the number of days before the action was filed and the number of days after the action was disposed of by the court.

This rule is intended to implement Iowa Code sections 252J.8 and 252J.9 and Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

531—14.18(99G) Financial responsibility of MVM retailers and MVM distributors. The lottery shall use the following guidelines to determine financial responsibility for a person seeking an MVM retailer license.

14.18(1) *Sole proprietorship.* The lottery will not require a bond from a sole proprietor if the account history for the applicant for the past two years discloses no more than four accounts past due and no accounts over 90 days past due.

14.18(2) *Partnership.* If the MVM license applicant is a partnership, 50 percent of the partners must meet the credit guidelines listed in subrule 14.18(1). If the credit history discloses that the requirements of subrule 14.18(1) are satisfied, the lottery will not require a bond.

14.18(3) *Fraternal or civic associations.* If the MVM license applicant is a fraternal association, civic organization or other nonprofit entity, the applicant must meet the credit guidelines set forth in subrule 14.18(1). If the fraternal or civic association or other nonprofit entity has no credit history or the credit history is incomplete as determined in the sole discretion of the lottery, then the officers of the fraternal or civic association or other nonprofit entity must meet the requirements of subrule 14.18(1). If the credit history discloses that the requirements of subrule 14.18(1) are satisfied, the lottery will not require a bond.

14.18(4) *Corporations and limited liability companies in existence two years or more if a credit risk appraisal is available through a financial and credit reporting entity.* If the MVM license applicant is a corporation or a limited liability company and the corporation or the limited liability company has been in existence for more than two years from the date of the application and a credit risk appraisal is available through a financial and credit reporting entity, the MVM license applicant must meet the following financial responsibility guidelines:

a. The MVM license applicant is paying 60 percent of its suppliers on time or within terms; and

b. The license applicant must have a credit risk appraisal provided by a financial and credit reporting entity that indicates the corporation or limited liability company's financial condition is fair or better. If the corporation or the limited liability company meets the guidelines described in this rule, the lottery will not require a bond from the license applicant.

14.18(5) *Corporations and limited liability companies in existence less than two years or if a credit risk appraisal is not available through a financial and credit reporting entity.* If a corporation has been in existence for less than two years from the date of the application or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the corporate officers who hold 10 percent or more of the stock of the corporation. If a limited liability company has been in existence for less than two years or a credit risk appraisal is not available through a financial and credit reporting entity, the lottery will review the credit history of the members of a limited liability company who have contributed 10 percent or more to the capital of the limited liability company. Fifty percent or more of the corporate officers or members of the limited liability company must meet the credit guidelines set forth in subrule 14.18(1). If the corporate officers or the members of the limited liability company meet the requirements set forth in subrule 14.18(1), the lottery will not require the corporation or the limited liability company to obtain a bond.

14.18(6) *Bonding requirements.* With respect to any MVM license applicant whose credit history does not meet the guidelines described in subrules 14.18(1) through 14.18(5), the applicant will be required to obtain a bond from a surety company authorized to do business in Iowa or offer a cash bond in the amount of $250 per MVM to be operated by the MVM license applicant; provided, however, that the total amount of such bond shall not exceed $50,000.

14.18(7) *Holding period for bond.* The lottery will hold the bond provided by the license applicant for a minimum time period of one year. Thereafter, the lottery will review the credit history of the licensed retailer. If the retailer's account history shows no delinquent payments, the lottery will release the bond.

This rule is intended to implement Iowa Code Supplement sections 99G.7(1) and 99G.26.

531—14.19(99G) MVM certification. Before an MVM may be used to vend lottery products, it must be certified by the chief executive officer of the lottery. No MVM shall be placed in an MVM premises prior to being certified by the lottery. An MVM shall be certified only after all of the following requirements have been met:

14.19(1) The manufacturer of the MVM shall have passed a criminal background check pursuant to rule 531—2.16(99G).

14.19(2) The manufacturer shall have passed a financial responsibility background check.

14.19(3) The manufacturer shall demonstrate to the lottery's satisfaction that the MVM can perform all of the following:

a. Reliably vend lottery-approved tickets, either preprinted or printed on demand from a predetermined electronic "pack" of tickets.

b. Display, in the process of vending tickets, lottery-approved graphics and sound, indicating whether the vended ticket is a winner.

c. Communicate reliably with a central computer system, as described below, in order to transmit data.

d. Disable itself if it fails to communicate with the central computer system for a period of 48 hours.

e. Keep lottery tickets and cash receipts secure.

f. Account for the number of tickets sold and prizes awarded.

14.19(4) The manufacturer shall demonstrate the ability to securely, reliably, and consistently produce either preprinted tickets or electronic "packs" of tickets that meet the lottery's specifications as set forth in the game rules.

14.19(5) The manufacturer shall demonstrate that the MVM can operate reliably with a central computer system capable, at a minimum, of all of the following:

a. Communicating with MVMs located in all parts of the state.

b. Retrieving data from MVMs.

c. Transmitting data to MVMs.

d. Storing data received from MVMs.

e. Allowing secure access to data by the lottery and MVM retailers.

f. Producing printed reports in a format usable by the lottery.

g. Performing security checks on MVMs.

h. Consistently and reliably operating at least 16 hours per day.

14.19(6) The MVM manufacturer must commit contractually to provide the lottery with the data required by the lottery in a timely manner. The lottery may negotiate directly with manufacturers of certified MVMs for these services.

14.19(7) The manufacturer shall pay a fee of $25, plus all actual costs incurred by the lottery in performing the necessary criminal background and financial responsibility checks. The lottery may require a manufacturer to pay the estimated cost of the criminal background and financial responsibility checks in advance.

14.19(8) As a condition of certification, the manufacturer shall provide to the lottery a working example of each model of MVM it proposes to have certified for testing and troubleshooting purposes. The lottery may keep the working example for such time as the model remains certified.

14.19(9) The certification process, including the financial responsibility background check, is solely for the use of the lottery. The lottery does not warrant the financial stability of any MVM manufacturer, and lottery certification of an MVM model shall not be considered to constitute a representation or a warranty that a particular MVM of that model is merchantable, fit for any particular purpose, or free of defects. MVM retailers and distributors shall conduct their own due diligence, including financial responsibility, prior to purchasing or leasing an MVM.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.30, and 99G.31.

531—14.20(99G,252J) Suspension or revocation of certification of an MVM.

14.20(1) The lottery may suspend or revoke any certification made pursuant to these rules for one or more of the following reasons:

a. Failing to meet or maintain the certification criteria established by Iowa Code Supplement chapter 99G or these rules.

b. Violating any of the provisions of Iowa Code Supplement chapter 99G or these rules.

c. Fraud, deceit, misrepresentation, or other conduct prejudicial to the public confidence in the lottery.

d. Violating federal, state, or local law or allowing the violation of any laws in connection with the production or operation of MVMs.

e. Obtaining a certification by fraud, misrepresentation, concealment or through inadvertence or mistake.

f. Making a misrepresentation of fact to the board or lottery on any report, record, application form, or questionnaire required to be submitted to the board or lottery.

g. Systematically pursuing economic gain in an occupational manner or context which is in violation of the criminal or civil public policy of this state if such pursuit creates cause to believe that the participation of such person in these activities is detrimental to the proper operation of an authorized lottery.

h. Failing to follow security procedures of the lottery for the management of personnel, handling of tickets, or for the conduct of any particular game or special event.

i. Making a misrepresentation of fact to a purchaser, or prospective purchaser, of a ticket, or to the general public with respect to the conduct of a particular game or special event.

j. Repeated failure or inability of the MVM or the associated central computer system to operate properly.

k. The occurrence of any event or the existence of any state of facts that would cause the MVM manufacturer to fail a criminal background check or a financial responsibility check.

14.20(2) The effective date of revocation or suspension of a certification, or denial of the issuance or renewal of a certification, as specified in the notice required by Iowa Code section 252J.8, shall be 60 days following service of the notice.

This rule is intended to implement Iowa Code section 252J.8 and Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

531—14.21(99G) Requirements for the sale of tickets.

14.21(1) Prior to the vending of any lottery products by an MVM retailer, the lottery and the MVM retailer shall enter into a written agreement specifying the share of revenue to be remitted to the lottery, providing for the provisioning of tickets and paper stock, and other matters as the parties shall agree upon.

14.21(2) Tickets shall be sold at the price designated by the lottery unless the lottery specifically authorizes their sale at a different price.

14.21(3) No MVM retailer or any employee, member, or agent of an MVM retailer shall attempt to identify a winning ticket prior to the sale of the ticket.

14.21(4) MVM retailers shall arrange for the MVM premises operator or agent(s) or employees of the MVM premises operator to pay all prizes less than $600 during normal business hours at the MVM premises where the prize-winning ticket was vended. Prizes of $600 or more shall be paid at a lottery regional office or at lottery headquarters in Des Moines. Prizes to be claimed from an MVM premises operator must be claimed prior to the MVM premises' first close of business following the vending of the winning ticket.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.30, and 99G.31.

531—14.22(99G) Ownership of tickets and other property. All tickets or electronic "packs" of tickets accepted by a licensed MVM retailer are the property of the MVM retailer. After confirmation of delivery, the retailer is responsible for the condition and security of the tickets and for any losses resulting from tickets that become lost, stolen, or damaged. The lottery may credit MVM retailers for lost, stolen, or damaged tickets if the MVM retailer licensee has been billed for the lost, stolen, or damaged tickets and only if the lottery determines that the best interests of the lottery will be served by issuing a credit.

Unless otherwise indicated in writing, all lottery property provided to an MVM retailer for use in selling products, as opposed to property and tickets sold to an MVM retailer, remains the property of the lottery. The retailer shall deliver lottery property to the lottery upon request.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.24, and 99G.27.

531—14.23(99G) MVM retailer compensation. The lottery, with board approval, shall set the amount of MVM retailer compensation.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.24.

531—14.24(99G) MVM retailer payment methods. MVM retailers are required to pay for lottery tickets or shares by means of an electronic funds transfer (EFT) from the MVM retailer's account. The lottery may allow an MVM retailer to make payments by another method if the MVM retailer can show that the electronic funds transfer system imposes a significant hardship on the MVM retailer or if the lottery determines that the MVM retailer's payment history justifies use of an alternative payment method.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), 99G.27, 99G.28, and 99G.40.

531—14.25(99G) Dishonored checks and electronic funds transfers. Any payment made to the lottery by an applicant for a license or by a licensed MVM retailer either by a check which is dishonored or by an electronic funds transfer which is not paid by the depository shall be grounds for immediate denial of the application for a license or for the suspension or revocation of an existing license. The lottery may assess a surcharge up to the maximum allowed by applicable state law for each dishonored check or EFT. The lottery may also alter the payment terms of an MVM retailer's license and require an MVM retailer to reimburse the lottery for costs that occur as a result of a dishonored check or EFT. The lottery may disable all MVMs associated with the licensed MVM retailer until such time as the lottery receives certified funds to compensate for the dishonored item.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, and 99G.27.

531—14.26(99G) Inspection of lottery materials and licensed premises. MVM retailers and MVM premises operators shall allow the lottery to inspect lottery materials, tickets, and the premises. All books and records pertaining to the MVM retailer's and the MVM premises operator's lottery activities shall be available to the lottery for inspection and copying during the normal business hours of the MVM retailer or the MVM premises operator and between 8 a.m. and 5 p.m., Monday through Friday. All books and records pertaining to the MVM retailer's and MVM premises operator's lottery activities are subject to seizure by the lottery without prior notice.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.24, 99G.27, and 99G.28.

531—14.27(99G) Payment of MVM ticket prizes. Prizes won by MVM tickets may be paid only by an agent or employee of the MVM premises operator where the winning ticket was vended or by an agent or employee of the Iowa lottery authority, as specified in subrule 14.21(4). If the MVM premises operator is a nonprofit organization, members of the organization may also pay prizes if authorized by the organization. The MVM retailer shall be responsible for ensuring that prizes up to $600 are paid.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.30, and 99G.31.

531—14.28(99G) Ticket sales restrictions.

14.28(1) The lottery reserves the right to limit or terminate the sale of tickets from any MVM or at any MVM premises if such sales may compromise the operation and integrity of the lottery, reflect conduct prejudicial to the public confidence in the lottery or reflect activity of an illegal nature under local, state or federal laws.

14.28(2) Tickets shall not be purchased from MVMs by any officer, employee, agent, or subcontractor of any MVM retailer, MVM distributor, or manufacturer, or to any spouse, child, sibling, or parent residing as a member of the same household in the principal place of residence of any such person.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, 99G.27, 99G.30, and 99G.31.

531—14.29(99G) Transfer of MVMs. MVMs may only be transferred to authorized entities.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21(2), 99G.24, and 99G.27.

531—14.30(99G) Tax reporting. MVM retailers are responsible for tax reporting requirements related to MVM premises locations.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21(2).

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CHAPTERS 15 to 17
Reserved

CHAPTER 18
SCRATCH TICKET GENERAL RULES

[Prior to 1/14/87, Iowa Lottery Agency[526] Ch 8]
[Prior to 11/30/88, Instant Game General Rules[705] Ch 8]
[Prior to 9/17/03, see 705—Ch 8]

531—18.1(99G) Authorization of scratch ticket games. The lottery authority board authorizes the sale of scratch tickets that meet the criteria set forth in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

531—18.2(99G) Definitions.

"Play symbols" means the numbers or symbols appearing under the removable covering on the ticket.

"Scratch ticket" as used in this chapter means an instant lottery ticket that is played by removing a rub-off covering on the ticket.

"Validation number" means the characters or numbers found on a ticket or ticket stub.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

531—18.3(99G) Scratch ticket price. The lottery shall specify the price of scratch tickets in the specific game rules for each game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—18.4(99G) Method of play. Winners of a prize may be determined by such activities as locating, matching, or adding the play symbols on the tickets or by any other play action approved by the lottery. The exact method of designating a winning ticket shall be determined by the lottery and shall be set forth in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—18.5(99G) Prizes.

18.5(1) The number and amount of prizes shall be determined by the lottery and set forth in the specific game rules.

18.5(2) At the lottery's discretion, a scratch ticket game may include a special prize event. The number of prizes and the amount of each prize in the prize event shall be determined by the lottery. The dates and times, as well as the procedures for conducting any elimination drawings or prize events, shall be determined by the lottery in the specific game rules. Finalists for prize events shall be selected in the manner stated in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—18.6(99G) Annuity prizes. If a prize offered in a scratch game is an annuity, the prize shall consist of an initial prize payment followed by yearly installments as described in the specific game rules. If the current cash value of an annuity prize attributable to a single ticket or entry is less than $100,000, the lottery may elect to pay the current cash value of the prize in one lump-sum payment.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—18.7(99G) Disclosure of odds. The overall probability of purchasing a winning ticket shall be displayed on each ticket.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—18.8(99G) Claiming prizes.

18.8(1) *Claim period.* Prizes must be claimed within 90 days of the announced end of the scratch game.

18.8(2) *Prizes claimed at retailer.* The specific game rules shall specify prizes that shall be claimed from the retailer. To claim a prize from a retailer, the winner shall sign the back of the winning ticket and fill out a claim form if required by the specific game rules. If a retailer can verify the claim, the retailer shall pay the prize. If a retailer cannot verify the claim, the player shall submit the ticket and a completed claim form to the lottery. If the claim is validated by the lottery, a draft shall be forwarded to the player in payment of the amount due. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

18.8(3) *Prizes claimed at lottery.* The specific game rules shall specify prizes that may be claimed only from the lottery. To claim a prize from the lottery, the player may personally present the completed claim form obtained from a licensed retailer or any lottery office and the ticket to any lottery office or may mail the ticket and claim form to the Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999. If the claim is validated by the lottery, the prize or a check, warrant, or draft shall be forwarded to the player in payment of the amount due less any applicable state or federal income tax withholding. If the claim is not validated by the lottery, the claim shall be denied and the player shall be promptly notified.

18.8(4) *Prizes in special events.* The specific game rules shall set forth the manner in which prizes won in special events or drawings may be claimed.

18.8(5) *Variation by specific game rules.* The specific game rules may vary the terms of this rule in respect to the manner in which prizes are claimed or the claim period applicable to any scratch game or special event.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—18.9(99G) Ticket validation requirements.

18.9(1) To be a valid scratch ticket, a ticket must meet all of the following validation requirements. A ticket must:

a. Have been issued by the lottery in an authorized manner.

b. Not be altered, unreadable, reconstructed or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed or produced in error.

f. Have play symbols and captions as described in the specific game rules. All symbols, numbers and codes must be present in their entirety, legible, right side up, and not reversed in any manner.

g. Have the appropriate bar code, pack-ticket number, retailer verification code and security code.

h. Have a validation number that appears on the lottery's official list of validation numbers of winning tickets. A ticket with that validation number shall not have been previously paid.

i. Pass all additional validation requirements stated in the specific game rules and any confidential validation requirements established by the lottery.

18.9(2) Any ticket not passing all applicable validation requirements is invalid and is ineligible for any prize. The chief executive officer's determination that a ticket is invalid is final.

The chief executive officer, in the chief executive officer's sole discretion, may choose to pay an amount equal to the prize that would have been won on an invalid ticket if the lottery is able to determine the prize which would have been won by use of a symbol, number, color code, or other mechanism. The chief executive officer's decision as to whether to pay a player the sum equal to the prize on an invalid ticket is final.

If an invalid ticket is purchased by a player, the only responsibility or liability of the lottery shall be to replace the invalid ticket with an unplayed ticket from the same game or any other game or issue a refund of the sale price.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—18.10(99G) Official end of game. The lottery shall announce the official end of each scratch game. Retailers may continue to sell tickets for each game up to the cutoff date specified by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—18.11(99G) Board approval of games. The lottery shall provide board members with a written description of each specific scratch game. The chairperson or a quorum of the board may call a special meeting to review the instant game selection. The board shall not contest the selection of a scratch game more than five days after receiving written notice of the selection.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

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CHAPTER 19
PULL-TAB GENERAL RULES
[Prior to 9/17/03, see 705—Ch 11]

531—19.1(99G) Authorization of pull-tab games. The lottery authority board authorizes the lottery to sell pull-tab tickets which meet the criteria specified in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

531—19.2(99G) Definitions. As used in this chapter the following definitions are applicable.

"Low-tier prizes" are prizes which are included in the guaranteed low-end prize structure of a pull-tab game.

"Pull-tab tickets" are instant lottery tickets that are played by opening tabs to reveal if a prize was won. "Pull-tab tickets" do not include "scratch tickets" that are played by removing a rub-off covering from the play area.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

531—19.3(99G) Pull-tab ticket price. The lottery shall specify the price of pull-tab tickets in the specific game rules for each game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—19.4(99G) Method of play. Each pull-tab ticket shall have tabs under which play symbols shall appear. A winning ticket shall be determined by matching, aligning, adding, or locating symbols or numbers under the tabs.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—19.5(99G) Ticket validation requirements.

19.5(1) Winning tickets shall be validated by use of a symbol, number, or color-coded marking. A ticket is not valid if it fails to meet any of the following requirements. The ticket must:

a. Have been issued by the Iowa lottery authority in an authorized manner.

b. Not be altered, unreadable, reconstructed, or tampered with in any manner.

c. Not be counterfeit in whole or in part.

d. Not be stolen or appear on any list of omitted tickets on file with the lottery.

e. Be complete and not blank or partially blank, miscut, misregistered, defective, or printed in error.

f. Have the exact play symbols and captions specified in the specific game rules.

g. Pass all validation tests including confidential validation tests.

If a ticket is invalid when sold it is not eligible to receive any prize, and the purchaser's sole remedy is to submit the ticket to lottery headquarters to obtain a refund of the retail sale price. The lottery shall have no liability or responsibility for tickets invalidated after the time of sale.

The chief executive officer may, in the chief executive officer's sole discretion, choose to pay a sum equal to the prize on an invalid ticket if the lottery is able to determine the prize that would have been won on the invalid ticket by use of a symbol, number, color code or other mechanism. The chief executive officer's determinations that a ticket is valid or invalid, that a ticket was valid when sold and was subsequently invalidated, and whether a sum equal to the prize on an invalid ticket will be paid shall be final.

19.5(2) Reserved.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.6(99G) Prizes. The number and the amount of prizes shall be determined by the lottery and set forth by the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.7(99G) Disclosure of odds. The overall probability of purchasing a winning ticket shall be stated on the ticket.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—19.8(99G) Prize claims. All prizes must be claimed only at the place of business of the retailer that sold the ticket. Prizes must be claimed prior to the retailer's first close of business following the sale of the ticket. The winning ticket must be submitted to the retailer to obtain payment of any prize.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.9(99G) Owner of ticket. Retailers shall pay prizes only to persons who present winning tickets. The person in physical possession of a pull-tab ticket shall be deemed to be the owner of the ticket who is entitled to prize payment regardless of any signature or other writing that may have been placed on the ticket after purchase.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.10(99G) Disputed claim. If a purchaser and a retailer cannot agree as to whether a prize should be paid on any ticket, the purchaser may submit the ticket to any lottery office. The chief executive officer's determination as to whether a prize shall be awarded is final.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.11(99G) Lottery logo. All pull-tab tickets sold by the Iowa lottery authority shall be conspicuously marked with the logo of the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—19.12(99G) End of game. The chief executive officer shall announce the end of any pull-tab game or games.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—19.13(99G) Board approval of game. After selection of a particular pull-tab game, the lottery shall provide board members with written notification that a particular game has been selected. The chairperson of the board or a quorum of the board may call a meeting to review the game selection. If the lottery board does not disapprove of the game within five working days following receipt of notice that the game has been selected, the board may not later disapprove of the game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

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CHAPTER 20
COMPUTERIZED GAMES—GENERAL RULES

[Prior to 10/12/94, see 705—Chapters 9, 10, 12, 13, 14, 15]
[Prior to 9/17/03, see 705—Ch 13]

531—20.1(99G) Authorization of computerized lottery games. The lottery authority board authorizes the sale of computerized games to be played in compliance with the criteria set forth in this chapter.

This rule is intended to implement Iowa Code Supplement section 99G.9(3).

531—20.2(99G) Computerized lottery definitions. For the purposes of interpreting this chapter, the following definitions are applicable unless the context requires a different meaning.

"Central computer" or *"central computer system"* is a computer system designated to control, monitor, and communicate with the terminals and to record the transactions processed by the terminals.

"Drawing" means that process that is used to randomly select a winning combination for the game plays.

"Drawing machine" means a computer or other device that determines the outcome of the process of selection of winning and losing tickets or shares in a lottery.

"Easy pick" means the random selection by the computer terminal of a valid play for the game that was selected.

"Electronic ticket" or *"e-ticket"* means a lottery ticket or share for which an electronic visual facsimile on a computer is available from the lottery.

"Game" shall mean any computerized game conducted by the lottery.

"Game ticket" or *"ticket"* means a ticket or share produced by a terminal or manufacturing process that is the tangible evidence to prove participation in a game.

"Gaming machine" means a drawing machine that upon winning dispenses coins, currency, or a ticket, credit, or token that is redeemable for cash or a prize.

"Lotto terminal" means a vending machine that prints and dispenses tickets or shares that will be determined to be winning or losing tickets or shares either by a predetermined pool drawing machine or by a drawing machine at some time subsequent to the dispensing of the tickets or shares.

"Monitor vending machine" means a vending machine that dispenses or prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

"On-line vending machine" means a vending machine that prints and dispenses lottery tickets or shares that have been determined to be winning or losing tickets or shares by a predetermined pool drawing machine prior to the dispensing of the tickets or shares.

"Panel" or *"game panel"* means that area of a play slip that contains marked squares that may be played.

"Play" or *"game plays"* means the selection of an appropriate number of available variables that constitutes a valid entry in the game or the purchase of a ticket or share with a sequentially generated variable appearing on the face of the ticket or share that constitutes a valid entry in a pool exhaustion game.

"Play slip" means a card used by the player in marking a player's game plays.

"Pool exhaustion game" means a game where a predetermined pool of plays is established.

"Predetermined pool drawing machine" means a computer or other device external to a lotto terminal, scratch ticket vending machine, on-line vending machine, or monitor vending machine that predetermines winning and losing tickets or shares, assigns them to preprogrammed and prepackaged sequential electronic pool files and subsequently utilizes the files in production and distribution of electronic game cards and paper game tickets or shares produced in manufactured packs or through lotto terminals or vending machines.

"Retailer" means the person or entity licensed by the Iowa lottery to sell game plays.

"Scratch (instant) ticket vending machine" or *"ITVM"* means a vending machine that dispenses preprinted paper lottery tickets with a scratch-off area or electronic game cards with preprogrammed and prepackaged sequential electronic pool files that have been determined to be winning or losing tickets by a predetermined pool drawing machine prior to the dispensing of the tickets.

"Specific game rules" means the rules promulgated by the lottery pursuant to Iowa Code Supplement section 99G.9(4) that contain the features of a particular computerized game or promotion.

"Terminal" means a device that is authorized by the lottery to function with a central computer system for the purpose of issuing, entering, receiving, and processing lottery transactions.

"Vending machine" means a lottery ticket or share dispensing machine either with a mechanical operating mechanism or with computer components that perform accounting functions and activate the ticket or share dispensing mechanism.

"Winning numbers" means the selection of an appropriate number of the variables, randomly selected at each drawing, which shall be used to determine winning plays contained on a game ticket or share.

This rule is intended to implement Iowa Code Supplement sections 99G.3 and 99G.9(3).

531—20.3(99G) Method of play. If required by the specific game rules, a player must select an appropriate number of the available game variables. A player may select each game variable by marking a play slip and submitting the play slip to a retailer or by verbally requesting "easy pick" from a retailer. Players may also purchase game plays from player-activated terminals by use of a touch screen if player-activated terminals are available. A drawing is held in which an appropriate number of the game variables are drawn on a random basis.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.4(99G) Cancellation by a player. A ticket or share may be canceled by returning the ticket or share to the selling retailer provided that the ticket or share is returned to the retailer the same day it was purchased in time to permit canceling to be fully completed prior to the closing time for that drawing. In the event that a ticket or share is canceled, the player will be entitled to a refund from the retailer equal to the purchase price of the ticket or share.

Cancellations will not be allowed in certain games as outlined in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.5(99G) Prizes and odds. The amount of prizes and the odds of winning shall be set forth in the specific game rules. Specific game rules may allow alternative prize structures.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.6(99G) Payment of annuity jackpot prizes. The lottery may offer cash prizes, annuitized installment prizes, and prizes with cash or annuity payment options available to the winners. If the jackpot prize or share of the jackpot prize will be paid as an annuity, it will consist of the initial payment followed by such number of yearly installments as may be provided in the specific game rules for the game unless the cash value of the annuity prize attributable to a single play is less than $100,000. If the cash value of the annuity prize attributable to a single play is under $100,000, the lottery may elect to pay the cash value of the prize in one lump-sum prize payment. This rule does not apply to multistate or other multijurisdictional lottery games. Provision for payment of prizes for multistate and other multijurisdictional games shall be outlined in the specific game rules for such games.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.7(99G) Unclaimed prizes. Unclaimed jackpot prizes, shares of the jackpot prize, and other lotto prizes do not increase a prize simultaneously won by any other player in the game. Unclaimed jackpot shares shall be added to future jackpot prize pools at times determined by the lottery. Other unclaimed prizes shall be added to future prize pools for any lottery game. This rule shall also apply to such games offered in Iowa, except as may otherwise be provided in the specific game rules of a multistate lottery or other multijurisdictional lottery with which the Iowa lottery may be affiliated.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.8(99G) Disclosure of odds. The overall probability of purchasing a winning ticket or share shall be stated on the game ticket and in the game literature made available by the lottery.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.9(99G) Price. The price of a game play shall be outlined in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.10(99G) Changes for special promotions. The lottery may alter the price of the tickets or shares, features, or prizes of the game or drawings to accommodate special promotions. Alterations made by the lottery shall be contained in the specific rules for the promotion.

This rule is intended to implement Iowa Code Supplement sections 99G.7, 99G.9(3), and 99G.21.

531—20.11(99G) Ticket or share ownership and prize entitlement.

20.11(1) A ticket or share is owned by its physical possessor until a signature is placed on the back of a ticket in the area designated for signature. When a signature is placed on the back of the ticket or share in the designated space, the person whose signature appears in the designated space is the owner of the ticket or share and is entitled to any prize attributable to the ticket or share.

20.11(2) Notwithstanding any name or names submitted on a claim form, the lottery shall make payment to the person whose signature appears on the back of the ticket or share in the designated space. If the signatures of more than one person appear in that space, the lottery shall make payment to the person identified on the winner's claim form to receive payment, which designation shall be made by all persons whose signatures appear on the reverse side of the ticket or share. In the event that all persons whose signatures appear in the appropriate space cannot identify one person to whom payment should be made, the lottery may withhold payment until the proper payee is determined. In no event shall more than one person be entitled to a particular prize.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.12(99G) Ticket validation requirements.

20.12(1) All claims for prizes are subject to validation by the lottery. To be a valid ticket or share and eligible to receive a prize, all of the following requirements must be satisfied.

a. The ticket or share must have been issued by the lottery directly or through a retailer, via a terminal, in an authorized manner.

b. The information on the ticket or share must correspond precisely with the lottery's computer record.

c. The ticket or share serial number must appear in its entirety, and correspond, using a computer validation file, to the winning game play or plays printed on the ticket or share.

d. A ticket or share shall be void unless the ticket or share is printed on a paper stock roll that was validly issued to and used, at the time of the play, by the retailer from whom the ticket or share was purchased.

e. The ticket or share must not be produced in error, counterfeit in whole or in part, altered, mutilated, unreadable, tampered with in any manner, incomplete, blank or partially blank, miscut, or defective.

f. The ticket or share must pass all other security criteria determined by the lottery.

g. The ticket or share must not be stolen.

h. The ticket or share must not be canceled.

i. The ticket or share must pass additional validation requirements that may be stated in the specific game rules.

20.12(2) In the event that a ticket or share fails to pass all of the validation criteria set forth in this rule and the specific game rules, it is invalid and ineligible for any prize. The lottery, in its sole discretion, may choose to pay a sum equal to the prize on an invalid ticket or share if the lottery can determine the prize that would have been won by the ticket or share by use of a symbol, code number, color code, or other mechanism. The lottery's decisions as to whether a ticket or share is invalid and whether a sum equal to the prize on an invalid ticket or share will be paid are final. If the lottery determines that a ticket or share is not eligible to receive a prize or a sum equivalent to the prize amount, the lottery may replace the invalid ticket or share with a ticket or share of equivalent sale price from any current lottery game or refund the purchase price of the ticket or share. Replacement of the ticket or share, or refund of the purchase price, shall be the claimant's sole and exclusive remedy.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.13(99G) Claim period. All prizes for games not associated with another state's lottery must be claimed as directed within 90 calendar days of the drawing in which the prize was won, unless otherwise specified in the specific game rules for the game. All prizes for games associated with another state's lottery must be claimed as directed within the specific game rules. For purposes of determining the claim period, the drawing date shall not be counted. If a prize is claimed by mail, the lottery must actually receive the ticket or share and claim form within the claim period. Any prize not properly claimed within the specified period shall be forfeited. The claim period for a game may be altered by the lottery in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.14(99G) Manner of claiming prizes.

20.14(1) To receive payment for a prize or prizes on any single game ticket or share that total $600 or less, the winner may take the signed ticket or share directly to any lottery retailer authorized to sell and validate the game, or to any lottery office, or mail the signed ticket or share, along with a completed claim form, to Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

If there is any alteration, mutilation, tear, or other ambiguity on the ticket or share, the retailer is not authorized to make direct payment of a prize and a claim form and the ticket or share must be submitted to the lottery.

20.14(2) To receive payment for a prize or prizes on any single game ticket or share that total more than $600, the winner may submit the signed ticket or share and a completed claim form directly to any lottery office. The winner may also mail the signed ticket or share and claim form to Iowa Lottery Authority, 2015 Grand Avenue, Des Moines, Iowa 50312-4999.

20.14(3) Claim forms are available at all computerized lottery retailers and lottery offices. The lottery or, at the lottery's direction, a lottery retailer may require the person claiming a prize of any amount to fill out a claim form.

20.14(4) If a prize is claimed by mail, the ticket or share and the claim form must actually be received by the lottery within the claim period.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.15(99G) Presentation of ticket. No prize payments shall be made unless the player submits a valid, uncanceled ticket or share. A play slip has no pecuniary or prize value and is not evidence of ticket purchase or of numbers selected.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.16(99G) One prize per game play. The holder of a winning ticket or share may win only one prize per game play in connection with the winning numbers drawn and shall be entitled only to the prize won by those numbers in the highest matching prize category.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.17(99G) Corrections. The lottery reserves the right to correct and adjust, up or down, the amount of any prize or prizes, whether all or part of the prize or prizes has been paid, if it is determined that one or more players are entitled to a portion of a prize and were not included in the prize calculations or were included in the prize calculations by mistake.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.18(99G) Risk of error. The placing of plays is done at the player's own risk. It is solely the player's responsibility to verify the accuracy of game plays and all other data printed on the ticket. In the event of any error, the player's only remedy is cancellation of the ticket or share according to the procedure specified in this chapter. The lottery and lottery retailers have no other responsibility for tickets or shares printed in error.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3), 99G.21, and 99G.31.

531—20.19(99G) Multidraw plays and advance plays. Multidraw plays and advance plays may be available.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.20(99G) Drawings. Drawings will be held as specified in the game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.21(99G) Cancellation or delay of play. The lottery reserves the right to cancel or delay drawings or ticket or share sales in the event of technical difficulties, and on days of special importance or on days the drawings would be impractical or inappropriate.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.22(99G) Pool exhaustion game—method of play.

20.22(1) Players may purchase tickets or shares for a specific game. Each ticket or share sold for a pool exhaustion game will be generated separately. Tickets or shares shall be sold against the pool until the pool of plays is exhausted or until the game ends in accordance with the specific game rules.

20.22(2) Each ticket or share will bear a sequentially generated variable on the face of the ticket or share.

20.22(3) Drawings for the prizes for a specific game shall randomly select a winner or winners from the tickets or shares actually sold. The drawing method shall be described in the specific game rules.

20.22(4) Prizes shall be awarded as specified in the specific game rules.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

531—20.23(99G) Prize insurance fund.

20.23(1) The lottery may provide that up to 10 percent of the funds designated for the jackpot prize level in the prize structure of the specific game rules for a game or that any prize funding not awarded by the conclusion of the relevant claim period for a fixed-prize game shall be transferred to a prize insurance fund.

20.23(2) The prize insurance fund may be used for any of the following purposes:

a. To pay prizes for any on-line game prize obligation if the amount available to fund an on-line game prize is insufficient;

b. To support a special promotion to retire an on-line game, e.g., a television show or a second chance drawing;

c. To transfer amounts to a successor game to pay prize obligations for a different on-line game.

This rule is intended to implement Iowa Code Supplement sections 99G.9(3) and 99G.21.

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VOLUNTEER SERVICE, IOWA COMMISSION ON[555]

[Created by Executive Order 48 on 2/14/94]
[Prior to 3/31/04, see Iowa Commission on National and Community Service[555]; renamed Iowa Commission on Volunteer Service by Executive Order 64 on 5/18/98]

CHAPTER 1
ORGANIZATION AND OPERATION

555—1.1(ExecOrd48) Purpose. This chapter describes the organization and operation of the Iowa commission on volunteer service (herein generally referred to as the commission), including the offices where and the means by which any interested person may obtain information and make submittals or requests.

555—1.2(ExecOrd48) Organization and operation.

1.2(1) *Location*. The commission is located at 200 East Grand, Des Moines, Iowa 50309; telephone (515)242-4799. Office hours are 8 a.m. to 4:30 p.m., Monday to Friday. Offices are closed on Saturdays and Sundays and on official state holidays designated in accordance with state law.

1.2(2) *The commission*. The commission consists of 15 to 25 voting members and functions under the leadership of a chairperson. Each member, appointed in accordance with federal and state guidelines, serves a three-year term scheduled so that no more than one-third of the appointments will expire in the same year.

1.2(3) *Meetings*. The commission shall meet at regular intervals at least four times annually. Additional meetings may be called at the discretion of the chairperson. All meetings are open to the public in accordance with the open meetings law, Iowa Code chapter 21.

a. Chairperson. The chairperson of the commission presides at each meeting. Members of the public may be recognized at the discretion of the chairperson.

b. Public notice. The commission shall give advance public notice of the time and place of each commission meeting. The notice will include the specific date, time, and place of the meeting.

c. Quorum. A quorum shall consist of half of the current voting members of the commission plus one. When a quorum is present, a position is carried by an affirmative vote of the majority of commission members eligible to vote. A commissioner is eligible to vote in person, by telephone hook-up, or by proxy executed in writing to the chairperson prior to the meeting. A proxy shall be valid only for one meeting.

d. Termination. Any commissioner who does not attend three or more consecutive regular meetings or who attends less than one-half of the regular meetings within a 12-month period shall be considered to have resigned from the commission.

e. Resignations. A commissioner wishing to resign may do so by submitting a letter of resignation to the governor and sending a copy to the commission chairperson.

f. Public presentations. A specific time is set aside at each meeting for the public to address the board. As a general guideline, a limit of five minutes will be allocated for each of these presentations. If a large group seeks to address a specific issue, the chairperson may limit the number of speakers. To address the board, individuals are encouraged to notify the commission staff at least 72 hours in advance of the meeting.

1.2(4) *Minutes.* The minutes of all commission meetings shall be recorded and kept by the administrative assistant in the commission office.

1.2(5) *Records.* The records of all of the business transacted and other information with respect to the operation of the commission are public records and shall be kept on file in the commission office. All records, except statements specified as confidential under these rules, are available for inspection during regular business hours. (Copies of up to ten pages of records may be obtained without charge. The cost of reproduction will be charged for pages in excess of ten. The charge may be waived by the executive director.)

1.2(6) *Submission and requests*. Inquiries, submissions, petitions, and other requests directed to the commission shall be made by letter addressed to the executive director at the address listed in subrule 1.2(1). Any person may petition for a written or oral hearing before the commission. All requests for a hearing must be in writing and state the specific subject to be discussed and the reasons why a personal appearance is necessary if one is requested.

1.2(7) *Committees*. The chairperson may establish committees including an executive committee that may conduct commission business as necessary between scheduled meetings. The chairperson may appoint commissioners and noncommissioners to serve on the committees. Noncommissioners shall not serve on the executive committee.

These rules are intended to implement Executive Order Number 48.

[Filed 11/16/94, Notice 6/22/94—published 12/7/94, effective 1/11/95]
[Filed 3/11/04, Notice 1/21/04—published 3/31/04, effective 5/5/04]

CHAPTER 2
RULE MAKING

555—2.1(ExecOrd48) Initiation of rule-making procedures.

2.1(1) Any person may request the commission to adopt, amend, or rescind a rule by making the request in writing to the commission coordinator clearly stating the intent, purposes, and general language of the desired rules.

2.1(2) The commission shall act upon the request within 60 days after its submission in accordance with Iowa Code section 17A.7.

2.1(3) The commission may initiate rule-making procedures upon its own motion in accordance with Iowa Code section 17A.4.

555—2.2(ExecOrd48) Procedures for oral or written presentations.

2.2(1) Except where oral or written presentations are deemed unnecessary by the commission in accordance with Iowa Code section 17A.4(2), the commission shall allow for the submission of oral or written presentations or both prior to its adoption of any rules.

2.2(2) Interested persons shall have at least 20 days from the date of publication of notice in the Iowa Administrative Bulletin to submit written requests for oral presentations or to submit written presentations.

2.2(3) Notice of date, time, and place of oral presentations by requesting parties will be published in the Iowa Administrative Bulletin at least 20 days in advance of the hearing.

2.2(4) Interested parties may be requested to supplement oral presentations with written presentations at the discretion of the commission.

These rules are intended to implement Executive Order Number 48.

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CHAPTER 3
DECLARATORY RULINGS

555—3.1(ExecOrd48) Declaratory rulings. The commission shall provide declaratory rulings as to applicability of any statutory provision, rule, or other written statement of law or policy, decision or order when petitioned to do so by the public where, in the judgment of the commission, it is necessary or helpful for them to conduct their affairs in accordance with the law.

Requests for declaratory rulings shall be made to the commission coordinator in writing.

Within 30 days after submission of a request for declaratory ruling, the commission shall issue a ruling on the rule, statute, or policy in question. The ruling shall be in writing.

The commission may decline to rule when, in the judgment of the commission, the ruling would be beyond the commission's realm of authority, when no clear answer is determinable, or when the issue presented is pending resolution by a court of Iowa or by the attorney general.

555—3.2(ExecOrd48) Procedure for informal settlements in contested cases. Unless precluded by statute, informal settlement of disputes over rules of the commission that may otherwise result in contested case proceedings as prescribed in Iowa Code section 17A.12 shall be encouraged. All informal settlements shall be made by the commission coordinator subject to ratification by the commission and by the parties contesting the rule in question. The settlement shall be expressed in a written stipulation representing an informed mutual consent.

These rules are intended to implement Executive Order Number 48.

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CHAPTER 4
Reserved

CHAPTER 5
DUE PROCESS

555—5.1(ExecOrd48) Appeals.

5.1(1) *Commission staff decisions.* Administrative staff of the commission shall make all decisions in accordance with established policies and administrative rules of the Iowa commission on volunteer service and published policies from the Corporation for National Service.

a. Appeal of commission staff decision. If an individual, agency, or reasonable representative of commission business disagrees with a staff decision, that party has the right to appeal to the full commission. The appeal shall be in the form of a public hearing. The appellant must request the hearing in writing to the executive director within 14 calendar days of receiving the written notice of the staff decision. The written request shall clearly set forth the issues being contested and provide evidence supporting the claims. In order to be considered by the full commission, the request shall be based upon one or more of the following grounds:

(1) The staff's decision was in violation of federal law.

(2) The staff's decision was in violation of Iowa state law.

(3) The staff's decision was in violation of published Corporation for National Service guidelines or published Iowa commission on volunteer service rules.

(4) The staff's decision was made in an unreasonable and arbitrary or capricious manner.

All written evidence provided by the appellant will be mailed to commission members no later than 7 calendar days before the scheduled hearing for the commissioners' consideration. Commission staff will also be afforded the right to present a written explanation of the staff decision. This explanation shall be mailed at the same time as the appellant's materials.

b. Hearing.

(1) The executive director shall set a date for the hearing within 30 calendar days from the date the request was received. The hearing date will be set as soon as reasonable, and in no event later than 60 calendar days from the date the request was received.

(2) The executive director shall establish the procedural guidelines of the hearing in accordance with the uniform rules on contested cases as published in the Iowa Administrative Code. The executive director will notify the appellant and commission members of the hearing procedures no later than 14 calendar days before the designated hearing date.

(3) The commission chairperson shall preside at the hearing. If the chairperson is not able to preside, the commission vice-chairperson shall be the designated substitute. The commission chairperson shall appoint a representative of the commission to preside if neither the chairperson or vice-chairperson is able to preside.

(4) After commission consideration of all evidence presented, the presiding officer shall call for a roll-call vote of the commission members. A quorum must be present to take an official vote of the commission on the appeal. A simple majority vote of the eligible voting members of the commission is required for a decision. The presiding officer shall announce the result of the roll-call vote. The commission's decision is final and binding on all parties.

(5) Written notice of the commission's decision on the appeal shall be mailed to the appellant within 10 days of the hearing.

5.1(2) *Committee decisions.* Committees of the commission shall make all decisions in accordance with established policies and administrative rules of the Iowa commission on volunteer service and published policies from the Corporation for National Service.

a. Appeal of committee decision. If an individual, agency, or representative of commission business disagrees with a committee decision, that party has the right to appeal to the full commission. The appeal shall be in the form of a public hearing. The appellant must request the hearing in writing to the executive director within 14 calendar days of receiving the written notice of the committee decision. The written notice shall clearly set forth the issues being contested and provide evidence supporting the claims. In order to be considered by the full commission, the request shall be based upon one or more of the following grounds:

(1) The committee's decision was in violation of federal law.

(2) The committee's decision was in violation of Iowa state law.

(3) The committee's decision was in violation of published Corporation for National Service guidelines or published Iowa commission on volunteer service rules.

(4) The committee's decision was made in an unreasonable and arbitrary or capricious manner.

All written evidence provided by the appellant will be mailed to commission members no later than 7 calendar days before the scheduled hearing for the commissioners' consideration. The committee chairperson will also be afforded the right to present a written explanation of the committee's decision. This explanation shall be mailed at the same time as the appellant's materials.

b. Hearing.

(1) The executive director shall set a date for the hearing within 30 calendar days from the date the request was received. The hearing date will be set as soon as reasonable, and in no event later than 60 calendar days from the date the request was received.

(2) The executive director shall establish the procedural guidelines of the hearing in accordance with the uniform rules on contested cases as published in the Iowa Administrative Code. The executive director will notify the appellant and commission members of the hearing procedures no later than 14 calendar days before the designated hearing date.

(3) The commission chairperson shall preside at the hearing. If the chairperson is not able to preside, the commission vice-chairperson shall be the designated substitute. The commission chairperson shall appoint a representative of the commission to preside if neither the chairperson or vice-chairperson is able to preside.

(4) After commission consideration of all evidence presented, the presiding officer shall call for a roll-call vote of the commission members. A quorum must be present to take an official vote of the commission on the appeal. A simple majority vote of the eligible voting members of the commission is required for a decision. The presiding officer shall announce the result of the roll-call vote. The commission's decision is final and binding on all parties.

(5) Written notice of the commission's decision on the appeal shall be mailed to the appellant within 10 days of the hearing.

This rule is intended to implement Executive Order Number 48.

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CHAPTER 6
PUBLIC RECORDS AND FAIR INFORMATION PRACTICES

The Iowa commission for national and community service hereby adopts, with the following exceptions and amendments, rules of the Governor's Task Force on Uniform Rules Agency Procedures relating to public records and fair information practices which are printed in the first Volume of the Iowa Administrative Code.

555—6.1(17A,22) Definitions. As used in this chapter:

"Agency." In lieu of "(official or body issuing these rules)" insert "Iowa Commission National and Community Service".

555—6.3(17A,22) Requests for access to records.

6.3(l) *Location of record.* In lieu of "(insert agency head)", insert "Commission coordinator"; and in lieu of "(insert agency name and address)", insert "Iowa Commission on National and Community Service, 150 Des Moines Street, Des Moines, Iowa 50309".

6.3(2) *Office hours.* In lieu of "(insert customary office hours and, if agency does n have customary office hours of at least thirty hours per week, insert hours specified in Iowa Code section 22.4)", insert "8 a.m. to 4:30 p.m., Monday through Friday, except holidays".

6.3(7) *Fees.*

c. Supervisory fee. In lieu of "(specify time period)" insert "one hour".

555—6.6(17A,22) Procedure by which additions, dissents, or objections may be entered in certain records. In lieu of "(designate official)", insert "the Iowa commission on nation and community service".

555—6.9(17A,22) Routine use.

6.9(1) Defined. "Routine use" means the disclosure of a record without the consent the subject or subjects, for a purpose which is compatible with the purpose for which the record was collected. It includes disclosures required to be made by statute other than the public records law, Iowa Code chapter 22.

6.9(2) To the extent allowed by law, the following are considered routine uses of all agency records:

a. Disclosure of officers, employees, and agents of the agency who have a need for the record in the performance of their duties. The custodian of the record may, upon request of an officer or employee, or on the custodian's own initiative, determine what constitutes legitimate need to use confidential records.

b. Disclosure of information indicating an apparent violation of the law to appropriate law enforcement authorities for investigation and possible prosecution, civil court action, or regulatory order.

c. Disclosure to the department of inspections and appeals regarding matters in which performs services or functions on behalf of the agency.

d. Transfers of information within the agency, to other state agencies, or to local units government, as appropriate, to administer the program for which the information is collected.

e. Information released to staff of federal and state entities for audit purposes or to determine whether the agency is operating a program lawfully.

f. Any disclosure specifically authorized by the statute under which the record is collected or maintained.

555—6.10(17A,22) Consensual disclosure of confidential records.

6.10(1) *Consent to disclosure by a subject.* The subject may consent in writing to agency disclosure of confidential records as provided in rule 6.7(17A,22).

6.10(2) *Complaints to public officials.* A letter from a subject of a confidential record to a public official which seeks the official's intervention on behalf of the subject in a matter that involves the agency may be treated as an authorization to release sufficient information about the subject to the official to resolve the matter.

555—6.11(17A,22) Release to subject. The subject of a confidential record may file a written request to review the subject's confidential records. However, the agency need not release the following records to the subject:

1. The identity of a person providing information to the agency when the information is authorized as confidential pursuant to Iowa Code subsection 22.7(18).
2. The work product of an attorney or otherwise privileged information.
3. Peace officers' investigative reports, except as required by Iowa Code subsection 22.7(5).
4. Those otherwise authorized by law.

555—6.12(17A,22) Availability of records. This rule lists the agency records which are open to the public, those which are confidential, and those which are partially open and partially confidential.

Agency records are listed by category, according to the legal basis for confidential treatment (if any). The commission administers federally funded programs to enforce confidentiality standards for federal law and regulations as are required for receipt of the funds. A single record may contain information from several categories.

The chart indicates whether the record contains personally identifiable information and indicates the legal authority for confidentiality and for the collection of personally identifiable information.

Abbreviations used in the chart are defined as follows:

Code	Meaning	Code	Meaning
O	Open for public inspection	O/C	Partially open and partially confidential
C	Confidential/Not open to the public	O/E	Partially open to members of the public and partially exempt from disclosure
E	Exempt from mandatory disclosure		
NA	Not Applicable		

Description of Record	Type of Record	Legal Authority For Confidentiality	Personally Identifiable Information
Records of Commission and Committees	O/E	Iowa Code 21.5	No
Rule Making	O	NA	No
Declaratory Rulings	O/C	Iowa Code 22.7	No
Policy Manuals	O	NA	No
General Correspondence	O/E/C	Iowa Code 22.7	Yes
Publications	O	NA	No
Financial and Administrative Records	O/E/C	Iowa Code 22.7	Yes

Contracts and Agreements	O/C	Iowa Code 22.7(3)	Yes
Appeal Records	O/C	Iowa Code 22.7	Yes
Litigation Files	O/E/C	Iowa Code 22.7	Yes
Privileged Communications and Products of Attorneys	E/C	Iowa Code 22.7	No

These rules are intended to implement Iowa Code chapters 17A and 22 and Executive Order No. 48.

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HOMELAND SECURITY AND EMERGENCY MANAGEMENT DIVISION[605]

[Prior to 12/23/92, see Disaster Services Division[607]; renamed Emergency Management Division by 1992 Iowa Acts, chapter 1139, section 21]
[Prior to 3/31/04, see Emergency Management Division[605]; renamed Homeland Security and Emergency Management Division by 2003 Iowa Acts, chapter 179, section 157]

605—10.9(34A) Wireless E911 emergency communications fund.

10.9(1) Wireless E911 surcharge money, collected and remitted by wireless service providers, shall be placed in a fund within the state treasury under the control of the administrator.

10.9(2) Iowa Code section 8.33 shall not apply to moneys in the fund. Moneys earned as income, including as interest, from the fund shall remain in the fund until expended as provided in this subrule. However, moneys in the fund may be combined with other moneys in the state treasury for purposes of investment.

10.9(3) Moneys in the fund shall be expended and distributed in the order and manner as follows:

a. An amount as appropriated by the general assembly to the emergency management division for implementation, support, and maintenance of the functions of the E911 program.

b. The administrator shall retain funds necessary to reimburse wireless service providers for their eligible costs to deliver E911 services. Those eligible costs include hardware and software necessary for receipt and delivery of the enhanced wireless 911 service phase I call and as further defined in the enhanced wireless 911 service plan.

10.9(4) Payments to wireless service providers shall be made quarterly, based on original, itemized claims or invoices presented within 20 days of the end of the calendar quarter. Payments to wireless service providers shall be made in accordance with these rules and the State of Iowa Accounting Policies and Procedures.

10.9(5) Wireless service providers shall be reimbursed for only those items and services that are defined as eligible in the enhanced wireless 911 service plan and when initiation of service has been ordered and authorized by the E911 program manager.

10.9(6) If the total amount of moneys available in the fund for the reimbursement of wireless service providers is insufficient to reimburse all wireless service providers for their eligible expenses, the E911 program manager shall remit an amount to each wireless service provider equal to the percentage of the provider's eligible expenses as compared to the total of all eligible expenses for all wireless service providers for the calendar quarter during which such expenses were submitted. Any remaining unpaid balances shall be carried forward in the next quarter's billing cycle.

10.9(7) If moneys remain in the fund, they shall be distributed to the department of public safety and joint E911 service boards to be used for the implementation of enhanced wireless communications capabilities.

10.9(8) The department of public safety or a joint E911 service board, to receive funds from the E911 emergency communications fund, shall submit an annual written request for such funds to the E911 program manager in a form as approved by the E911 program manager. This approved application form is contained in the "Wireless Enhanced 911 Implementation and Operation Plan." This application form is due on May 15 or the next business day.

10.9(9) Requests shall be for funding under the approved statewide enhanced wireless 911 service plan for equipment which is directly related to the reception and disposition of incoming enhanced wireless 911 calls.

10.9(10) If insufficient funds are available to fund all requests, the E911 program manager shall fund requests in an order deemed appropriate by the manager, consistent with the statewide enhanced wireless 911 service plan, and after considering factors including, but not limited to, the documented volume of enhanced wireless 911 calls received by each PSAP, the population served by each PSAP, the number of wireless telephones in the PSAP jurisdiction, the public safety of the citizens of the state, and any other factor deemed appropriate by the E911 program manager, in consultation with the E911 communications council. Any remaining unpaid balances shall be carried forward in the next quarter's billing cycle.

10.9(11) If it is found that an overpayment has been made to an entity, the E911 program manager shall attempt recovery of the debt from the entity by certified letter. Due diligence shall be documented and retained at the emergency management division. If resolution of the debt does not occur and the debt is at least $50, the emergency management division will then utilize the income offset program through the department of revenue and finance. Until resolution of the debt has occurred, the emergency management division may withhold future payments to the entity.

605—10.10(34A) E911 surcharge exemptions. The following agencies, individuals, and organizations are exempt from imposition of the E911 surcharge:

1. Federal agencies and tax-exempt instrumentalities of the federal government.
2. Indian tribes for access lines on the tribe's reservation upon filing a statement with the joint E911 service board, signed by appropriate authority, requesting surcharge exemption.
3. An enrolled member of an Indian tribe for access lines on the reservation, who does not receive E911 service, and who annually files a signed statement with the joint E911 service board that the person is an enrolled member of an Indian tribe living on a reservation and does not receive E911 service. However, once E911 service is provided, the member is no longer exempt.
4. Official station testing lines owned by the provider.
5. Individual wire-line subscribers to the extent that they shall not be required to pay on a single periodic billing the surcharge on more than 100 access lines, or their equivalent, in an E911 service area.

All other subscribers not listed above, that have or will have the ability to access 911, are required to pay the surcharge, if imposed by the official order of the E911 program manager.

605—10.11(34A) E911 service fund.

10.11(1) The department of public safety and each joint E911 service board have the responsibility for the E911 service fund.

a. An E911 service fund shall be established in the office of the county treasurer for each joint E911 service board and with the state treasurer for the department of public safety.

b. Collected surcharge moneys and any interest thereon, as authorized in Iowa Code chapter 34A, shall be deposited into the E911 service fund. E911 surcharge moneys must be kept separate from all other sources of revenue utilized for E911 systems.

c. For joint E911 service boards, withdrawal of moneys from the E911 service fund shall be made on warrants drawn by the county auditor, per Iowa Code section 331.506, supported by claims and vouchers approved by the chairperson or cochairperson of the joint E911 service board or the appropriate operating authority so designated in writing.

d. For the department of public safety, withdrawal of moneys from the E911 service fund shall be made in accordance with state laws and administrative rules.

10.11(2) The E911 service funds shall be subject to examination by the division at any time during usual business hours. E911 service funds are subject to the audit provisions of Iowa Code chapter 11. A copy of all audits of the E911 service fund shall be furnished to the division within 30 days of receipt. If through the audit or monitoring process the division determines that a joint E911 service board or the department of public safety is not adhering to an approved plan or is not using funds in the manner prescribed in these rules or Iowa Code chapter 34A, the administrator may, after notice and hearing, suspend surcharge imposition and order termination of expenditures from the E911 service fund. The joint E911 service board or department of public safety is not eligible to receive or expend surcharge moneys until such time as the E911 program manager determines that the board or department is in compliance with the approved plan and fund usage limitations.

605—10.12(34A) Operating budgets.

10.12(1) Each joint E911 service board and the department of public safety shall provide a copy, to the E911 program manager, within 30 days of adoption, of the operating budget for the ensuing fiscal year for the fund as established under subrule 10.11(1).

10.12(2) The E911 program manager shall, upon review of the operating budget, make necessary adjustments to the surcharge as provided in Iowa Code chapter 34A.

10.15(6) Any party adversely affected by the administration bureau chief's ruling may file a written appeal to the administrator of the emergency management division. The appeal request shall contain information identifying the appealing party, the ruling being appealed, specific findings or conclusions to which exception is taken, the relief sought, and the grounds for relief. The administrator shall issue a ruling regarding the matter within 90 days of the hearing. The administrator's ruling constitutes final agency action for purposes of judicial review.

605—10.16(34A) Confidentiality. All financial or operations information provided by a wireless service provider to the E911 program manager shall be identified by the provider as confidential trade secrets under Iowa Code section 22.7(3) and shall be kept confidential as provided under Iowa Code section 22.7(3) and Iowa Administrative Code 605—Chapter 5. Such information shall include numbers of accounts, numbers of customers, revenues, expenses, and the amounts collected from said wireless service provider for deposit in the fund. Notwithstanding such requirements, aggregate amounts and information may be included in reports issued by the administrator if the aggregated information does not reveal any information attributable to an individual wireless service provider.

These rules are intended to implement Iowa Code chapter 34A.

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CHAPTER 38
GENERAL PROVISIONS FOR RADIATION MACHINES AND RADIOACTIVE MATERIALS

641—38.1(136C) Purpose and scope.

38.1(1) Except as otherwise specifically provided, these rules apply to all persons who receive, possess, use, transfer, own, or acquire any source of radiation; provided, however, that nothing in these rules shall apply to any person to the extent such person is subject to regulation by the U.S. Nuclear Regulatory Commission. Attention is directed to the fact that regulation by the state of source material, by-product material, and special nuclear material in quantities not sufficient to form a critical mass is subject to the provisions of the agreement between the state and the U.S. Nuclear Regulatory Commission and to 10 CFR Part 150 of the Commission's regulations.

38.1(2) All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of May 5, 2004.

38.1(3) The provisions of Chapter 38 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 39 to 45.

641—38.2(136C) Definitions. As used in these rules, these terms have the definitions set forth below and are adopted by reference and included herein for 641—Chapters 39 to 45.

"A_1" means the maximum activity of special form radioactive material permitted in a Type A package.

"A_2" means the maximum activity of radioactive material, other than special form radioactive material, permitted in a Type A package. These values are listed in 49 CFR 173.435.

"*Absorbed dose*" means the energy imparted by ionizing radiation per unit mass of irradiated material. It is determined as the quotient of dE by dM, where dE is the mean energy imparted by ionizing radiation to matter of mass dM. The SI unit of absorbed dose is joule per kilogram and the special name of the unit of absorbed dose is the gray (Gy). The units of absorbed dose are the gray (Gy) and the rad.

"*Absorbed dose rate*" means absorbed dose per unit time, for machines with timers, or dose monitor unit per unit time for linear accelerators.

"*Accelerator*" means any machine capable of accelerating electrons, protons, deuterons, or other charged particles in a vacuum and of discharging the resultant particulate or other radiation into a medium at energies usually in excess of 1 MeV. For purposes of this definition, "particle accelerator" is an equivalent term.

"*Accelerator-produced material*" means any material made radioactive by a particle accelerator.

"*Act*" means 1984 Iowa Acts, chapter 1286, relating to regulation of radiation machines and radioactive materials. (Iowa Code chapter 136C)

"*Activity*" means the rate of disintegration or transformation or decay of radioactive material. The units of activity are the curie (Ci) and the becquerel (Bq).

"*Adult*" means an individual 18 years of age or older.

"*Agency*" means the Iowa department of public health.

"*Agreement state*" means any state with which the U.S. Nuclear Regulatory Commission or the U.S. Atomic Energy Commission has entered into an effective agreement under Subsection 274b of the Atomic Energy Act of 1954 as amended (73 Stat. 689).

"*Airborne radioactive material*" means any radioactive material dispersed in the air in the form of dusts, fumes, particles, mists, vapors, or gases.

"Airborne radioactivity area" means a room, enclosure, or area in which airborne radioactive material (composed wholly or partly of licensed material) exists in concentrations (1) in excess of the derived air concentrations (DACs) specified in Appendix A of 641—Chapter 40; or (2) to such a degree that an individual present in the area without respiratory protective equipment could exceed, during the hours an individual is present in a week, an intake of 0.6 percent of the annual limit on intake (ALI) or 12 DAC-hours.

"Air kerma (K)" means the kinetic energy released in air by ionizing radiation. Kerma is determined as the quotient of dE by dM, where dE is the sum of the initial kinetic energies of all the charged ionizing particles liberated by uncharged ionizing particles in air of mass dM. The SI unit of air kerma is joule per kilogram and the special name for the unit of kerma is the gray (Gy).

"Air-purifying respirator" means a respirator with an air-purifying filter, cartridge, or canister that removes specific air contaminants by passing ambient air through the air-purifying element.

"Annually" means at least once every 365 days.

"As low as is reasonably achievable" (ALARA) means making every reasonable effort to maintain exposures to radiation as far below the dose limits in these rules as is practical, consistent with the purpose for which the licensed or registered activity is undertaken, taking into account the state of technology, the economics of improvements in relation to state of technology, the economics of improvements in relation to benefits to the public health and safety, and other societal and socioeconomic considerations, and in relation to utilization of nuclear energy and licensed or registered sources of radiation in the public interest.

"Assembler" means any person engaged in the business of assembling, replacing, or installing one or more components into an X-ray system or subsystem. The term includes the owner of an X-ray system or the employee or agent who assembles components into an X-ray system that is subsequently used to provide professional or commercial services.

"Assigned protection factor (APF)" means the expected workplace level of respiratory protection that would be provided by a properly functioning respirator or a class of respirators to properly fitted and trained users. Operationally, the inhaled concentration can be estimated by dividing the ambient airborne concentration by the APF.

"Atmosphere-supplying respirator" means a respirator that supplies the respirator user with breathing air from a source independent of the ambient atmosphere, and includes supplied-air respirators (SARs) and self-contained breathing apparatus (SCBA) units.

"Authorized medical physicist" means an individual who meets the requirements of 641—subrule 41.2(74) and 641—subrule 41.2(77) and 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.

"Background radiation" means radiation from cosmic sources; naturally occurring radioactive materials, including radon (except as a decay product of source or special nuclear material); and global fallout as it exists in the environment from the testing of nuclear explosive devices or from past nuclear accidents such as Chernobyl that contribute to background radiation and are not under the control of the licensee. "Background radiation" does not include sources of radiation from radioactive materials regulated by the agency.

"Barrier" (see "Protective barrier").

"Beam axis" means a line from the source through the centers of the X-ray fields.

"Beam-limiting device" means a field defining collimator, integral to the system, which provides a means to restrict the dimensions of the X-ray field or useful beam.

"Beam monitoring system" means a system designed and installed in the radiation head to detect and measure the radiation present in the useful beam.

"Becquerel" (Bq) means the SI unit of activity. One becquerel is equal to 1 disintegration or transformation per second (dps or tps).

"Bioassay" means the determination of kinds, quantities or concentrations and, in some cases, the locations of radioactive material in the human body, whether by direct measurement, in vivo counting, or by analysis and evaluation of materials excreted or removed from the human body. For purposes of these rules, "radiobioassay" is an equivalent term.

"Bone densitometry unit" means a medical device which uses electronically produced ionizing radiation to determine the density of bone structures of human patients.

"Brachytherapy" means a method of radiation therapy in which sealed sources are utilized to deliver a radiation dose at a distance of up to a few centimeters, by surface, intracavitary, intraluminal, or interstitial application.

"Brachytherapy source" means a radioactive source or a manufacturer-assembled source train or a combination of these sources that is designed to deliver a therapeutic dose within a distance of a few centimeters.

"By-product material" means (1) any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material, and (2) the tailings or wastes produced by the extraction or concentration of uranium or thorium from any ore processed primarily for its source material content, including discrete surface wastes resulting from uranium or thorium solution extraction processes. Underground ore bodies depleted by these solution extraction operations do not constitute "by-product material" within this definition.

"Cabinet radiography" means industrial radiography conducted in an enclosure or cabinet shielded so that radiation levels at every location on the exterior meet the limitations specified in 641—40.26(136C).

"Calendar quarter" means not less than 12 consecutive weeks nor more than 14 consecutive weeks. The first calendar quarter of each year shall begin in January and subsequent calendar quarters shall be so arranged such that no day is included in more than one calendar quarter and no day in any one year is omitted from inclusion within a calendar quarter. No licensee or registrant shall change the method of determining calendar quarters for purposes of these rules except at the beginning of a year.

"Calibration" means the determination of (1) the response or reading of an instrument relative to a series of known radiation values over the range of the instrument, or (2) the strength of a source of radiation relative to a standard.

"CFR" means Code of Federal Regulations.

"Changeable filters" means any filter, exclusive of inherent filtration, which can be removed from the useful beam through any electronic, mechanical, or physical process.

"Collective dose" means the sum of the individual doses received in a given period of time by a specified population from exposure to a specified source of radiation.

"Committed dose equivalent" ($H_{T,50}$) means the dose equivalent to organs or tissues of reference (T) that will be received from an intake of radioactive material by an individual during the 50-year period following the intake.

"Committed effective dose equivalent" ($H_{E,50}$) is the sum of the products of the weighting factors applicable to each of the body organs or tissues that are irradiated and the committed dose equivalent to each of these organs or tissues ($H_{E,50} = \Sigma w_T, H_{T,50}$).

"Constraint" or *"dose constraint"* means a value above which specified licensee actions are required.

"Controlled area" means an area, outside of a restricted area but inside the site boundary, access to which can be limited by the licensee or registrant for any reason.

"Critical group" means the group of individuals reasonably expected to receive the greatest exposure to residual radioactivity for any applicable set of circumstances.

"Curie" means a unit of quantity of radioactivity. One curie (Ci) is that quantity of radioactive material which decays at the rate of 3.7E+10 transformations per second (tps).

"Decay-in-storage" means the holding of radioactive material having half-lives of less than 65 days, except Cobalt-57, until it decays to background levels. Before disposal in ordinary trash, the material must have been held for a minimum of ten half-lives and its radioactivity is indistinguishable from background as indicated by a survey meter set on its most sensitive scale with no interposing shielding.

"Decommission" means to remove a facility or site safely from service and reduce residual radioactivity to a level that permits:

1. Release of the property for unrestricted use and termination of the license; or
2. Release of the property under restricted conditions and termination of the license.

"Deep dose equivalent" (H_d), which applies to external whole body exposure, means the dose equivalent at a tissue depth of 1 centimeter (1000 mg/cm^2).

"Demand respirator" means an atmosphere-supplying respirator that admits breathing air to the facepiece only when a negative pressure is created inside the facepiece by inhalation.

"Depleted uranium" means the source material uranium in which the isotope uranium-235 is less than 0.711 weight percent of the total uranium present. Depleted uranium does not include special nuclear material.

"Detector" (see "Radiation detector").

"Diagnostic clinical procedures manual" means a collection of written procedures that describes each method (and other instructions and precautions) by which the licensee performs diagnostic clinical procedures; where each diagnostic clinical procedure has been approved by the authorized user and includes the radiopharmaceutical, dosage, and route of administration.

"Diagnostic imaging system" means an assemblage of components for the generation, emission, reception, transformation, storage and visual display of the resultant image.

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

"Direct supervision" means guidance and instruction by a qualified individual who is physically present and watching the performance of the radiological operation or procedure and in such proximity that contact can be maintained and immediate assistance can be given as required.

"Disposable respirator" means a respirator for which maintenance is not intended and that is designed to be discarded after excessive breathing resistance, sorbent exhaustion, physical damage, or end-of-service-life renders it unsuitable for use. Examples of this type of respirator are a disposable half-mask respirator or a disposable escape-only self-contained breathing apparatus (SCBA).

"Distinguishable from background" means that the detectable concentration of a radionuclide is statistically different from the background concentration of that radionuclide in the vicinity of the site or, in the case of structures, in similar materials using adequate measurement technology, survey, and statistical techniques.

"Dose" is a generic term that means absorbed dose, dose equivalent, effective dose equivalent, committed dose equivalent, committed effective dose equivalent, total organ dose equivalent, or total effective dose equivalent. For purposes of these rules, "radiation dose" is an equivalent term.

"Dose equivalent (H_T)" means the product of the absorbed dose in tissue, quality factor, and all other necessary modifying factors at the location of interest. The units of dose equivalent are the sievert (Sv) and rem.

"Dose limits" means the permissible upper bounds of radiation doses established in accordance with these rules. For purposes of these rules, "limits" is an equivalent term.

"Effective dose equivalent (H_E)" means the sum of the products of the dose equivalent to each organ or tissue (H_T) and the weighting factor (w_T) applicable to each of the body organs or tissues that are irradiated ($H_E = \Sigma w_T H_T$).

"Embryo/fetus" means the developing human organism from conception until the time of birth.

"Entrance or access point" means any opening through which an individual or extremity of an individual could gain access to radiation areas or to licensed or registered radioactive materials. This includes entry or exit portals of sufficient size to permit human entry, irrespective of their intended use.

"Exposure" means being exposed to ionizing radiation or to radioactive material.

"Exposure" means the quotient of dQ by dm where "dQ" is the absolute value of the total charge of the ions of one sign produced in air when all the electrons (negatrons and positrons) liberated by photons in a volume element of air having mass "dm" are completely stopped in air. (The special unit of exposure is the roentgen (R) (see 38.2(136C) for SI equivalent coulomb per kilogram). When not underlined as above or when indicated as 'exposure' or (X), the term "exposure" has a more general meaning in these rules.

"Exposure rate" means the exposure per unit of time, such as roentgen per minute and milliroentgen per hour.

"External dose" means that portion of the dose equivalent received from any source of radiation outside the body.

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

"Facility" means the location, building, vehicle, or complex under one administrative control, at which radioactive material is stored or used or at which one or more radiation machines are installed, located or used.

"Filtering facepiece (dust mask)" means a negative pressure particulate respirator with a filter as an integral part of the facepiece or with the entire facepiece composed of the filtering medium, which is not equipped with elastomeric sealing surfaces and adjustable straps.

"Fit factor" means a quantitative estimate of the fit of a particular respirator to a specific individual, and typically estimates the ratio of the concentration of a substance in ambient air to its concentration inside the respirator when worn.

"Fit test" means the use of a protocol to qualitatively or quantitatively evaluate the fit of a respirator on an individual.

"Former U.S. Atomic Energy Commission (AEC) or U.S. Nuclear Regulatory Commission (NRC) licensed facilities" means nuclear reactors, nuclear fuel reprocessing plants, uranium enrichment plants, or critical mass experimental facilities where AEC or NRC licenses have been terminated.

"Generally applicable environmental radiation standards" means standards issued by the U.S. Environmental Protection Agency (EPA) under the authority of the Atomic Energy Act of 1954, as amended, that impose limits on radiation exposures or levels, or concentrations or quantities of radioactive material, in the general environment outside the boundaries of locations under the control of persons possessing or using radioactive material.

"Gray (Gy)" means the SI unit of absorbed dose, kerma, and specific energy imparted equal to 1 joule per kilogram. (1 Gy=100 rad).

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

"Hazardous waste" means those wastes designated as hazardous by U.S. Environmental Protection Agency regulations in 40 CFR Part 261.

"Healing arts" means the occupational fields of diagnosing or treating disease, providing health care and improving health by the practice of medicine, osteopathy, chiropractic, podiatry, dentistry, nursing, veterinary medicine, and supporting professions, such as physician assistants, nurse practitioners, radiologic technologists, and dental hygienists.

"Helmet" means a rigid respiratory inlet covering that also provides head protection against impact and penetration.

"High dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate in excess of 1200 rads (12 gray) per hour at the point or surface where the dose is prescribed.

"High-level radioactive waste" or *"HLW"* means (1) irradiated reactor fuel; (2) liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; and (3) solids into which such liquid wastes have been converted.

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

"Hood" means a respiratory inlet covering that completely covers the head and neck and may also cover portions of the shoulders and torso.

"Human use" means the internal or external administration of radiation or radioactive material to human beings.

"Individual" means any human being.

"Individual monitoring" means the assessment of:

1. Dose equivalent by the use of individual monitoring devices or by the use of survey data; or
2. Committed effective dose equivalent by bioassay or by determination of the time-weighted air concentrations to which an individual has been exposed, that is, DAC-hours. See the definition of DAC-hours in 641—Chapter 40.

"Individual monitoring devices" means devices designed to be worn by a single individual for the assessment of dose equivalent. For purposes of these rules, "personnel dosimeter" and "dosimeter" are equivalent terms. Examples of individual monitoring devices are film badges, thermoluminescent dosimeters (TLDs), pocket ionization chambers, optically stimulated luminescent (OSL) devices, and personal air sampling devices.

"Industrial radiography" means a nondestructive testing method using ionizing radiation, such as gamma rays or X-rays, to make radiographic images.

"Inspection" means an official examination or observation including, but not limited to, tests, surveys, and monitoring to determine compliance with rules, regulations, orders, requirements, and conditions of the agency.

"Instrument traceability" means, for ionizing radiation measurements, the ability to show that an instrument has been calibrated at specified time intervals using a national standard or a transfer standard. If a transfer standard is used, the calibration must be from a laboratory accredited by a program which required continuing participation in measurement quality assurance with the National Institute of Standards and Technology or other equivalent national or international program.

"Interlock" means a device preventing the start or continued operation of equipment unless certain predetermined conditions prevail.

"Internal dose" means that portion of the dose equivalent received from radioactive material taken into the body.

"Ionizing radiation." See "Radiation."

"Irradiation" means the exposure of a living being or matter to ionizing radiation.

"Kilovolt (kV)(kilo electron volt (keV))" means the energy equal to that acquired by a particle with one electron charge in passing through a potential difference of 1000 volts in a vacuum.

"Lead equivalent" means the thickness of lead affording the same attenuation, under specified conditions, as the material in question.

"Leakage radiation" means radiation emanating from the diagnostic or therapeutic source assembly except for:

1. The useful beam, and
2. Radiation produced when the exposure switch or timer is not activated.

"Lens dose equivalent (LDE)" applies to the external exposure of the lens of the eye and is taken as the dose equivalent at a tissue depth of 0.3 centimeter (300 mg/cm^2).

"License" means a license issued by the agency in accordance with the rules adopted by the agency.

"Licensed (or registered) material" means radioactive material received, possessed, used, transferred or disposed of under a general or specific license (or registration) issued by the agency.

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

"Licensee" means any person who is licensed by the agency in accordance with these rules and the Act.

"Licensing state" means any state with regulations equivalent to the suggested state regulations for control of radiation relating to, and an effective program for, the regulatory control of NARM and which has been granted final designation by the Conference of Radiation Control Program Directors, Inc.

"Light field" means that area of the intersection of the light beam from the beam-limiting device and one of the set of planes parallel to and including the plane of the image receptor, whose perimeter is the locus of points at which the illumination is one-fourth of the maximum in the intersection.

"Limits." See "Dose limits."

"Loose-fitting facepiece" means a respiratory inlet covering that is designed to form a partial seal with the face.

"Lost or missing licensed (or registered) source of radiation" means licensed (or registered) source of radiation whose location is unknown. This definition includes licensed (or registered) material that has been shipped but has not reached its planned destination and whose location cannot be readily traced in the transportation system.

"Low dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of less than or equal to 200 rads (2 gray) per hour at the point or surface where the dose is prescribed.

"mA" means milliampere.

"Major processor" means a user processing, handling, or manufacturing radioactive material exceeding Type A quantities as unsealed sources or material, or exceeding four times Type B quantities as sealed sources, but does not include nuclear medicine programs, universities, industrial radiographers, or small industrial programs. Type A and B quantities are defined in this rule.

"Mammography" means the radiography of the breast except as defined in 641—subrule 41.6(1).

"Mammography unit" means an assemblage of components for the production of X-rays for use during mammography, including, at a minimum: an X-ray generator, an X-ray control, a tube housing assembly, a beam-limiting device, and the supporting structures for these components.

"Manual brachtherapy" means a type of brachytherapy in which the brachytherapy sources (e.g., seeds, ribbons) are manually placed topically on or inserted either into the body cavities that are in close proximity to a treatment site or directly into the tissue volume.

"Medical use" means the intentional internal or external administration of radioactive material or the radiation therefrom to patients or human research subjects under the supervision of an authorized user.

"Medium dose-rate remote afterloader" means a brachytherapy device that remotely delivers a dose rate of greater than 200 rads (2 gray), but less than 1200 rads (12 gray) per hour at the point or surface where the dose is prescribed.

"Member of the public" means any individual except when that individual is receiving an occupational dose.

"Minor" means an individual less than 18 years of age.

"Misadministration" means the administration of:

1. Radiation doses received from linear accelerator therapy, deep X-ray machine therapy or superficial therapy; involving the wrong patient or human research subject, wrong mode of treatment or wrong treatment site;

When the treatment consists of three or fewer fractions and the calculated total administered dose differs from the total prescribed dose by more than 10 percent of the total prescribed dose;

When the calculated weekly administered dose is 30 percent greater than the weekly prescribed dose; or

When the calculated total administered dose differs from the total prescribed dose by more than 20 percent of the total prescribed dose.

2. A diagnostic radiopharmaceutical dosage, other than quantities greater than 30 microcuries of either sodium iodide I-125 or I-131, both:

Involving the wrong patient or human research subject, wrong radiopharmaceutical, wrong route of administration; or when the administered dosage differs from the prescribed dosage; and

When the dose to the patient or human research subject exceeds 5 rem effective dose equivalent or 50 rem dose equivalent to any individual organ.

"Monitoring (radiation monitoring, radiation protection monitoring)" means the measurement of radiation levels, radioactive material concentrations, surface area concentrations or quantities of radioactive material and the use of the results of these measurements to evaluate potential exposures and doses.

"NARM" means any naturally occurring or accelerator-produced radioactive material. It does not include by-product, source, or special nuclear material.

"Natural radioactivity" means radioactivity of naturally occurring nuclides. For the purpose of meeting the definition of a licensing state by the Conference of Radiation Control Program Directors, Inc., (CRCPD), NARM refers only to discrete sources of NARM. Diffuse sources of NARM are excluded from consideration by the CRCPD for licensing state designation purposes.

"Negative pressure respirator (tight fitting)" means a respirator in which the air pressure inside the facepiece is negative during inhalation with respect to the ambient air pressure outside the respirator.

"Nuclear Regulatory Commission (NRC)" means the U.S. Nuclear Regulatory Commission or its duly authorized representatives.

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

"Package" means the packaging together with its radioactive contents as presented for transport.

"Particle accelerator." See "Accelerator."

"Patient" means an individual or animal subjected to healing arts examination, diagnosis or treatment.

"Peak tube potential" means the maximum value of the potential difference across the X-ray tube during an exposure.

"Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but shall not include federal government agencies.

"Personnel monitoring equipment." See "Individual monitoring devices."

"Phantom" means a volume of material behaving in a manner similar to tissue with respect to the attenuation and scattering of radiation. This requires that both the atomic number (Z) and the density of the material be similar to that of tissue.

"Pharmacist" means an individual licensed by this state to compound and dispense drugs, prescriptions, and poisons.

"Physician" means a person who is currently licensed in Iowa to practice medicine and surgery, osteopathic medicine and surgery, or osteopathy.

"Positive pressure respirator" means a respirator in which the pressure inside the respiratory inlet covering exceeds the ambient air pressure outside the respirator.

"Powered air-purifying respirator (PAPR)" means an air-purifying respirator that uses a blower to force the ambient air through air-purifying elements to the inlet covering.

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

1. In a written directive; or
2. In accordance with the directions of the authorized user for procedures performed in 641—subrules 41.2(31) and 41.2(33).

"Prescribed dose" means:

1. For gamma stereotactic radiosurgery, the total dose as documented in the written directive;
2. For teletherapy, particle accelerators and X-ray systems, the total dose and dose per fraction as documented in the written directive;
3. For manual brachytherapy, either the total source strength and exposure time or the total doses, as documented in the written directive; or
4. For remote brachytherapy afterloaders, the total dose and dose per fraction as documented in the written directive.

"Pressure demand respirator" means a positive pressure atmosphere-supplying respirator that admits breathing air to the facepiece when the positive pressure is reduced inside the facepiece by inhalation.

"Primary dose monitoring system" means a system which will monitor the useful beam during irradiation and which will terminate irradiation when a preselected number of dose monitor units have been acquired.

"Primary protective barrier" (see "Protective barrier").

"Principal activities," as used in this part, means activities authorized by the license which are essential to achieving the purpose(s) for which the license was issued or amended. Storage during which no licensed material is accessed for use or disposal and activities incidental to decontamination or decommissioning are not principal activities.

"Protective barrier" means a barrier used to reduce radiation exposure. The types of protective barriers are as follows:

1. *"Primary protective barrier"* means the material, excluding filters, placed in the useful beam, for protection purposes, to reduce the radiation exposure.
2. *"Secondary protective barrier"* means a barrier sufficient to attenuate the stray radiation to the required degree.

"Public dose" means the dose received by a member of the public from exposure to radiation or to radioactive material released by a licensee, registrant, or other person, or to any other source of radiation under the control of a licensee, registrant, or other person. It does not include occupational dose or doses received from background radiation, from any medical administration the individual has received, from exposure to individuals administered sources of radiation or radioactive material and released in accordance with 641—subrule 41.2(27) or from voluntary participation in medical research programs.

"Pyrophoric material" means any liquid that ignites spontaneously in dry or moist air at or below 130° F (54.4° C) or solid, other than one classed as an explosive, which under normal conditions is liable to cause fires through friction, retained heat from manufacturing or processing, or which can be ignited readily and, when ignited, burns so vigorously and persistently as to create a serious transportation, handling, or disposal hazard. Included are spontaneously combustible and water-reactive materials.

"Qualified expert" means an individual having the knowledge and training to measure ionizing radiation, to evaluate safety techniques, and to advise regarding radiation protection needs. For example, individuals certified in the appropriate field by the American Board of Radiology, the American Board of Medical Physics, or the American Board of Health Physics, or those having equivalent qualifications. With reference to the calibration of radiation therapy equipment, an individual having, in addition to the above qualifications, training and experience in the clinical applications of radiation physics to radiation therapy, for example, individuals certified in Therapeutic Radiological Physics or X-Ray and Radium Physics by the American Board of Radiology, or those having equivalent qualifications.

"Qualitative fit test (QLFT)" means a pass-fail fit test to assess the adequacy of respirator fit that relies on the individual's response to the test agent.

"Quality factor" (Q) means the modifying factor, listed in Tables I and II of 38.4(4), that is used to derive dose equivalent from absorbed dose.

"Quantitative fit test (QNFT)" means an assessment of the adequacy of respirator fit by numerically measuring the amount of leakage into the respirator.

"Rad" means the special unit of absorbed dose. One rad is equal to an absorbed dose of 100 erg per gram or 0.01 joule per kilogram (0.01 gray).

"Radiation" means alpha particles, beta particles, gamma rays, X-rays, neutrons, high-speed electrons, high-speed protons, and other particles capable of producing ions. For purposes of these rules, ionizing radiation is an equivalent term. Radiation, as used in these rules, does not include nonionizing radiation, such as radiowaves, visible, infrared, or ultraviolet light.

"Radiation area" means any area, accessible to individuals, in which radiation levels could result in an individual receiving a dose equivalent in excess of 0.05 mSv (0.005 rem) in 1 hour at 30 centimeters from the source of radiation or from any surface that the radiation penetrates.

"Radiation detector" means a device which, in the presence of radiation, provides a signal or other indication suitable for use in measuring one or more quantities of incident radiation.

"Radiation dose." See "Dose."

"Radiation machine" means any device capable of producing radiation except those devices with radioactive material as the only source of radiation.

"Radiation safety officer" means an individual who has the knowledge and responsibility to apply appropriate radiation protection regulations and has been assigned such responsibility by the licensee or registrant.

"Radioactive material" means any solid, liquid, or gas which emits radiation spontaneously.

"Radioactivity" means the transformation of unstable atomic nuclei by the emission of radiation.

"Radiobioassay." See "Bioassay."

"Radiographic imaging system" means any system whereby a permanent or semipermanent image is recorded on an image receptor by the action of ionizing radiation.

641—38.7(136C) Communications.

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.

38.7(2) Drafts of proposed regulations released to the department from the federal government which constitute essential information needed by the department to ensure compliance with federal regulations are not available for public examination. Therefore, pursuant to Iowa Code section 22.9, the department waives the provision of Iowa Code section 22.2 as it applies to these proposed draft regulations.

641—38.8(136C) Fees.

38.8(1) *Radiation machines.*

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

ANNUAL FEE SCHEDULE

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

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

b. Each registrant shall, where appropriate, pay the following special inspections/interpretation fee at the written request of the department:

(1) Mammography unit inspections fees:

- $850 for the first unit and, if the facility has additional units at the address of the first unit, a fee of $300 for each additional unit; or
- $850 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 for the second facility follow-up visit to review or determine the corrective action taken to address noncompliances.
- $850 for each stereotactic breast biopsy unit.

(2) Mammography interpretation fees of $100 per mammography examination provided to the department for the purpose of determining film diagnostic quality.

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

(4) Industrial radiography X-ray units/walk-in cabinet radiography X-ray unit registrants shall pay for each inspection a fee of $250 for the first unit and $75 for each additional unit.

c. Each person who is engaged in the business of installing or offering to furnish radiation machines or is engaged in the business of furnishing or offering to furnish radiation machine servicing or service in the state shall apply for registration of such service with the agency prior to furnishing or offering to furnish any such service. Application shall be on a form provided by the department and include an annual nonrefundable fee of $100.

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 annual listing fee to this agency.

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

38.8(2) *Radioactive material licensing, inspection and registration fee.*

a. Licensing.

(1) Fees associated with licensing of the possession and use of radioactive materials in Iowa shall not exceed those specified in 10 CFR 170.31. The radioactive materials fee schedule is available through the agency.

(2) All required fees for new radioactive materials licenses, amendments to licenses, or renewal of licenses shall accompany the application for the requested action.

b. Inspections.

(1) After completion of an inspection, an inspection fee shall be assessed to a facility based on the fees for inspection, which shall not exceed those found in 10 CFR 170.32 entitled "Schedule of Fees for Health and Safety, and Safeguards Inspections for Materials Licenses." The radioactive materials fee schedule is available through the agency.

(2) All required fees for inspections conducted by the agency shall be paid within 30 days after receipt of the agency notification following the inspection.

c. Registration. Each person having generally licensed radioactive materials shall annually register with the department and pay a nonrefundable annual fee of $150.

38.8(3) *Industrial radiography testing and certification.*

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

b. A fee of $25 shall be submitted in order to replace lost identification cards issued to industrial radiographers by the agency pursuant to 641—subrule 45.1(10).

38.8(4) *Owner-assessed expenses.* In cases in which the agency determines that the cost of regulating or inspecting registered radiation machine facilities or radioactive materials licensees significantly exceeds the fees charged to the facility, it may assess an additional fee to the owner or user of the source(s) of radiation to cover the actual expenses incurred by the agency.

38.8(5) *Environmental surveillance fee.* A fee may be levied against any licensee for environmental surveillance activities which are necessary to access the radiological impact of activities conducted by the registrant or licensee. This fee shall be sufficient to defray actual costs incurred by the agency, including, but not limited to, salaries of agency employees, per diem, travel, and costs of laboratory analysis of samples, when required.

b. Deliberately submit to the agency, a licensee, registrant, applicant, or a licensee's, registrant's, or applicant's contractor or subcontractor, information that the person submitting the information knows to be incomplete or inaccurate in some respect material to the agency.

38.10(2) A person who violates paragraph 38.10(1)*"a"* or *"b"* may be subject to enforcement action in accordance with the procedures in 641—38.9(136C).

38.10(3) For the purposes of paragraph 38.10(1)*"a,"* deliberate misconduct by a person means an intentional act or omission that the person knows:

a. Would cause a licensee, registrant, or applicant to be in violation of any rule, regulation, or order; or any term, condition, or limitation of any license issued by the agency; or

b. Constitutes a violation of a requirement, procedure, instruction, contract, purchase order, or policy of a licensee, registrant, applicant, contractor, or subcontractor.

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

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◊Two ARCs
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CHAPTER 39
REGISTRATION OF RADIATION MACHINE FACILITIES, LICENSURE OF RADIOACTIVE MATERIALS AND TRANSPORTATION OF RADIOACTIVE MATERIALS

641—39.1(136C) Purpose and scope.

39.1(1) All persons possessing radiation machines within the state shall be registered in accordance with this chapter, except as specifically exempted.

39.1(2) No person shall receive, possess, use, transfer, own, or acquire radioactive material except as authorized in a specific or general license issued pursuant to this chapter or as otherwise provided in these rules.

39.1(3) All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of May 5, 2004.

39.1(4) In addition to the requirements of this chapter, all registrants are subject to the requirements of 641—Chapters 38 and 40. Furthermore, registrants engaged in healing arts are subject to the requirements of 641—Chapters 41 and 42; registrants engaged in industrial/nonmedical radiographic operations are subject to the requirements of 641—Chapter 45.

39.1(5) In areas under exclusive federal jurisdiction, nothing in these rules applies to the extent that persons are subject to regulation by the U.S. Nuclear Regulatory Commission (NRC) or other federal agencies.

641—39.2(136C) Definitions. For the purpose of this chapter, the definitions in 641—Chapter 38 may also apply to this chapter.

641—39.3(136C) Requirements for registration of X-ray and other electronic machines that produce radiation.

39.3(1) *Exemptions.*

a. Electronic equipment that produces radiation incidental to its operation for other purposes is exempt from the registration and notification requirements of this chapter, provided that the dose equivalent rate averaged over an area of 10 square centimeters does not exceed 0.5 millirem (5 μSv) per hour at 5 centimeters from any accessible surface of such equipment. The production, testing, or factory servicing of such equipment shall not be exempt.

b. Radiation machines while in transit or storage incident thereto are exempt from the requirements of this chapter.

c. Domestic television receivers are exempt from the requirements of this chapter.

39.3(2) *Application for registration of radiation machine facilities.* Each person having a radiation machine facility shall:

a. Apply for registration of such facility with the agency prior to the operation of a radiation machine facility. In order to register equipment, the person must have a permanent office located in Iowa that has a non-wireless telephone, employee and equipment, and storage for records regarding the equipment and operator certification. Application for registration shall be completed on forms furnished by the agency and shall include the appropriate fee from 641—38.8(136C).

b. Designate on the application form an individual to be responsible for radiation protection.

c. Each registrant shall prohibit any person from furnishing radiation machine servicing or services as described in 39.3(3)*"d"* to the registrant's radiation machine facility until such person provides evidence that the person has been registered with the agency as a provider of services in accordance with 39.3(3).

39.3(3) *Application for registration of servicing and services.*

a. Each person who is engaged in the business of installing or offering to install radiation machines or is engaged in the business of furnishing or offering to furnish radiation machine servicing or services in this state shall apply for registration of such services with the agency prior to furnishing or offering to furnish any such services.

b. Application for registration shall be completed on forms furnished by the agency and shall contain all information required by the agency as indicated on the forms and accompanying instructions and include the fee required in 641—paragraph 38.8(1)*"c."*

c. Each person applying for registration under this chapter shall specify:

(1) That the person has read and understands the requirements of these rules;

(2) The services for which the person is applying for registration;

(3) The training and experience that qualify the person to discharge the services for which the person is applying for registration;

(4) The type of measurement instrument to be used, frequency of calibration, and source of calibration; and

(5) The type of personnel dosimeters supplied, frequency of reading, and replacement or exchange schedule.

d. For the purpose of 39.3(3), services may include but shall not be limited to:

(1) Installation and servicing of radiation machines and associated radiation machine components;

(2) Calibration of radiation machines or radiation measurement instruments or devices;

(3) Radiation protection or health physics consultations or surveys; and

(4) Processor or processor servicing, or both.

e. No individual shall perform services which are not specifically stated for that individual on the notice of registration issued by the agency.

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

39.3(4) *Issuance of notice of registration.*

a. Upon a determination that an applicant meets the requirements of this chapter, the agency shall issue a notice of registration.

i. Licensing the manufacture and distribution of ice detection devices. An application for a specific license to manufacture and distribute ice detection devices to persons generally licensed under 39.4(22)"*j*" will be approved if:

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

(2) The criteria of Sections 32.61, 32.62, and 32.103 of 10 CFR Part 32 are met.

j. Manufacture, preparation, or transfer for commercial distribution of radioactive drugs containing by-product material for medical use under 641—41.2(136C).

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

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

2. The applicant submits evidence that the applicant is at least one of the following:

- Registered or licensed with the U.S. Food and Drug Administration (FDA) as a drug manufacturer;
- Registered or licensed with a state agency as a drug manufacturer;
- Licensed by the Iowa board of pharmacy examiners as a nuclear pharmacy; or
- Operating as a nuclear pharmacy within a federal medical institution;

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

4. The applicant satisfies the following labeling requirements:

- A label is affixed to each transport radiation shield, whether it is constructed of lead, glass, plastic, or other material, of a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL"; the name of the radioactive drug or its abbreviation; and the quantity of radioactivity at a specified date and time. For radioactive drugs with a half-life greater than 100 days, the time may be omitted.
- A label is affixed to each syringe, vial, or other container used to hold a radioactive drug to be transferred for commercial distribution. The label must include the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL" and an identifier that ensures that the syringe, vial, or other container can be correlated with the information on the transport radiation shield label.

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

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

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

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

3. May designate a pharmacist (as defined in 641—subrule 41.2(2)) as an authorized nuclear pharmacist if the individual is identified as of July 9, 1997, as an "authorized user" on a nuclear pharmacy license issued by the agency, the Nuclear Regulatory Commission or an Agreement State.

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

5. Shall provide to the agency a copy of each individual's certification by the Board of Pharmaceutical Specialties, the NRC, or agreement state license, or the permit issued by a licensee of broad scope, and a copy of the state pharmacy licensure or registration, no later than 30 days after the date that the licensee allows, pursuant to 39.4(29)"*j*"(2)"2," first and third bulleted paragraphs, the individual to work as an authorized nuclear pharmacist.

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

1. Perform tests before initial use, periodically, and following repair, on each instrument for accuracy, linearity, and geometry dependence, as appropriate for the use of the instrument, and make adjustments when necessary; and

2. Check each instrument for constancy and proper operation at the beginning of each day of use.

(4) Nothing in this subrule relieves the licensee from complying with applicable FDA, other federal, and state requirements governing radioactive drugs.

k. Manufacture and distribution of generators or reagent kits for preparation of radiopharmaceuticals containing radioactive material. Although the agency does not regulate the manufacture and distribution of reagent kits that do not contain radioactive material, it does regulate the use of such reagent kits for the preparation of radiopharmaceuticals containing radioactive material as part of its licensing and regulation of the users of radioactive material. Any manufacturer of reagent kits that do not contain radioactive material who desires to have their reagent kits approved by the agency for use by persons licensed pursuant to 641—subrule 41.2(33) may submit the pertinent information specified in 39.4(29)"*k.*" An application for a specific license to manufacture and distribute generators or reagent kits containing radioactive material for preparation of radiopharmaceuticals by persons licensed pursuant to this chapter for the uses listed in 641—subrule 41.2(33) will be approved if:

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

(2) The applicant submits evidence that:

1. The generator or reagent kit is to be manufactured, labeled and packaged in accordance with the Federal Food, Drug and Cosmetic Act or the Public Health Service Act, such as a new drug application (NDA) approved by the Food and Drug Administration (FDA), or a "Notice of Claimed Investigational Exemption for a New Drug" (IND) that has been accepted by the FDA, or

2. The manufacture and distribution of the generator or reagent kit are not subject to the Federal Food, Drug and Cosmetic Act and the Public Health Service Act;

(3) The applicant submits information on the radionuclide, chemical and physical form, packaging including maximum activity per package, and shielding provided by the packaging of the radioactive material contained in the generator or reagent kit;

(4) The label affixed to the generator or reagent kit contains information on the radionuclide, quantity, and date of assay; and

(5) The label affixed to the generator or reagent kit, or the leaflet or brochure which accompanies the generator or reagent kit, contains:

1. Adequate information, from a radiation safety standpoint, on the procedures to be followed and the equipment and shielding to be used in eluting the generator or processing radioactive material with the reagent kit, and

2. A statement that this generator or reagent kit, as appropriate, is approved for use by persons licensed by the agency pursuant to 641—subrule 41.2(33) or under equivalent licenses of the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state. The labels, leaflets, or brochures required by 39.4(29)"*k*" are in addition to the labeling required by the Food and Drug Administration (FDA) and they may be separate from or, with the approval of the FDA, may be combined with the labeling required by the FDA.

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

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

(2) The applicant submits sufficient information regarding each type of source or device pertinent to an evaluation of its radiation safety, including:

1. The radioactive material contained, its chemical and physical form, and amount,
2. Details of design and construction of the source or device,
3. Procedures for, and results of, prototype tests to demonstrate that the source or device will maintain its integrity under stresses likely to be encountered in normal use and accidents,
4. For devices containing radioactive material, the radiation profile of a prototype device,
5. Details of quality control procedures to ensure that production sources and devices meet the standards of the design and prototype tests,
6. Procedures and standards for calibrating sources and devices,
7. Legend and methods for labeling sources and devices as to their radioactive content, and
8. Instructions for handling and storing the source or device from the radiation safety standpoint. These instructions are to be included on a durable label attached to the source or device or attached to a permanent storage container for the source or device, provided that instructions which are too lengthy for such label may be summarized on the label and printed in detail on a brochure which is referenced on the label;

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

(4) In the event the applicant desires that the source or device be required to be tested for leakage of radioactive material at intervals longer than six months, the applicant shall include in the application sufficient information to demonstrate that such longer interval is justified by performance characteristics of the source or device or similar sources or devices and by design features that have a significant bearing on the probability or consequences of leakage of radioactive material from the source; and

(5) In determining the acceptable interval for test of leakage of radioactive material, the agency will consider information that includes, but is not limited to:

1. Primary containment or source capsule,
2. Protection of primary containment,
3. Method of sealing containment,
4. Containment construction materials,
5. Form of contained radioactive material,
6. Maximum temperature withstood during prototype tests,
7. Maximum pressure withstood during prototype tests,
8. Maximum quantity of contained radioactive material,
9. Radiotoxicity of contained radioactive material, and
10. Operating experience with identical sources or devices or similarly designed and constructed sources or devices.

m. Requirements for license to manufacture and distribute industrial products containing depleted uranium for mass-volume applications.

(1) An application for a specific license to manufacture industrial products and devices containing depleted uranium for use pursuant to 39.4(21)*"d"* or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state will be approved if:

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

2. The applicant submits sufficient information relating to the design, manufacture, prototype testing, quality control procedures, labeling or marking, proposed uses, and potential hazards of the industrial product or device to provide reasonable assurance that possession, use, or transfer of the depleted uranium in the product or device is not likely to cause any individual to receive in any period of one calendar quarter a radiation dose in excess of 10 percent of the limits specified in 641—40.15(136C) of these rules; and

3. The applicant submits sufficient information regarding the industrial product or device and the presence of depleted uranium for a mass-volume application in the product or device to provide reasonable assurance that unique benefits will accrue to the public because of the usefulness of the product or device.

(2) In the case of an industrial product or device whose unique benefits are questionable, the agency will approve an application for a specific license under 39.4(29)*"m"* only if the product or device is found to combine a high degree of utility and low probability of uncontrolled disposal and dispersal of significant quantities of depleted uranium into the environment.

(3) The agency may deny any application for a specific license under 39.4(29)*"m"* if the end use(s) of the industrial product or device cannot be reasonably foreseen.

(4) Each person licensed pursuant to 39.4(29)*"m"*(1) shall:

1. Maintain the level of quality control required by the license in the manufacture of the industrial product or device, and in the installation of the depleted uranium into the product or device;

2. Label or mark each unit to:

- Identify the manufacturer of the product or device and the number of the license under which the product or device was manufactured, the fact that the product or device contains depleted uranium, and the quantity of depleted uranium in each product or device; and
- State that the receipt, possession, use, and transfer of the product or device are subject to a general license or the equivalent and the regulations of the U.S. Nuclear Regulatory Commission or an agreement state;

3. Ensure that the depleted uranium before being installed in each product or device has been impressed with the following legend clearly legible through any plating or other covering: "Depleted Uranium";

4. Furnish a copy of the general license contained in 39.4(21)*"d"* and a copy of the agency form used to register the device to each person to whom the person transfers depleted uranium in a product or device for use pursuant to the general license contained in 39.4(21)*"d,"* or furnish a copy of the general license contained in the U.S. Nuclear Regulatory Commission's or agreement state's regulation equivalent to 39.4(21)*"d"* and a copy of the U.S. Nuclear Regulatory Commission's or agreement state's certificate, or alternatively, furnish a copy of the general license contained in 39.4(21)*"d"* and a copy of the agency form used to register to each person to whom the person transfers depleted uranium in a product or device for use pursuant to the general license of the U.S. Nuclear Regulatory Commission or an agreement state, with a note explaining that use of the product or device is regulated by the U.S. Nuclear Regulatory Commission or an agreement state under requirements substantially the same as those in 39.4(21)*"d"*;

5. Report to the agency all transfers of industrial products or devices to persons for use under the general license in 39.4(21)*"d."* Such report shall identify each general licensee by name and address, an individual by name and position who may constitute a point of contact between the agency and the general licensee, the type and model number of device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such a product or device is transferred to the generally licensed person. If no transfers have been made to persons generally licensed under 39.4(21)*"d"* during the reporting period, the report shall so indicate;

6. Report to the U.S. Nuclear Regulatory Commission all transfers of industrial products or devices to persons for use under the U.S. Nuclear Regulatory Commission general license in Section 40.25 of 10 CFR Part 40; and shall report to the responsible state agency all transfers of devices manufactured and distributed pursuant to 39.4(29)*"m"* for use under a general license in that state's regulations equivalent to 39.4(21)*"d."* Such report shall identify each general licensee by name and address, an individual by name and position who may constitute a point of contact between the agency and the general licensee, the type and model number of the device transferred, and the quantity of depleted uranium contained in the product or device. The report shall be submitted within 30 days after the end of each calendar quarter in which such product or device is transferred to the generally licensed person. If no transfers have been made to U.S. Nuclear Regulatory Commission licensees during the reporting period, this information shall be reported to the U.S. Nuclear Regulatory Commission. If no transfers have been made to general licensees within a particular agreement state during the reporting period, this information shall be reported to the responsible agreement state agency upon the request of that agency; and

7. Keep records showing the name, address, and point of contact for each general licensee to whom the person transfers depleted uranium in industrial products or devices for use pursuant to the general license provided in 39.4(21)*"d"* or equivalent regulations of the U.S. Nuclear Regulatory Commission or an agreement state. The records shall be maintained for a period of two years and shall show the date of each transfer, the quantity of depleted uranium in each product or device transferred, and compliance with the report requirements of 641—Chapters 39 and 40.

39.4(30) Reserved.

39.4(31) *Issuance of specific licenses.*

a. Upon a determination that an application meets the requirements of the Iowa Code and the rules of the agency, the agency will issue a specific license authorizing the proposed activity in such form and containing such conditions and limitations as it deems appropriate or necessary.

b. The agency may incorporate in any license at the time of issuance, or thereafter by appropriate rule, regulation, or order, such additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of radioactive material subject to this chapter as it deems appropriate or necessary in order to:

(1) Minimize danger to public health and safety or property;

(2) Require such reports and the keeping of such records, and to provide for such inspections of activities under the license as may be appropriate or necessary; and

(3) Prevent loss or theft of material subject to this chapter.

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

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

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

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

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

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

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

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

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

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

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

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

d. Specific licenses for well logging. The agency will approve an application for a specific license for the use of licensed material in well logging if the applicant meets the following requirements:

(1) The applicant shall satisfy the general requirements specified in 39.4(25) and all other requirements in 641—Chapter 39, as appropriate, and any special requirements contained in 39.4(31)*"d."*

(2) The applicant shall develop a program for training logging supervisors and logging assistants and submit to the agency a description of this program which specifies the following:

1. Initial training;
2. On-the-job training;
3. Annual safety reviews provided by the licensee;
4. The means the applicant will use to demonstrate the logging supervisor's knowledge and understanding of and ability to comply with the agency's regulations and licensing requirements and the applicant's operating and emergency procedures; and
5. The means the applicant will use to demonstrate the logging assistant's knowledge and understanding of and ability to comply with the applicant's operating and emergency procedures.

(3) The applicant shall submit to the agency written operating and emergency procedures as described in 641—subrule 45.6(16) or an outline or summary of the procedures that includes the important radiation safety aspects of the procedures.

(4) The applicant shall establish and submit to the agency its program for annual inspections of the job performance of each logging supervisor to ensure that the agency's regulations and license requirements and the applicant's operating and emergency procedures are followed. Inspection records must be retained for three years after each annual internal inspection.

(5) The applicant shall submit a description of its overall organizational structure as the organizational structure applies to the radiation safety responsibilities in well logging, including specified delegations of authority and responsibility.

(6) If an applicant wants to perform leak testing of sealed sources, the applicant shall identify the manufacturers and the model numbers of the leak test kits to be used. If the applicant wants to analyze its own wipe samples, the applicant shall establish procedures to be followed and submit a description of these procedures to the agency. The description must include the instruments to be used, methods of performing the analysis, and pertinent experience of the person who will analyze the wipe samples.

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

a. Each license issued pursuant to this chapter shall be subject to all the provisions of the Iowa Code, now or hereafter in effect, and to all rules, regulations, and orders of the agency.

b. No license issued or granted under this chapter and no right to possess or utilize radioactive material granted by any license issued pursuant to this chapter shall be transferred, assigned, or in any manner disposed of, either voluntarily or involuntarily, directly or indirectly, through transfer of control of any license to any person unless the agency shall, after securing full information, find that the transfer is in accordance with the provisions of the Iowa Code, now or hereafter in effect, and to all valid rules, regulations, and orders of the agency, and shall give its consent in writing.

c. Each person licensed by the agency pursuant to this chapter shall confine use and possession of the material licensed to the locations and purposes authorized in the license.

d. Each licensee shall notify the agency in writing when the licensee decides to permanently discontinue all activities involving materials authorized under the license.

e. Each licensee shall notify the agency in writing immediately following the filing of a voluntary or involuntary petition for bankruptcy under any Chapter of Title 11 (Bankruptcy) of the United States Code by or against:

(1) The licensee;

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

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

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

39.4(33) *Expiration and termination of licenses and decommissioning of sites and separate buildings or outdoor areas.*

a. Each specific license expires at the end of the day on the expiration date stated in the license unless the licensee has filed an application for renewal under 39.4(33) not less than 30 days before the expiration date stated in the existing license. If an application for renewal has been filed at least 30 days before the expiration date stated in the existing license, the existing license expires at the end of the day on which the agency makes a final determination to deny the renewal application or, if the determination states an expiration date, the expiration date stated in the determination.

b. Each specific license revoked by the agency expires at the end of the day on the date of the agency's final determination to revoke the license, or on the expiration date stated in the determination, or as otherwise provided by agency order.

c. Each specific license continues in effect, beyond the expiration date if necessary, with respect to possession of by-product material until the agency notifies the licensee in writing that the license is terminated. During this time, the licensee shall:

(1) Limit actions involving by-product material to those related to decommissioning; and

(2) Continue to control entry to restricted areas until they are suitable for release in accordance with state of Iowa requirements.

d. Within 60 days of the occurrence of any of the following, each licensee shall provide notification to the agency in writing of such occurrence, and either begin decommissioning its site, or any separate building or outdoor area that contains residual radioactivity so that the building or outdoor area is suitable for release in accordance with the state of Iowa requirements, or submit within 12 months of notification a decommissioning plan, if required by 39.4(33)*"j"* and begin decommissioning upon approval of that plan if:

(1) The license has expired pursuant to 39.4(33)*"a"* or *"b"*;

(2) The licensee has decided to permanently cease principal activities, as defined in 641—38.2(136C) at the entire site or in any separate building or outdoor area that contains residual radioactivity such that the building or outdoor area is unsuitable for release in accordance with state of Iowa requirements;

(3) No principal activities under the license have been conducted for a period of 24 months; or

(4) No principal activities have been conducted for a period of 24 months in any separate building or outdoor area suitable for release in accordance with State of Iowa requirements.

e. Coincident with the notification required by 39.4(33)*"d,"* the licensee shall maintain in effect all decommissioning financial assurances established by the licensee pursuant to subrule 39.4(26) in conjunction with a license issuance or renewal or as required by this subrule. The amount of the financial assurance must be increased, or may be decreased, as appropriate, to cover the detailed cost estimate for decommissioning established pursuant to paragraph 39.4(33)*"g."*

(1) Any licensee who has not provided financial assurance to cover the detailed cost estimate submitted with the decommissioning plan shall do so when this rule becomes effective on July 9, 1997.

(2) Following approval of the decommissioning plan, a licensee may reduce the amount of the financial assurance as decommissioning proceeds and radiological contamination is reduced at the site with the approval of the agency.

f. The agency may grant a request to extend the time periods established in 39.4(33)*"d"* if the agency determines that this request is not detrimental to the public health and safety and is otherwise in the public interest. The request must be submitted no later than 30 days before notification pursuant to 39.4(33)*"d."* The schedule for decommissioning set forth in 39.4(33)*"d"* of this subrule may not commence until the agency has made a determination on the request.

g. A decommissioning plan must be submitted if required by license conditions or if the procedures and activities necessary to carry out decommissioning of the site or separate building or outdoor area have not been previously approved by the agency and these procedures could increase the potential health and safety impacts to workers or to the public.

(1) Procedures having potential health and safety impacts include, but are not limited to:

1. Procedures that would involve techniques not applied routinely during cleanup or maintenance operations;
2. Workers that would be entering areas not normally occupied where surface contamination and radiation levels are significantly higher than routinely encountered during operation;
3. Procedures that could result in significantly greater airborne concentrations of radioactive material than are present during operation;
4. Procedures could result in significantly greater releases of radioactive material to the environment than those associated with operation.

(2) The agency may approve an alternate schedule for submittal of a decommissioning plan required pursuant to 39.4(33)*"d"* of this subrule if the agency determines that the alternate schedule is necessary to the effective conduct of decommissioning operations and presents no undue risk from radiation to the public health and safety and is otherwise in the public interest.

(3) Procedures such as those listed in 39.4(33)*"g"* with potential health and safety impacts may not be carried out prior to approval of the decommissioning plan.

(4) The proposed decommissioning plan for the site or separate building or outdoor area must include:

1. A description of the conditions of the site or separate building or outdoor area sufficient to evaluate the acceptability of the plan;
2. A description of planned decommissioning activities;
3. A description of the methods used to ensure protection of workers and the environment against radiation hazards during decommissioning;
4. A description of the planned final radiation survey; and
5. An updated detailed cost estimate for decommissioning, and a plan for ensuring the availability of adequate funds for completion of decommissioning.
6. For decommissioning plans calling for completion of decommissioning later than 24 months after plan approval, the plan shall include justification for the delay based on the criteria in paragraph *"i"* of this subrule.

(5) The proposed decommissioning plan will be approved by the agency if the information therein demonstrates that the decommissioning will be completed as soon as practicable and that the health and safety of workers and the public will be adequately protected.

3. If the licensee no longer meets the requirements of Section I of this appendix, the licensee must send notice to this agency of its intent to establish alternative financial assurance as specified in these rules. The notice must be sent by certified mail, return receipt requested, within 90 days after the end of the fiscal year for which the year-end financial data show that the licensee no longer meets the financial test requirements. The licensee must provide alternate financial assurance within 120 days after the end of such fiscal year.

III. Self-Guarantee

The terms of a self-guarantee which an applicant or licensee furnishes must provide that:

A. The guarantee shall remain in force unless the licensee sends notice of cancellation by certified mail, return receipt requested, to the agency. Cancellation may not occur until an alternative financial assurance mechanism is in place.

B. The licensee shall provide alternative financial assurance as specified in these rules within 90 days following receipt by the agency of a notice of cancellation of the guarantee.

C. The guarantee and financial test provisions must remain in effect until the agency has terminated the license or until another financial assurance method acceptable to the agency has been put in effect by the licensee.

D. The applicant or licensee must provide to the agency a written guarantee (a written commitment by a corporate officer or officer of the institution) which states that the licensee will fund and carry out the required decommissioning activities or, upon issuance of an order by the agency, the licensee will set up and fund a trust in the amount of the current cost estimates for decommissioning.

E. If, at any time, the licensee's most recent bond issuance ceases to be rated in any category of "A" or above by either Standard and Poor's or Moody's, the licensee shall provide notice in writing of such fact to the agency within 20 days after publication of the change by the rating service.

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

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CHAPTER 40
STANDARDS FOR PROTECTION AGAINST RADIATION

GENERAL PROVISIONS

641—40.1(136C) Purpose and scope.

40.1(1) This chapter establishes standards for protection against ionizing radiation resulting from activities conducted pursuant to licenses or registrations issued by the Agency. These rules are issued pursuant to the authority in Iowa Code section 136C.3 and 136C.4.

40.1(2) The requirements of this chapter are designed to control the receipt, possession, use, transfer, and disposal of sources of radiation by any licensee or registrant so the total dose to an individual, including doses resulting from all sources of radiation other than background radiation, does not exceed the standards for protection against radiation prescribed in this chapter. However, nothing in this chapter shall be construed as limiting actions that may be necessary to protect health and safety.

40.1(3) In addition to complying with the requirements set forth in this chapter, every reasonable effort should be made to maintain radiation exposures and releases of radioactive material in effluents to unrestricted areas as low as is reasonably achievable (ALARA). The term "as low as is reasonably achievable" means as low as is reasonably achievable taking into account the state of technology and the economics of improvements in relation to benefits to the public health and safety, other societal and socioeconomic considerations, and in relation to the utilization of ionizing radiation in the public interest.

40.1(4) Except as specifically provided in other parts of these rules, this chapter applies to persons licensed or registered by the Agency to receive, possess, use, transfer, or dispose of sources of radiation. The limits in this chapter do not apply to doses due to background radiation, to exposure of patients to radiation for the purpose of medical diagnosis or therapy, or to voluntary participation in medical research programs.

40.1(5) All references to Code of Federal Regulations (CFR) in this chapter are those in effect on or before May 5, 2004.

40.1(6) The provisions of Chapter 40 are in addition to, and not in substitution for, any other applicable portions of 641—Chapters 38 to 45.

641—40.2(136C) Definitions.

40.2(1) For the purposes of this chapter, the definitions of 641—Chapter 38 may also apply.

40.2(2) As used in this chapter, these terms have the definitions set forth below.

"Annual limit on intake (ALI)" means the derived limit for the amount of radioactive material taken into the body of an adult worker by inhalation or ingestion in a year. ALI is the smaller value of intake of a given radionuclide in a year by the reference person that would result in a committed effective dose equivalent of 5 rem (0.05 Sv) or a committed dose equivalent of 50 rem (0.5 Sv) to any individual organ or tissue. ALI values for intake by ingestion and by inhalation of selected radionuclides are given in Table I, Columns 1 and 2, of Appendix B.

"Class (or lung class or inhalation class)" means a classification scheme for inhaled material according to its rate of clearance from the pulmonary region of the lung. Materials are classified as D, W, or Y, which applies to a range of clearance half-times: for Class D, Days, of less than 10 days, for Class W, Weeks, from 10 to 100 days, and for Class Y, Years, of greater than 100 days.

"Declared pregnant woman" means a woman who has voluntarily informed her licensee or registrant, in writing, of her pregnancy and the estimated date of conception. The declaration remains in effect until the declared pregnant woman withdraws the declaration in writing or is no longer pregnant.

"Derived air concentration (DAC)" means the concentration of a given radionuclide in air which, if breathed by the reference person for a working year of 2,000 hours under conditions of light work, results in an intake of one ALI. For purposes of these rules, the condition of light work is an inhalation rate of 1.2 cubic meters of air per hour for 2,000 hours in a year. DAC values are given in Table I, Column 3, of Appendix B.

"Derived air concentration-hour (DAC-hour)" means the product of the concentration of radioactive material in air, expressed as a fraction or multiple of the derived air concentration for each radionuclide, and the time of exposure to that radionuclide, in hours. A licensee or registrant may take 2,000 DAC-hours to represent one ALI, equivalent to a committed dose equivalent of 5 rem (0.05 Sv).

"Dosimetry processor" means an individual or an organization that processes and evaluates individual monitoring devices in order to determine the radiation dose delivered to the monitoring devices.

"Inhalation class" (see "Class.")

"Lung class" (see "Class.")

"Nonstochastic effect" means a health effect, the severity of which varies with the dose and for which a threshold is believed to exist. Radiation-induced cataract formation is an example of a nonstochastic effect. For purposes of these rules, "deterministic effect" is an equivalent term.

"Planned special exposure" means an infrequent exposure to radiation, separate from and in addition to the annual occupational dose limits.

"Quarter" means a period of time equal to one-fourth of the year observed by the licensee, approximately 13 consecutive weeks, providing that the beginning of the first quarter in a year coincides with the starting date of the year and that no day is omitted or duplicated in consecutive quarters.

"Reference person" means a hypothetical aggregation of human physical and physiological characteristics determined by international consensus. These characteristics may be used by researchers and public health workers to standardize results of experiments and to relate biological insult to a common base. A description of the reference person is contained in the International Commission on Radiological Protection report, ICRP Publication 23, "Report of the Task Group on Reference Man."

"Respiratory protective equipment" means an apparatus, such as a respirator, used to reduce an individual's intake of airborne radioactive materials.

"Sanitary sewerage" means a system of public sewers for carrying off wastewater and refuse, but excluding sewage treatment facilities, septic tanks, and leach fields owned or operated by the licensee or registrant.

"Stochastic effect" means a health effect that occurs randomly and for which the probability of the effect occurring, rather than its severity, is assumed to be a linear function of dose without threshold. Hereditary effects and cancer incidence are examples of stochastic effects. For purposes of these rules, "probabilistic effect" is an equivalent term.

40.60(2) *Exception to color requirements for standard radiation symbol.* Notwithstanding the requirements of 40.60(1), licensees are authorized to label sources, source holders, or device components containing sources of radiation that are subjected to high temperatures, with conspicuously etched or stamped radiation caution symbols and without a color requirement.

40.60(3) *Additional information on signs and labels.* In addition to the contents of signs and labels prescribed in this chapter, the licensee or registrant shall provide, on or near the required signs and labels, additional information, as appropriate, to make individuals aware of potential radiation exposures and to minimize the exposures.

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

641—40.61(136C) Posting requirements.

40.61(1) *Posting of radiation areas.* The licensee or registrant shall post each radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIATION AREA".

40.61(2) *Posting of high radiation areas.* The licensee or registrant shall post each high radiation area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, HIGH RADIATION AREA" or "DANGER, HIGH RADIATION AREA".

40.61(3) *Posting of very high radiation areas.* The licensee or registrant shall post each very high radiation area with a conspicuous sign or signs bearing the radiation symbol and words "GRAVE DANGER, VERY HIGH RADIATION AREA".

40.61(4) *Posting of airborne radioactivity areas.* The licensee shall post each airborne radioactivity area with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, AIRBORNE RADIOACTIVITY AREA" or "DANGER, AIRBORNE RADIOACTIVITY AREA".

40.61(5) *Posting of areas or rooms in which licensed or registered material is used or stored.* The licensee shall post each area or room in which there is used or stored an amount of licensed material exceeding ten times the quantity of such material specified in Appendix C with a conspicuous sign or signs bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL(S)" or "DANGER, RADIOACTIVE MATERIAL(S)".

641—40.62(136C) Exceptions to posting requirements.

40.62(1) A licensee or registrant is not required to post caution signs in areas or rooms containing sources of radiation for periods of less than eight hours, if each of the following conditions is met:

a. The sources of radiation are constantly attended during these periods by an individual who takes the precautions necessary to prevent the exposure of individuals to sources of radiation in excess of the limits established in this chapter; and

b. The area or room is subject to the licensee's or registrant's control.

40.62(2) Rooms or other areas in hospitals that are occupied by patients are not required to be posted with caution signs pursuant to 40.61(136C) provided that the patient could be released from licensee control pursuant to 641—subrule 41.2(27).

40.62(3) A room or area is not required to be posted with a caution sign because of the presence of a sealed source provided the radiation level at 30 centimeters from the surface of the sealed source container or housing does not exceed 0.005 rem (0.05 mSv) per hour.

40.62(4) A room or area is not required to be posted with a caution sign because of the presence of radiation machines used solely for diagnosis or simulation in the healing arts.

40.62(5) Rooms in hospitals or clinics that are used for teletherapy are exempt from the requirement to post caution signs under 641—40.61(136C) if:

a. Access to the room is controlled pursuant to 641—subrule 41.2(53); and

b. Personnel in attendance take necessary precautions to prevent an inadvertent exposure of workers, other patients, and members of the public to radiation in excess of the limits established in this chapter.

641—40.63(136C) Labeling containers and radiation machines.

40.63(1) The licensee shall ensure that each container of licensed material bears a durable, clearly visible label bearing the radiation symbol and the words "CAUTION, RADIOACTIVE MATERIAL" or "DANGER, RADIOACTIVE MATERIAL". The label shall also provide information, such as the radionuclides present, an estimate of the quantity of radioactivity, the date for which the activity is estimated, radiation levels, kinds of materials, and mass enrichment, to permit individuals handling or using the containers, or working in the vicinity of the containers, to take precautions to avoid or minimize exposures.

40.63(2) Each licensee shall, prior to removal or disposal of empty uncontaminated containers to unrestricted areas, remove or deface the radioactive material label or otherwise clearly indicate that the container no longer contains radioactive materials.

40.63(3) Each registrant shall ensure that each radiation machine is labeled in a conspicuous manner which cautions individuals that radiation is produced when it is energized.

641—40.64(136C) Exemptions to labeling requirements. A licensee is not required to label:

40.64(1) Containers holding licensed materials in quantities less than the quantities listed in Appendix C; or

40.64(2) Containers holding licensed material in concentrations less than those specified in Table III of Appendix B; or

40.64(3) Containers attended by an individual who takes the precautions necessary to prevent the exposure of individuals in excess of the limits established by this chapter; or

40.64(4) Containers when they are in transport and packaged and labeled in accordance with the rules of the U.S. Department of Transportation;[2] or

[2] Labeling of packages containing radioactive materials is required by the U.S. Department of Transportation if the amount and type of radioactive material exceeds the limits for an excepted quantity or article as defined and limited by U.S. Department of Transportation regulations 49 CFR 173.403(m) and (w) and 173.421-424.

NOTE: For purposes of 40.61(5), 40.64(1), and 40.95(1) where there is involved a combination of radionuclides in known amounts, the limit for the combination shall be derived as follows: determine, for each radionuclide in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific radionuclide when not in combination. The sum of such ratios for all radionuclides in the combination may not exceed "1"—that is, unity.

CHAPTER 40

APPENDIX D

REQUIREMENTS FOR TRANSFERS AND MANIFESTS OF LOW-LEVEL RADIOACTIVE WASTE INTENDED FOR DISPOSAL AT LICENSED LAND DISPOSAL FACILITIES

As used in this appendix, the following definitions apply:

"Chelating agent" means amine polycarboxylic acids (e.g., EDTA, DTPA), hydroxy-carboxylic acids, and polycarboxylic acids (e.g., citric acid, carbolic acid, and glucinic acid).

"Chemical description" means a description of the principal chemical characteristics of a low-level radioactive waste.

"Computer-readable medium" means that the regulatory agency's computer can transfer the information from the medium into its memory.

"Consignee" means the designated receiver of the shipment of low-level radioactive waste.

"Decontamination facility" means a facility operating under an Agreement State or Nuclear Regulatory Commission license whose principal purpose is decontamination of equipment or materials to accomplish recycle, reuse, or other waste management objectives and, for purposes of this appendix, is not considered to be a consignee for LLW shipments.

"Disposal container" means a container principally used to confine low-level radioactive waste during disposal operations at a land disposal facility (also see "high integrity container"). Note that for some shipments, the disposal container may be the transport package.

"EPA identification number" means the number received by a transporter following application to the administrator of EPA as required by 40 CFR Part 263.

"Forms 540, 540A, 541, 541A, 542, and 542A" are official forms referenced in this appendix. Licensees need not use originals of these forms as long as any substitute forms are equivalent to the original documentation in respect to content, clarity, size, and location of information. Upon agreement between the shipper and consignee, Forms 541 (and 541A) and Forms 542 (and 542A) may be completed, transmitted, and stored in electronic media. The electronic media must have the capability for producing legible, accurate, and complete records in the format of the uniform manifest.

"Generator" means a licensee operating under an Agreement State or Nuclear Regulatory Commission license who (1) is a waste generator as defined in this rule, or (2) is the licensee to whom waste can be attributed within the context of the Low-Level Radioactive Waste Policy Amendments Act of 1985 (e.g., waste generated as a result of decontamination or recycle activities).

"High integrity container (HIC)" means a container commonly designed to meet the structural stability requirements of 10 CFR 61.56, and to meet United States Department of Transportation requirements for a Type A package.

"Land disposal facility" means the land, buildings and structures, and equipment which are intended to be used for the disposal of radioactive wastes. For purposes of this appendix, a "geologic repository" as defined in 10 CFR Part 60 is not considered a land disposal facility.

"Package" means the assembly of components necessary to ensure compliance with the packaging requirements of United States Department of Transportation regulations, together with its radioactive contents, as presented for transport.

"Physical description" means the items called for on Form 541 to describe a low-level radioactive waste.

"Residual waste" means low-level radioactive waste resulting from processing or decontamination activities that cannot be easily separated into distinct batches attributable to specific waste generators. This waste is attributable to the processor or decontamination facility, as applicable.

Material	Microcurie*
Yttrium-92	100
Yttrium-93	100
Zinc-65	10
Zinc-69m	100
Zinc-69	1,000
Zirconium-93	10
Zirconium-95	10
Zirconium-97	10
Any alpha-emitting radionuclide not listed above or mixtures of alpha emitters of unknown composition	0.01
Any radionuclide other than alpha-emitting radionuclides, not listed above or mixtures of beta emitters of unknown composition	0.1

*To convert μCi to kBq, multiply the μCi value by 37.
**Based on alpha disintegration rate of U-238, U-234, and U-235.

NOTE: This Appendix is retained for use by those Agreement States that need to adopt decommissioning regulations compatible with the U.S. Nuclear Regulatory Commission.

NOTE: Where there is involved a combination of isotopes in known amounts, the limit for the combination should be derived as follows: Determine, for each isotope in the combination, the ratio between the quantity present in the combination and the limit otherwise established for the specific isotope when not in combination. The sum of such ratios for all the isotopes in the combination may not exceed "1"—that is, unity.

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

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CHAPTER 41
SAFETY REQUIREMENTS FOR THE USE OF RADIATION MACHINES AND CERTAIN USES OF RADIOACTIVE MATERIALS

641—41.1(136C) X-rays in the healing arts.

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

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

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of May 5, 2004.

41.1(2) *Definitions.* For the purpose of this chapter, the definitions of 641—Chapters 38 and 40 may also apply. The following are specific to 641—Chapter 41.

"*Accessible surface*" means the external surface of the enclosure or housing of the radiation producing machine as provided by the manufacturer.

"*Added filtration*" means any filtration which is in addition to the inherent filtration.

"*Aluminum equivalent*" means the thickness of type 1100 aluminum alloy affording the same attenuation, under specified conditions, as the material in question.

"*Attenuation block*" means a block or stack, having dimensions 20 centimeters by 20 centimeters by 3.8 centimeters, of type 1100 aluminum alloy or other materials having equivalent attenuation.

"*Automatic exposure control (AEC)*" means a device which automatically controls one or more technique factors in order to obtain at a preselected location(s) a required quantity of radiation (see also "Phototimer"). (Includes devices such as phototimers and ion chambers.)

"*Base density*" means the optical density due to the supporting base of the film alone. The base density of a film is the optical density that would result if an unexposed film were processed through the fixer, wash, and dryer, without first passing through the developer.

"*Base plus fog density*" means the optical density of a film due to its base density plus any action of the developer on the unexposed silver halide crystals. The base plus fog density can be measured by processing an unexposed film through the entire processing cycle and measuring the resultant optical density.

"*Beam monitoring system*" means a system designed to detect and measure the radiation present in the useful beam.

"*C-arm X-ray system*" means an X-ray system in which the image receptor and X-ray tube housing assembly are connected by a common mechanical support system in order to maintain a desired spatial relationship. This system is designed to allow a change in the projection of the beam through the patient without a change in the position of the patient.

"*Cassette*" means a light-tight case, usually made of thin, low X-ray absorption plastic, for holding X-ray film. One or two intensifying screens for the conversion of X-rays to visible light photons are mounted inside the cassette so that they are in close contact to the film.

"*Cephalometric device*" means a device intended for the radiographic visualization and measurement of the dimensions of the human head.

"*Certified components*" means components of X-ray systems which are subject to regulations promulgated under Public Law 90-602, the "Radiation Control for Health and Safety Act of 1968," the Food and Drug Administration.

"*Certified system*" means any X-ray system which has one or more certified component(s).

"Coefficient of variation" or *"C"* means the ratio of the standard deviation to the mean value of a population of observations. It is estimated using the following equation:

$$C = \frac{s}{\bar{x}} = \frac{1}{\bar{x}} \left[\sum_{i=1}^{n} \frac{(x_i - \bar{x})^2}{n-1} \right]^{1/2}$$

where:
s = Estimated standard deviation of the population.
X = Mean value of observations in sample.
X_i = i^{th} observation in sample.
n = Number of observations in sample.

"Computed tomography" means the production of a tomogram by the acquisition and computer processing of X-ray transmission data.

"Control chart" means a chart used to record (and control) the results of quality control testing as a function of time.

"Control limit" means the range of variation on a control chart beyond which action must be taken to correct the results of quality control testing.

"Control panel" (see X-ray control panel).

"Cooling curve" means the graphical relationship between heat units stored and cooling time.

"CT" (see "Computed tomography").

"Dead-man switch" means a switch so constructed that a circuit closing contact can be maintained only by continuous pressure on the switch by the operator.

"Dedicated mammography equipment" means X-ray systems designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression and low dose exposure that can generate reproducible images of high quality.

"Densitometer" means an instrument which measures the degree of blackening (or radiographic density) of film due to radiation or light by measuring the ratio of the light intensity incident on the film to the light intensity transmitted by the film.

"Detents" means mechanical settings that limit or prevent the motion or rotation of an X-ray tube, cassette assembly, or image receptor system.

"Developer" means a chemical solution (alkaline) that changes the latent image (exposed silver halide crystals) on a film to a visible image composed of minute masses of black metallic silver.

"Developer replenishment" means the process, occurring as film travels past a certain point in the processor, triggering the activation of a pump, whereby fresh developer is added in small amounts to the solution in the developer tank of the processor. The purpose is to maintain the proper alkalinity, chemical activity, and level of solution in the developer tank.

"Diagnostic mammography" means mammography performed on an individual who, by virtue of symptoms or physical findings, is considered to have a substantial likelihood of having breast disease.

"Diagnostic source assembly" means the tube housing assembly with a beam-limiting device attached.

"Direct scattered radiation" means that scattered radiation which has been deviated in direction only by materials irradiated by the useful beam (see "Scattered radiation").

"Entrance exposure rate" means the exposure free in air per unit time at the point where the center of the useful beam enters the patient.

"Equipment" (see "X-ray equipment").

"Field emission equipment" means equipment which uses an X-ray tube in which electron emission from the cathode is due solely to the action of an electric field.

"Filter" means material placed in the useful beam to preferentially absorb selected radiations.

"Fixer" means a chemical solution (acidic) which removes the unexposed and undeveloped silver halide crystals from film so it will not discolor or darken with age or exposure to light. Fixer also hardens the gelatin containing the black metallic silver so film may be dried and resist damage from abrasions.

(6) Gonad shielding of not less than 0.50 millimeter lead equivalent shall be used for human patients, who have not passed the reproductive age, during radiographic procedures in which the gonads are in the useful beam, except for cases in which this would interfere with the diagnostic procedure.

(7) Individuals shall not be exposed to the useful beam unless (1) the radiation exposure occurs in the context of a previously established professional relationship between a licensed practitioner of the healing arts or a licensed registered nurse who is registered as an advanced registered nurse practitioner pursuant to Iowa Code chapter 152 and a patient, which includes a physical examination by the practitioner of the patient unless such examination is not clinically indicated; and (2) such practitioner issues a written order for the radiation exposure. The written order shall be issued prior to the exposure unless the exposure results from care provided in an emergency or surgery setting. A verbal order may be issued provided the licensed practitioner is directly supervising the procedure and the order is documented in the patient's record after the procedure is completed. This provision specifically prohibits deliberate exposure for the following purposes:

1. Exposure of an individual for training, demonstration, or other non-healing arts purposes; and
2. Exposure of an individual for the purpose of healing arts screening except as authorized by 41.1(3)*"a"*(11).

(8) When a patient or film must be provided with auxiliary support during a radiation exposure:

1. Mechanical holding devices shall be used when the technique permits. The written safety procedures, required by 41.1(3)*"a"*(4), shall list individual projections where holding devices cannot be utilized;
2. Written safety procedures, as required by 41.1(3)*"a"*(4), shall indicate the requirements for selecting a holder and the procedure the holder shall follow;
3. The human holder shall be instructed in personal radiation safety and protected as required by 41.1(3)*"a"*(5)"2";
4. No individual shall be used routinely to hold film or patients; and
5. In those cases where the human patient must hold the film, except during intraoral examinations, any portion of the body other than the area of clinical interest struck by the useful beam shall be protected by not less than 0.5 millimeter lead equivalent material.
6. Each facility shall have leaded aprons and gloves available in sufficient numbers to provide protection to all personnel who are involved with X-ray operations and who are otherwise not shielded.

(9) Procedures and auxiliary equipment designed to minimize patient and personnel exposure commensurate with the needed diagnostic information shall be utilized.

1. The speed of film or screen and film combinations shall be the fastest speed consistent with the diagnostic objective of the examinations. Film cassettes without intensifying screens shall not be used for any routine diagnostic radiological imaging, with the exception of veterinary radiography and standard film packets for intra-oral use in dental radiography.
2. The radiation exposure to the patient shall be the minimum exposure required to produce images of good diagnostic quality.
3. Portable or mobile X-ray equipment shall be used only for examinations where it is impractical to transfer the patient(s) to a stationary X-ray installation.
4. X-ray systems subject to 41.1(6) shall not be utilized in procedures where the source to human patient distance is less than 30 centimeters.
5. If grids are used between the patient and the image receptor to decrease scatter to the film and improve contrast, the grid shall:

- Be positioned properly, i.e., tube side facing the correct direction, and the grid centered to the central ray;
- If the grid is of the focused type, be at the proper focal distance for the SIDs being used.

(10) All individuals who are associated with the operation of an X-ray system are subject to the requirements of 641—subrule 40.36(3) and rules 641—40.15(136C) and 641—40.37(136C). In addition:

1. When protective clothing or devices are worn on portions of the body and a personnel monitoring device(s) is present, it (they) shall be worn in accordance with the recommendations found in Chapter 4 of the National Council of Radiation Protection and Measurements Report No. 57.

2. Exposure of a personnel monitoring device to deceptively indicate a dose delivered to an individual is prohibited.

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

(12) Rescinded IAB 3/31/04, effective 5/5/04.

b. Information and maintenance record and associated information. Records in 41.1(3)*"b"*(1) and (3) below shall be maintained until the X-ray system is removed from the facility. There shall be two cycles of records on file for items in 41.1(3)*"b"*(2) below. The registrant shall maintain the following information for each X-ray system for inspection by the agency:

(1) User's manual for the X-ray system;

(2) Records of surveys, calibrations, maintenance, and modifications performed on the X-ray system(s) with the names of persons who performed such services;

(3) A copy of all correspondence with this agency regarding that X-ray system.

c. X-ray utilization log. Except for veterinary facilities, each facility shall maintain an X-ray log containing the patient's name, the type of examinations, the dates the examinations were performed, the name of the individual performing the X-ray procedure, and the number of exposures and retakes involved. When the patient or film must be provided with human auxiliary support, the name of the human holder shall be recorded. These records shall be kept until the facility is inspected by this agency or until all films listed on the utilization log have been purged.

d. Plan review.

(1) Prior to construction of all new installations, or modifications of existing installations, or installation of equipment into existing facilities utilizing X-rays for diagnostic or therapeutic purposes, the floor plans and equipment arrangements shall be submitted to the agency for review and verification that national standards have been met. The required information is denoted in Appendices A and B of this chapter.

(2) The agency may require the applicant to utilize the services of a qualified expert to determine the shielding requirements prior to the plan review and approval.

(3) The approval of such plans shall not preclude the requirement of additional modifications should a subsequent analysis of operating conditions indicate the possibility of an individual receiving a dose in excess of the limits prescribed in 641—Chapter 40.

e. Federal performance standards. All X-ray equipment shall comply with the applicable performance standards of 21 CFR 1020.30 to 1020.40 which were in effect at the time the unit was manufactured. All equipment manufactured before the effective date of 21 CFR 1020.30 to 1020.40 shall meet the requirements of the Iowa rules. Persons registered to possess the affected radiation-emitting equipment in Iowa shall be responsible for maintaining the equipment in compliance with the appropriate federal performance standards.

f. X-ray film processing facilities and practices (except for mammography). Each installation using a radiographic X-ray system and using analog image receptors (e.g., radiographic film) shall have available suitable equipment for handling and processing radiographic film in accordance with the following provisions:

(1) Manually developed film.

1. Processing tanks shall be constructed of mechanically rigid, corrosion-resistant material; and

2. Film shall be processed in accordance with the time-temperature relationships recommended by the film developer manufacturer. The specified developer temperature and immersion time shall be posted in the darkroom. Deviations from the manufacturer's recommendations shall be in writing and on file at the facility. Documentation shall include justification for the deviation.

3. Devices shall be utilized which will indicate the actual temperature of the developer and signal the passage of a preset time appropriate to the developing time required.

(2) Automatic processors and other closed processing systems.

1. Film shall be processed in accordance with the time-temperature relationships recommended by the film developer manufacturer.

2. Processing deviations from the requirements of 41.1(3)"*f*" shall be documented by the registrant in such manner that the requirements are shown to be met or exceeded (e.g., extended processing and special rapid chemistry).

(3) Other requirements.

1. Pass boxes, if provided, shall be so constructed as to exclude light from the darkroom when cassettes are placed in or removed from the boxes, and shall incorporate adequate shielding from stray radiation to prevent exposure of undeveloped film.

2. The darkroom shall be light tight and use proper safelighting such that any film type in use exposed in a cassette to X-radiation sufficient to produce an optical density from 1 to 2 when processed shall not suffer an increase in density greater than 0.1 when exposed out of the cassette in the darkroom for 2 minutes with all safelights on. If used, daylight film handling boxes shall preclude fogging of the film.

3. Darkrooms typically used by more than one individual shall be provided a method to prevent accidental entry while undeveloped films are being handled or processed.

4. Film shall be stored in a cool, dry place and shall be protected from exposure to stray radiation. Film in open packages shall be stored in a light tight container.

5. Film cassettes and intensifying screens shall be inspected periodically and shall be cleaned and replaced as necessary to best ensure radiographs of good diagnostic quality.

6. Outdated X-ray film shall not be used for diagnostic radiographs, unless the film has been stored in accordance with the manufacturer's recommendations and a sample of the film passes a sensitometric test for normal ranges of base plus fog and speed.

7. Film developing solutions shall be prepared in accordance with the directions given by the manufacturer and shall be maintained in strength by replenishment or renewal so that full development is accomplished within the time specified by the manufacturer.

(4) Records shall be maintained to verify that the items in 41.1(3)"*f*" are performed according to the requirements. Records may be discarded only after an agency inspection has been completed and the facility determined to be in compliance.

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

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

(2) If the facility is currently utilizing computer media and also storing images in a hard-copy format, it may continue to use this method of retention throughout the retention period. If the images are also on computer media, the data should be backed up, or refreshed, at appropriate intervals as defined by the facility.

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

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

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

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

41.1(4) *General requirements for all diagnostic X-ray systems.* In addition to other requirements of this chapter, all diagnostic X-ray systems shall meet the following requirements:

a. Warning label. The control panel containing the main power switch shall bear the warning statement, legible and accessible to view: "WARNING: This X-ray unit may be dangerous to patient and operator unless safe exposure factors and operating instructions are observed."

b. Battery charge indicator. On battery-powered X-ray generators, visual means shall be provided on the control panel to indicate whether the battery is in a state of charge adequate for proper operation.

c. Leakage radiation from the diagnostic source assembly. The leakage radiation from the diagnostic source assembly measured at a distance of 1 meter in any direction from the source shall not exceed 100 milliroentgens (25.8 μC/kg) in one hour when the X-ray tube is operated at its leakage technique factors. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

d. Radiation from components other than the diagnostic source assembly. The radiation emitted by a component other than the diagnostic source assembly shall not exceed 2 milliroentgens (0.516 μC/kg) in one hour at 5 centimeters from any accessible surface of the component when it is operated in an assembled X-ray system under any conditions for which it was designed. Compliance shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

e. Beam quality.

(1) Half-value layer.

1. The half-value layer of the useful beam for a given X-ray tube potential shall not be less than the values shown in Table I. If it is necessary to determine such half-value layer at an X-ray tube potential which is not listed in Table I, linear interpolation or extrapolation may be made.

Table I

Design operating range (kVp)	Measured potential (kVp)	Half-value layer (mm of aluminum)
Below 50	30	0.3
	40	0.4
	49	0.5
50 to 70	50	1.2
	60	1.3
	70	1.5
Above 70	71	2.1
	80	2.3
	90	2.5
	100	2.7
	110	3.0
	120	3.2
	130	3.5
	140	3.8
	150	4.1

2. and 3. Rescinded IAB 4/8/98, effective 7/1/98.

4. For capacitor energy storage equipment, compliance with the requirements of 41.1(4)*"e"* shall be determined with the system fully charged and a setting of 10 mAs for each exposure.

5. The required minimal half-value layer of the useful beam shall include the filtration contributed by all materials which are permanently between the source and the patient.

(2) Filtration controls. For X-ray systems which have variable kVp and variable filtration for the useful beam, a device shall link the kVp selector with the filter(s) and shall prevent an exposure unless the minimum amount of filtration required by 41.1(4)*"e"*(1)"1" is in the useful beam for the given kVp which has been selected.

f. Multiple tubes. Where two or more radiographic tubes are controlled by one exposure switch, the tube or tubes which have been selected shall be clearly indicated prior to initiation of the exposure. This indication shall be both on the X-ray control panel and at or near the tube housing assembly which has been selected.

g. Mechanical support of tube head. The tube housing assembly supports shall be adjusted such that the tube housing assembly will remain stable during an exposure unless tube housing movement is a designed function of the X-ray system.

h. Technique indicators.

(1) The technique factors to be used during an exposure shall be indicated before the exposure begins. If automatic exposure controls are used, the technique factors which are set prior to the exposure shall be indicated.

(2) The requirement of 41.1(4)*"h"*(1) may be met by permanent markings on equipment having fixed technique factors. Indication of technique factors shall be visible from the operator's position except in the case of spot films made by the fluoroscopist.

(3) The technique indicators shall be accurate to within manufacturer's standards.

i. All position locking, holding, and centering devices on X-ray system components and systems shall function as intended. All X-ray systems shall be maintained in good mechanical repair and comply with all state and local electrical code requirements.

41.1(5) *Fluoroscopic X-ray systems except for computed tomography X-ray systems.* All fluoroscopic X-ray systems shall be image intensified and meet the following requirements:

a. Limitation of useful beam.

(1) Primary barrier.

1. The fluoroscopic imaging assembly shall be provided with a primary protective barrier which intercepts the entire cross section of the useful beam at any SID.

2. The X-ray tube used for fluoroscopy shall not produce X-rays unless the barrier is in position to intercept the entire useful beam.

(2) Fluoroscopic beam limitation.

1. For certified fluoroscopic systems with or without a spot film device, neither the length nor the width of the X-ray field in the plane of the image receptor shall exceed that of the visible area of the image receptor by more than 3 percent of the SID. The sum of the excess length and the excess width shall be no greater than 4 percent of the SID.

2. For uncertified fluoroscopic systems with a spot film device, the X-ray beam with the shutter fully opened (during fluoroscopy or spot filming) shall be no larger than the largest spot film size for which the device is designed. Measurements shall be made at the maximum SID available but at no less than 20 centimeters from the tabletop to the film plane distance.

3. For uncertified fluoroscopic systems without a spot film device, the requirements of 41.1(5)*"a"*(2)"1" apply.

4. Other requirements for fluoroscopic beam limitation:

- Means shall be provided to permit further limitation of the field. Beam-limiting devices manufactured after May 22, 1979, and incorporated in equipment with a variable SID or a visible area of greater than 300 square centimeters shall be provided with means for stepless adjustment of the X-ray field;
- All equipment with a fixed SID and a visible area of 300 square centimeters or less shall be provided either with stepless adjustment of the X-ray field or with means to further limit the X-ray field size at the plane of the image receptor to 125 square centimeters or less;
- If provided, stepless adjustment shall, at the greatest SID, provide continuous field sizes from the maximum attainable to a field size of 5 centimeters by 5 centimeters or less;
- For equipment manufactured after February 25, 1978, when the angle between the image receptor and beam axis is variable, means shall be provided to indicate when the axis of the X-ray beam is perpendicular to the plane of the image receptor;
- For noncircular X-ray fields used with circular image receptors, the error in alignment shall be determined along the length and width dimensions of the X-ray field which pass through the center of the visible area of the image receptor.

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

• The measurement shall be made under the conditions that satisfy the requirements of 41.1(5)*"c"*(1)"3";

• The kVp, mA, or other selectable parameters shall be adjusted to those settings which give the maximum entrance exposure rate;

• The X-ray system(s) that incorporates automatic exposure rate control shall have sufficient attenuative material placed in the useful beam to produce either a milliamperage or kilovoltage or both to satisfy the conditions of 41.1(5)*"c"*(1)"3."

(2) Reserved.

d. Barrier transmitted radiation rate limits.

(1) The exposure rate due to transmission through the primary protective barrier with the attenuation block in the useful beam, combined with radiation from the image intensifier, if provided, shall not exceed 2 milliroentgens (0.516 μC/kg) per hour at 10 centimeters from any accessible surface of the fluoroscopic imaging assembly beyond the plane of the image receptor for each roentgen per minute of entrance exposure rate.

(2) Measuring compliance of barrier transmission.

1. The exposure rate due to transmission through the primary protective barrier combined with radiation from the image intensifier shall be determined by measurements averaged over an area of 100 square centimeters with no linear dimension greater than 20 centimeters.

2. If the source is below the tabletop, the measurement shall be made with the input surface of the fluoroscopic imaging assembly positioned 30 centimeters above the tabletop.

3. If the source is above the tabletop and the SID is variable, the measurement shall be made with the end of the beam-limiting device or spacer as close to the tabletop as it can be placed, provided that it shall not be closer than 30 centimeters.

4. Movable grids and compression devices shall be removed from the useful beam during the measurement.

e. Indication of potential and current. During fluoroscopy and cinefluorography the kV and the mA shall be continuously indicated.

f. Source-to-skin distance. The SSD shall not be less than:

(1) 38 centimeters on stationary fluoroscopes installed on or after August 1, 1974,

(2) 35.5 centimeters on stationary fluoroscopes which were in operation prior to August 1, 1974,

(3) 30 centimeters on all mobile fluoroscopes, and

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

(5) The written safety procedures must provide precautionary measures to be adhered to during the use of this device in addition to the procedures provided in 41.1(3)*"a"*(4).

g. Fluoroscopic timer.

(1) Means shall be provided to preset the cumulative on-time of the fluoroscopic X-ray tube. The maximum cumulative time of the timing device shall not exceed five minutes without resetting.

(2) A signal audible to the fluoroscopist shall indicate the completion of any preset cumulative on-time. Such signal shall continue to sound while X-rays are produced until the timing device is reset.

h. Control of scattered radiation.

(1) Fluoroscopic table designs when combined with procedures utilized shall be such that no unprotected part of any staff or ancillary individual's body shall be exposed to unattenuated scattered radiation which originates from under the table. The attenuation required shall be not less than 0.25 millimeter lead equivalent.

(2) Equipment configuration when combined with procedures shall be such that no portion of any staff or ancillary individual's body, except the extremities, shall be exposed to the unattenuated scattered radiation emanating from above the tabletop unless that individual:

1. Is at least 120 centimeters from the center of the useful beam, or

2. The radiation has passed through not less than 0.25 millimeter lead equivalent material including, but not limited to, drapes, Bucky-slot cover panel, or self-supporting curtains, in addition to any lead equivalency provided by the protective apron referred to in 41.1(3)*"a"*(5).

(3) The agency may grant exemptions to 41.1(5)*"h"*(2) where a sterile field will not permit the use of the normal protective barriers. Where the use of prefitted sterilized covers for the barriers is practical, the agency shall not permit such exemption.

i. Spot-film exposure reproducibility. Fluoroscopic systems equipped with spot-film (radiographic) mode shall meet the exposure reproducibility requirements of 41.1(6)*"d"* when operating in the spot-film mode.

j. Radiation therapy simulation systems. Radiation therapy simulation systems shall be exempt from all the requirements of 41.1(5)*"a," "c," "d,"* and *"g"* provided that:

(1) Such systems are designed and used in such a manner that no individual other than the patient is in the X-ray room during periods of time when the system is producing X-rays; and

(2) Systems which do not meet the requirements of 41.1(5)*"g"* are provided with a means of indicating the cumulative time that an individual patient has been exposed to X-rays. Procedures shall require in such cases that the timer be reset between examinations.

k. Dose-area-product monitor requirements.

(1) All fluoroscopic equipment installed after July 1, 2002, and used for special procedures (e.g., pacemaker implantation, diagnostic cardiac procedures (catheterization), and therapeutic cardiac procedures (angioplasty-balloon; stent; directional coronary atherectomy; rotational atherectomy; laser atherectomy; radio frequency ablation; and intravascular brachytherapy)) shall be equipped with a dose-area-product monitor capable of recording the total radiation dose received by a patient when the fluoroscopic tube is used. Equipment used and installed prior to July 1, 2002, shall be retrofitted with the radiation exposure device by January 1, 2004.

(2) Each facility using fluoroscopic equipment for special procedures shall include in the patient's chart and in a log for agency review the patient radiation exposure received per procedure. Adult doses that exceed 300 rad and doses for children (under the age of 18) that exceed 100 rad must be reviewed by the facility's radiation safety committee. The review must document the reason why a dose exceeded 300 rad for adults or 100 rad for children, and the reason must be documented in the committee's minutes. If a facility does not have a radiation safety committee, the facility must provide the agency, within 30 days of the event, documentation stating why the patient's dose exceeded 300 rad for adults or 100 rad for children. Also, if the patient doses noted above are exceeded, the patient's physician must do a follow-up examination of the patient to determine if there is any evidence of dose recorded reaction and to ensure that proper treatment is rendered.

(3) All fluoroscopic radiation detection devices in this subrule shall be calibrated annually or after repair or replacement.

l. Equipment operation.

(1) All imaging formed by the use of fluoroscopic X-ray systems shall be directly viewed and interpreted by a licensed practitioner of the healing arts.

(2) The use of fluoroscopic X-ray systems by radiologic technologists and students shall be performed under the direct supervision of a licensed practitioner of the healing arts for the purpose of localization to obtain images for diagnostic purposes.

(3) Overhead fluoroscopy shall not be used as a positioning tool for general purpose radiographic examinations.

(4) Facilities that use fluoroscopic X-ray systems shall maintain a record of cumulative fluoroscopic exposure time used and the number of spot films for each examination. This record shall indicate patient identification, type of examination, date of examination, and operator's name.

2. Information shall be available at the control panel regarding the operation and calibration of the system. Such information shall include the following: dates of the latest calibration and spot checks and the location within the facility where the results of those tests may be obtained; instructions on the use of the CT dosimetry phantom(s) including a schedule of spot checks appropriate for the system, allowable variations for the indicated parameters, and the results of at least the most recent spot checks conducted on the system; the distance in millimeters between the tomographic plane and the reference plane if a reference plane is utilized; and a current technique chart available at the control panel which specifies for each routine examination the CT conditions of operation and the number of scans per examination.

3. If the calibration or spot check of the CT X-ray system identifies that a system operating parameter has exceeded a tolerance established by the qualified expert, use of the CT X-ray system on patients shall be limited to those uses permitted by established written instructions of the qualified expert.

41.1(12) *X-ray machines used for mammography.* Rescinded IAB 4/8/98, effective 7/1/98.

641—41.2(136C) Use of radionuclides in the healing arts.

41.2(1) *Purpose and scope.*

a. This rule establishes requirements and provisions for the use of radionuclides in the healing arts and for issuance of licenses authorizing the medical use of this material. These requirements and provisions provide for the protection of the public health and safety. The requirements and provisions of this rule are in addition to, and not in substitution for, the applicable portions of 641—Chapters 38 to 40. The requirements and provisions of these rules apply to applicants and licensees subject to this rule unless specifically exempted.

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of May 5, 2004.

41.2(2) *Definitions.* For the purpose of this chapter, the definitions of 641—Chapters 38 to 40 may also apply. As used in 41.2(136C), the following definitions apply:

"Area of use" means a portion of a physical structure that has been set aside for the purpose of receiving, using, or storing radioactive material.

"Authorized medical physicist" means an individual who:

a. Meets the requirements of 41.2(74) and 41.2(77); or

b. Is identified as an authorized medical physicist or teletherapy physicist on:

1. A specific medical use license issued by this agency, the NRC, or an agreement state;
2. A medical use permit issued by an NRC master material licensee;
3. A permit issued by an NRC or agreement state broad scope medical use licensee; or
4. A permit issued by an NRC master material license broad scope medical use permittee.

"Authorized nuclear pharmacist" means a pharmacist who has met the appropriate requirements of 41.2(77) and 41.2(78) and who:

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 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), 41.2(68), 41.2(70), 41.2(71), 41.2(72), or 41.2(73) and 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.

"Dedicated check source" means a radioactive source that is used to ensure the constant operation of a radiation detection or measurement device over several months or years. This source may also be used for other purposes.

"Management" means the chief executive officer or that individual's designee.

"Medical institution" means an organization in which several medical disciplines are practiced.

"Mobile nuclear medicine service" means the transportation and medical use of radioactive material.

"Output" means the exposure rate, dose rate, or a quantity related in a known manner to these rates from a teletherapy unit for a specified set of exposure conditions.

"Pharmacist" means an individual licensed by a state or territory of the United States, the District of Columbia, or the Commonwealth of Puerto Rico to practice pharmacy.

"Radiation safety officer" means an individual who, in addition to the definition in 641—38.2(136C), meets the requirements of 41.2(65), 41.2(66), and 41.2(77) and 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.

"Teletherapy physicist" means an individual identified as the qualified teletherapy physicist on an agency license.

"Visiting authorized user" means an authorized user who is not identified on the license of the licensee being visited.

41.2(3) *License required.*

a. No person shall manufacture, produce, acquire, receive, possess, use, or transfer radioactive material for medical use except in accordance with a specific license issued pursuant to these rules.

b. Unless prohibited by license condition, an individual may receive, possess, use, or transfer radioactive material in accordance with these rules under the supervision of an authorized user as provided in 41.2(11).

c. An individual may prepare unsealed radioactive material for medical use in accordance with these rules under the supervision of an authorized nuclear pharmacist or authorized user as provided in 41.2(11) unless prohibited by license condition.

d. A licensee may conduct research involving human subjects using radioactive material provided that the research is conducted, funded, supported, or regulated by another federal agency which has implemented the Federal Policy for the Protection of Human Subjects. Otherwise, a licensee shall apply for and receive approval of a specific amendment to its license before conducting such research. Both types of licensees shall, at a minimum, obtain informed consent from the human subjects and obtain prior review and approval of the research activities by an Institutional Review Board in accordance with the meaning of these terms as defined and described in the Federal Policy for the Protection of Human Subjects.

(2) Check survey instruments for proper operation with a dedicated check source before use at each client's address;

(3) Before leaving a client's address, survey all areas of use to ensure compliance with the requirements of 641—Chapters 40 and 41.

41.2(14) *Records and reports of misadministrations and reportable medical events.*

a. When a misadministration or reportable medical event, as defined in 641—38.2(136C), occurs, the licensee shall notify the agency by telephone. The licensee shall also notify the referring physician of the affected patient or human research subject and the patient or human research subject or a responsible relative or guardian, unless the referring physician agrees to inform the patient or human research subject or believes, based on medical judgment, that telling the patient or human research subject or the patient's or human research subject's responsible relative or guardian would be harmful to one or the other, respectively. These notifications must be made within 24 hours after the licensee discovers the misadministration or reportable medical event. If the referring physician, patient or human research subject, or the patient's or human research subject's responsible relative or guardian cannot be reached within 24 hours, the licensee shall notify them as soon as practicable. The licensee is not required to notify the patient or human research subject or the patient's or human research subject's responsible relative or guardian without first consulting the referring physician; however, the licensee shall not delay medical care for the patient or human research subject because of this notification requirement including remedial care as a result of the misadministration or reportable medical event because of any delay in notification.

b. Written reports.

(1) The licensee shall submit a written report to the agency within 15 days after discovery of the misadministration or reportable medical event. The written report must include the licensee's name, the prescribing physician's name, a brief description of the event, why the event occurred, the effect on the patient or the human research subject, what improvements are needed to prevent recurrence, actions taken to prevent recurrence, whether the licensee notified the patient or the human research subject or the patient's or the human research subject's responsible relative or guardian (this individual will subsequently be referred to as "the patient or the human research subject"), and if not, why not, and if the patient or the human research subject was notified, what information was provided to that individual. The report must not include the patient's or the human research subject's name or other information that could lead to identification of the patient or the human research subject.

(2) If the patient or the human research subject was notified, the licensee shall also furnish, within 15 days after discovery of the misadministration or reportable medical event, a written report to the patient or the human research subject and the referring physician by sending either:

1. A copy of the report that was submitted to the agency; or

2. A brief description of both the event and the consequences as they may affect the patient or the human research subject, provided a statement is included that the report submitted to the agency can be obtained from the licensee.

c. Rescinded IAB 4/4/01, effective 5/9/01.

d. Each licensee shall retain a record of each misadministration for ten years and each reportable medical event for three years. The record shall contain the names of all individuals involved in the event, including the physician, allied health personnel, the patient or human research subject, and the patient's or human research subject's referring physician, the patient's or human research subject's social security number or identification number if one has been assigned, a brief description of the event, why it occurred, the effect on the patient or human research subject, what improvements are needed to prevent recurrence, and the action taken, if any, to prevent recurrence.

e. Aside from the notification requirement, nothing in 41.2(14)*"a"* to 41.2(14)*"d"* shall affect any rights or duties of licensees and physicians in relation to each other, patients or human research subjects, or responsible relatives or guardians.

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

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

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

1. Is greater than 5 rem (50 mSv) total effective dose equivalent; or

2. Has resulted in unintended permanent functional damage to an organ or a physiological system of the child, as determined by a physician.

(3) The licensee shall notify this agency by telephone no later than the next calendar day after a dose to the embryo/fetus or nursing child that requires a report in 41.2(14)"*f*"(1) or (2).

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

1. The written report must include:

- The licensee's name;
- The name of the prescribing physician;
- A brief description of the event;
- Why the event occurred;
- The effect, if any, on the embryo/fetus or the nursing child;
- What actions, if any, have been taken or are planned to prevent recurrence; and
- Certification that the licensee notified the pregnant individual or mother (or the mother's or child's responsible relative or guardian), and if not, why not.

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

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

(6) A licensee shall:

1. Annotate a copy of the report provided to the agency with the:

- Name of the pregnant individual or the nursing child who is the subject of the event; and
- Social security number or other identification number, if one has been assigned, of the pregnant individual or the nursing child who is the subject of the event; and

2. Provide a copy of the annotated report to the referring physician, if other than the licensee, no later than 15 days after the discovery of the event.

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 reagent kit 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

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:

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

(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:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Calibrating dose calibrators and diagnostic instruments and performing checks for proper operation of survey meters;
3. Calculating and safely preparing patient or human research subject dosages;
4. Using administrative controls to prevent the misadministration of radioactive material;
5. Using emergency procedures to contain spilled radioactive material safely and using proper decontamination procedures; and
6. Eluting technetium-99m from generator systems, assaying and testing the eluate for molybdenum-99 and alumina contamination, and processing the eluate with reagent kits to prepare technetium-99m labeled radiopharmaceuticals.

(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"*;

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

41.2(69) *Training for therapeutic use of radiopharmaceuticals.*

a. The licensee shall require the authorized user of a radiopharmaceutical listed in 41.2(37) for therapy to be a physician who:

(1) Is certified by:

1. The American Board of Nuclear Medicine; or
2. The American Board of Radiology in radiology, therapeutic radiology, or radiation oncology; or
3. The Royal College of Physicians and Surgeons of Canada in nuclear medicine; or
4. The American Osteopathic Board of Radiology after 1984; or

(2) Has had classroom and laboratory training in basic radionuclide handling techniques applicable to the use of therapeutic radiopharmaceuticals, and has had supervised clinical experience as follows:

1. 80 hours of classroom and laboratory training that includes:

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

2. Supervised clinical experience under the supervision of an authorized user at a medical institution and shall include:

- Use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism or cardiac dysfunction in ten individuals;
- Use of soluble phosphorus-32 for the treatment of ascites, polycythemia vera, leukemia, or bone metastases in three individuals;
- Use of iodine-131 for treatment of thyroid carcinoma in three individuals;
- Use of colloidal chromic phosphorus-32 or of colloidal gold-198 for intracavitary treatment of malignant effusions in three individuals;
- Use of strontium-89 or samarium-153 for relief of pain in metastatic disease in three individuals; and
- Use of iodine-131 radiolabeled monoclonal antibody for treatment of non-Hodgkin's lymphoma in three patients.

b. Training for the treatment of hyperthyroidism. Except as provided in 41.2(37), the licensee shall require the authorized user of only iodine-131 for the treatment of hyperthyroidism to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating hyperthyroidism, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

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

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for diagnosis of thyroid function and the treatment of hyperthyroidism in ten individuals.

c. Training for treatment of thyroid carcinoma. Except as provided in 41.2(37), the licensee shall require the authorized user of only iodine-131 for the treatment of thyroid carcinoma to be a physician with special experience in thyroid disease who has had classroom and laboratory training in basic radioisotope handling techniques applicable to the use of iodine-131 for treating thyroid carcinoma, and supervised clinical experience as follows:

(1) 80 hours of classroom and laboratory training that includes:

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

(2) Supervised clinical experience under the supervision of an authorized user that includes the use of iodine-131 for the treatment of thyroid carcinoma in three individuals.

41.2(70) *Training for therapeutic use of brachytherapy sources.* The licensee shall require the authorized user using a brachytherapy source specified in 41.2(43) for therapy to be a physician who:

a. Is certified in:

(1) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with a specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

b. Is in the active practice of therapeutic radiology, has completed 200 hours of instruction in basic radionuclide handling techniques applicable to the therapeutic use of brachytherapy sources and 500 hours of supervised work experience and a minimum of three years of supervised clinical experience.

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

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

(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:

1. Ordering, receiving, and unpacking radioactive materials safely and performing the related radiation surveys;
2. Checking survey meters for proper operation;
3. Preparing, implanting, and removing sealed sources;
4. Using administrative controls to prevent the misadministration of radioactive material; and
5. Using emergency procedures to control radioactive material.

(3) To satisfy the requirement for a period of supervised clinical experience, training shall include one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association, and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution. The supervised clinical experience shall include:

1. Examining individuals and reviewing their case histories to determine their suitability for brachytherapy treatment, and any limitations or contraindications;
2. Selecting the proper brachytherapy sources, dose, and method of administration;
3. Calculating the dose; and

4. Postadministration follow-up and review of case histories in collaboration with the authorized user; or

c. Be identified on a current Agreement State or NRC license as an authorized user for the uses in 41.2(43).

41.2(71) *Training for ophthalmic use of strontium-90.* The licensee shall require the authorized user using only strontium-90 for ophthalmic radiotherapy to be a physician who:

a. Is certified in radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology; or

b. Is in the active practice of therapeutic radiology or ophthalmology, and has completed 24 hours of instruction in basic radionuclide handling techniques applicable to the use of strontium-90 for ophthalmic radiotherapy, and a period of supervised clinical training in ophthalmic radiotherapy.

(1) To satisfy the requirement for instruction, the classroom and laboratory training shall include:

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

(2) To satisfy the requirement for a period of supervised clinical training in ophthalmic radiotherapy, training shall be under the supervision of an authorized user at a medical institution and shall include the use of strontium-90 for the ophthalmic treatment of five individuals that includes:

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; or

c. Be identified on a current Agreement State or NRC license as an authorized user for the use in 41.2(43)*"h."*

41.2(72) *Training for use of sealed sources for diagnosis.* The licensee shall require the authorized user using a sealed source in a device specified in 41.2(41) to be a physician, dentist, or podiatrist who:

a. Is certified in:

(1) Radiology, diagnostic radiology with special competence in nuclear radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(2) Nuclear medicine by the American Board of Nuclear Medicine; or

(3) Diagnostic radiology or radiology by the American Osteopathic Board of Radiology; or

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

b. Has completed eight hours of classroom and laboratory instruction in basic radionuclide handling techniques specifically applicable to the use of the device.

(1) To satisfy the requirements for instruction, the training shall include:

1. Radiation physics, mathematics pertaining to the use and measurement of radioactivity, and instrumentation;
2. Radiation biology; and
3. Radiation protection and training in the use of the device for the purposes authorized by the license.

(2) Reserved; or

c. Be identified on a current Agreement State or NRC license as an authorized user for those uses in 41.2(41).

41.2(73) *Training for use of therapeutic medical devices.* The licensee shall require the authorized user of a sealed source specified in 41.2(49) to be a physician who:

a. Is certified in:

(1) Radiology, therapeutic radiology, or radiation oncology by the American Board of Radiology;

(2) Radiation oncology by the American Osteopathic Board of Radiology;

(3) Radiology, with specialization in radiotherapy, as a British "Fellow of the Faculty of Radiology" or "Fellow of the Royal College of Radiology"; or

(4) Therapeutic radiology by the Canadian Royal College of Physicians and Surgeons; or

b. Is in the active practice of therapeutic radiology, and has classroom and laboratory training in basic radionuclide techniques applicable to the use of a sealed source in a therapeutic medical device, supervised work experience, and supervised clinical experience as follows:

(1) 200 hours of classroom and laboratory training to 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) 500 hours of supervised work experience under the supervision of an authorized user at a medical institution and shall include:

1. Review of the full calibration measurements and periodic spot checks;
2. Preparing treatment plans and calculating treatment times;
3. Using administrative controls to prevent medical events;
4. Implementing emergency procedures to be followed in the event of the abnormal operation of a medical device or console; and
5. Checking and using survey meters; and

(3) Three years of supervised clinical experience that includes one year in a formal training program approved by the Residency Review Committee for Radiology of the Accreditation Council for Graduate Medical Education or the Committee on Postdoctoral Training of the American Osteopathic Association and an additional two years of clinical experience in therapeutic radiology under the supervision of an authorized user at a medical institution that includes:

1. Examining individuals and reviewing their case histories to determine their suitability for teletherapy, remote afterloader, or gamma stereotactic radiosurgery treatment and any limitations or contraindications;
2. Selecting the proper dose and how it is to be administered;
3. Calculating the doses and collaborating with the authorized user in the review of patients' or human research subjects' progress and consideration of the need to modify originally prescribed doses as warranted by patients' or human research subjects' reaction to radiation; and
4. Postadministration follow-up and review of case histories.

41.2(74) *Training for authorized medical physicist.* The licensee shall require the authorized medical physicist to:

a. Be certified by:

(1) The American Board of Radiology in:

1. Therapeutic radiological physics;
2. Roentgen-ray and gamma-ray physics;
3. X-ray and radium physics; or
4. Radiological physics; or

(2) The American Board of Medical Physics in radiation oncology physics; or

b. Hold a master's or doctor's degree in physics, biophysics, radiological physics, or health physics, and have completed one year of full-time training in therapeutic radiological physics and one additional year of full-time work experience under the supervision of a medical physicist at a medical institution that includes the tasks listed in 41.2(21), 41.2(58), 41.2(59), and 41.2(60), as applicable.

41.2(75) *Training for experienced authorized users and teletherapy or medical physicists.*

a. An individual identified as a teletherapy or medical physicist on an 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).

b. Physicians, dentists, or podiatrists identified as authorized users for the medical use of by-product material issued by this agency, the NRC, or agreement state, a permit issued by an NRC master material licensee, a permit issued by an NRC 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(68), 41.2(69), 41.2(70), 41.2(71), 41.2(72), or 41.2(73).

41.2(76) *Physician training in a three-month program.* A physician who, before July 1, 1984, began a three-month nuclear medicine training program approved by the Accreditation Council for Graduate Medical Education and has successfully completed the program, is exempted from the requirements of 41.2(67) or 41.2(68).

41.2(77) *Recentness of training.* The training and experience specified in 41.2(65) to 41.2(79) and 41.2(81) 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.

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"* and whose certification has been recognized by the NRC or agreement state; or

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

(1) Didactic 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. 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, if appropriate, instruments used to measure alpha- or beta-emitting radionuclides;
3. Calculating, assaying, and safely preparing dosages for patients or human research subjects;
4. Using administrative controls to avoid medical events in the administration of by-product material; and
5. Using procedures to prevent or minimize radioactive contamination and using proper decontamination procedures; and

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

41.2(79) *Training for experienced nuclear pharmacists.* An individual identified as a nuclear pharmacist on an NRC or agreement state license or 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, need not comply with the training requirements of 41.2(78).

41.2(80) *Training for nuclear medicine technologists.* Rescinded IAB 4/2/03, effective 5/7/03.

41.2(81) and **41.2(82)** Reserved.

41.2(83) *Provisions for the protection of human research subjects.*

a. A licensee may conduct research involving human research subjects only if the licensee uses the radioactive materials authorized on its specific license for the uses authorized on its license.

b. If the research is conducted, funded, supported, or regulated by another federal agency that has implemented Federal Policy for the Protection of Human Subjects (Federal Policy), the licensee shall, before conducting research:

(1) Obtain review and approval of the research from an "Institutional Review Board," as defined and described in the Federal Policy; and

(2) Obtain "informed consent," as defined and described in the Federal Policy, from the human research subjects.

c. If the research will not be conducted, funded, supported, or regulated by another federal agency that has implemented the Federal Policy, the licensee shall, before conducting research, apply for and receive a specific amendment to its medical use license. The amendment request must include a written commitment that the licensee will, before conducting research:

(1) Obtain review and approval of the research from an "Institutional Review Board," as defined and described in the Federal Policy; and

(2) Obtain "informed consent," as defined and described in the Federal Policy, from the human research subjects.

d. Nothing in this subrule relieves a licensee from complying with the other requirements of these rules.

41.2(84) *Calibration measurements of brachytherapy sources.*

a. Before the first medical use of a brachytherapy source on or after January 1, 2003, a licensee shall have:

(1) Determined the source output or activity using a dosimetry system that meets the requirements of 41.2(57);

(2) Determined the source positioning accuracy within applicators; and

(3) Used published protocols currently accepted by nationally recognized bodies to meet the requirements of 41.2(84)*"a."*

b. A licensee may use measurements that are provided by the source manufacturer or by a calibration laboratory accredited by the American Association of Physicists in Medicine and that are made in accordance with 41.2(84)*"a"*(1) and (2).

c. A licensee shall mathematically correct the outputs or activities determined in 41.2(84)*"a"* for physical decay at intervals consistent with 1 percent physical decay.

d. A licensee shall retain a record of each calibration for three years after the last use of the source. The record must include:

(1) The date of the calibration;

(2) The manufacturer's name, model number, and serial number for the source and the instruments used to calibrate the source;

(3) The source output or activity;

(4) The source positioning accuracy within the applicators; and

(5) The signature of the authorized medical physicist.

41.2(85) *Decay of strontium-90 sources for ophthalmic treatment.*

a. Only an authorized medical physicist shall calculate the activity of each strontium-90 source that is used to determine the treatment times for ophthalmic treatments. The decay must be based on the activity determined under 41.2(84).

b. A licensee shall retain a record of the activity of each strontium-90 source in accordance with 41.2(84).

41.2(86) *Therapy-related computer systems.* The licensee shall perform acceptance testing on the treatment planning system of therapy-related computer systems in accordance with published protocols accepted by nationally recognized bodies. At a minimum, the acceptance must include, as applicable, verification of:

a. The source-specific input parameters required by the dose calculation algorithm;

b. The accuracy of dose, dwell time, and treatment time calculations at representative points;

c. The accuracy of isodose plots and graphic displays;

d. The accuracy of the software used to determine sealed source positions from radiographic images; and

e. The accuracy of electronic transfer of the treatment delivery parameters to the treatment delivery unit from the treatment planning system.

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

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

(1) For any administration of quantities greater than 30 microcuries of either sodium iodide I-125 or I-131: the dosage;

(2) For a therapeutic administration of a radiopharmaceutical other than sodium iodide I-125 or I-131: the radiopharmaceutical, dosage, and route of administration;

(3) For gamma stereotactic radiosurgery: target coordinates, collimator size, plug pattern, and total dose;

(4) For teletherapy, particle accelerator or X-ray: the total dose, dose per fraction, number of fractions, treatment site, and overall treatment period;

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

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

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

2. After implantation but prior to completion of the procedure: the radioisotope, treatment site, number of sources, and total source strength and exposure time (or, equivalently, the total dose);

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

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

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

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

f. If, because of the emergent nature of the patient's or human research subject's condition, a delay in order to provide a written directive jeopardizes the patient's or human research subject's health, an oral directive is acceptable. The information contained in the oral directive must be documented as soon as possible in writing in the patient's or human research subject's record. A written directive must be prepared within 48 hours of the oral directive; and

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

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

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

a. The applicant or licensee has submitted the information required by the agency; and

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

641—41.3(136C) Therapeutic use of radiation machines.

41.3(1) Scope and applicability.

a. This subrule establishes requirements, for which the registrant is responsible, for use of therapeutic radiation machines.

b. The use of therapeutic radiation machines shall be by, or under the supervision of, a physician who meets the training/experience criteria established by 41.3(5).

c. Unless specifically required otherwise by 641—41.3(136C), all registrants are subject to the requirements of 641—Chapters 38 to 40.

41.3(2) Definitions. In addition to the definitions provided in 641—38.2(136C) and 641—40.2(136C), the following definitions are specific to 641—41.3(136C).

"Accessible surface" means surface of equipment or of an equipment part that can be easily or accidentally touched by persons without the use of a tool.

"Added filtration" means any filtration which is in addition to the inherent filtration.

"Beam-limiting device" means a field defining collimator, integral to the therapeutic radiation machine, which provides a means to restrict the dimensions of the useful beam.

"Beam-scattering foil" means a thin piece of material (usually metallic) placed in the beam to scatter a beam of electrons in order to provide a more uniform electron distribution in the useful beam.

f. Periodic quality assurance checks.

(1) Periodic quality assurance checks shall be performed on all therapeutic radiation machines subject to 41.3(18) at intervals as specified in Appendix D of 641—Chapter 41;

(2) To satisfy the requirement of 41.3(18)"*f*"(1), quality assurance checks shall include determination of central axis radiation output and a representative sampling of periodic quality assurance checks contained in Appendix D of 641—Chapter 41. Representative sampling shall include all referenced periodic quality assurance checks at intervals not to exceed 12 consecutive calendar months;

(3) The registrant shall use a dosimetry system which has been intercompared within the previous 12 months with the dosimetry system described in 41.3(16)"*c*"(1) to make the periodic quality assurance checks required in 41.3(18)"*f*"(2);

(4) The registrant shall perform periodic quality assurance checks required by 41.3(18)"*f*"(1) in accordance with procedures established by the radiation therapy physicist;

(5) The registrant shall review the results of each periodic radiation output check according to the following procedures:

1. The authorized user and radiation therapy physicist shall be immediately notified if any parameter is not within its acceptable tolerance. The therapeutic radiation machine shall not be made available for subsequent medical use until the radiation therapy physicist has determined that all parameters are within their acceptable tolerances;
2. If all quality assurance check parameters appear to be within their acceptable range, the quality assurance check shall be reviewed and signed by either the authorized user or radiation therapy physicist within seven working days; and
3. The radiation therapy physicist shall review and sign the results of each radiation output quality assurance check within 20 working days of completion.

(6) Therapeutic radiation machines subject to 41.3(18) shall have safety quality assurance checks of each external beam radiation therapy machine performed at intervals not to exceed one week;

(7) To satisfy the requirement of 41.3(18)"*f*"(6), safety quality assurance checks shall ensure proper operation of:

1. Electrical interlocks at each external beam radiation therapy room entrance;
2. Proper operation of the "BEAM-ON," interrupt and termination switches;
3. Beam condition indicator lights on the access doors, control console, and in the radiation therapy room;
4. Viewing systems;
5. Aural systems;
6. Electrically operated treatment room door(s) from inside and outside the treatment room;

(8) Emergency power cutoff switches shall be checked for proper operation at intervals not to exceed three months. If more than one emergency power cutoff switch is installed and not all switches are tested at once, each switch shall be tested on a rotating basis. Safety quality assurance checks of the emergency power cutoff switches may be conducted at the end of the treatment day in order to minimize possible stability problems with the therapeutic radiation machine;

(9) The registrant shall promptly repair any system identified in 41.3(18)"*f*"(7) that is not operating properly; and

(10) The registrant shall maintain a record of each quality assurance check required by 41.3(18)"*f*"(1) and 41.3(18)"*f*"(7) for three years. The record shall include the date of the quality assurance check, the manufacturer's name, model number, and serial number for the therapeutic radiation machine, the manufacturer's name, model number and serial number of the instrument(s) used to measure the radiation output of the therapeutic radiation machine, and the signature of the individual who performed the periodic quality assurance check.

41.3(19) Shielding and safety design requirements.

a. Each therapeutic radiation machine subject to 41.3(17) or 41.3(18) shall be provided with such primary or secondary barriers as are necessary to ensure compliance with 641—40.15(136C) and 641—40.26(136C).

b. Facility design information for all new installations of a therapeutic radiation machine or installations of a therapeutic radiation machine of higher energy into a room not previously approved for that energy shall be submitted for agency approval prior to actual installation of the therapeutic radiation machine. The minimum facility design information that must be submitted is contained in Appendix E of 641—Chapter 41.

641—41.4(136C) Radiation safety requirements for analytical X-ray equipment. Rescinded IAB 4/8/98, effective 7/1/98.

641—41.5(136C) Radiation safety requirements for wireline service operations and subsurface tracer studies. Rescinded IAB 4/8/98, effective 7/1/98.

641—41.6(136C) X-ray machines used for screening and diagnostic mammography.

41.6(1) *Definitions.* In addition to the definitions provided in 641—38.2(136C), 641—40.2(136C), and 641—41.1(136C), the following definitions shall be applicable to this rule.

"Accreditation body" means an entity that has been approved by FDA to accredit mammography facilities.

"Action limits" or *"action levels"* means the minimum and maximum values of a quality assurance measurement that can be interpreted as representing acceptable performance with respect to the parameter being tested. Values less than the minimum or greater than the maximum action limit or level indicate that corrective action must be taken by the facility. Action limits or levels are also sometimes called control limits or levels.

"Adverse event" means an undesirable experience associated with mammography activities. Adverse events include but are not limited to:

1. Poor image quality;
2. Failure to send mammography reports within 30 days to the referring physician or in a timely manner to the self-referred patient; and
3. Use of personnel who do not meet the applicable requirements of this chapter.

"Air kerma" means kerma in a given mass of air. The unit used to measure the quantity of air kerma is the Gray (Gy). For X-rays with energies less than 300 kiloelectronvolts (keV), 1 Gray of absorbed dose is delivered by 114 roentgens (R) of exposure.

"Artifact" means a substance or structure not naturally present in living tissue but of which an authentic image appears in a radiograph.

"Automatic exposure control systems" means automatic exposure control systems, often referred to as phototimers, which are designed to automatically determine and provide the exposure needed to produce an adequate density image by sampling the X-ray intensity after passage through the patient and image receptor.

"Average glandular dose" means the energy deposited per unit mass of glandular tissue averaged over all the glandular tissue in the breast, calculated from values of entrance exposure in air, the X-ray beam quality (half-value layer), and compressed breast thickness. The maximum average glandular dose should be 6 milliGray (0.6 rad) or less for a 2-view examination of the breast. See also: "Dose."

"Breast implant" means a prosthetic device implanted in the breast.

"Calendar quarter" means any one of the following time periods during a given year: January 1 through March 31, April 1 through June 30, July 1 through September 30, or October 1 through December 31.

"Category 1" means medical education activities that have been designated as Category 1 by the Accreditation Council for Continuing Medical Education (ACCME), the American Osteopathic Association (AOA), a state medical society, or an equivalent organization.

"Certificate" means the certificate described in 41.6(2)*"a"*(2).

"Certification" means the process of approval of a facility by the FDA or this agency to provide mammography services.

"Clinical image" means a mammogram.

"Compression device" means a firm plastic paddle used to help hold the breast stationary and eliminate blurring due to motion, to help separate structures within the breast, and to decrease the thickness of breast tissue, minimizing the amount of radiation used and the amount of scattered radiation reaching the film.

"Consumer" means an individual who chooses to comment or complain in reference to a mammography examination, including the patient or representative of the patient (e.g., family member or referring physician).

"Contact hour" means an hour of training received through direct instruction.

"Continuing education unit" or *"continuing education credit"* means one contact hour of training.

"Craniocaudal view" means one of two routine views for mammography. The detector system is placed caudad to (below) the breast and the vertical X-ray beam is directed from cranial to caudad (downward) through the breast.

"Dedicated mammography equipment" means X-ray systems designed specifically for breast imaging, providing optimum imaging geometry, a device for breast compression and low dose exposure that can generate reproducible images of high quality.

"Direct instruction" means:

1. Face-to-face interaction between instructor(s) and student(s), as when the instructor provides a lecture, conducts demonstrations, or reviews student performance; or
2. The administration and correction of student examinations by an instructor(s) with subsequent feedback to the student(s).

"Direct supervision" means that:

1. During joint interpretation of mammograms, the supervising interpreting physician reviews, discusses, and confirms the diagnosis of the physician being supervised and signs the resulting report before it is entered into the patient's records; or
2. During the performance of a mammography examination or survey of the facility's equipment and quality assurance program, the supervisor is present to observe and correct, as needed, the performance of the individual being supervised who is performing the examination or conducting the survey.

"Dose" means the amount of energy deposited per unit mass of tissue due to X-radiation. The newer unit of absorbed dose is the Gray: 1 Gray=1 Joule of energy deposited per kilogram of tissue. The older unit of absorbed dose is the rad: 1 rad=0.01 Gray, 1 centiGray, or 10 milliGray.

"Exposure" means the amount of X-radiation, quantitated by measuring the amount of ionization in air caused by the radiation. The units of exposure are Coulombs of charge ionized per kilogram of air. The older unit of exposure is the Roentgen: 1 Roentgen=2.58 × 10E-4 Coulombs of charge per kilogram of air.

"Facility" means a hospital, outpatient department, clinic, radiology practice, mobile unit, office of a physician, or other facility that conducts mammography activities, including the following: operation of equipment to produce a mammogram, initial interpretation of the mammogram, and maintaining viewing conditions for that interpretation. This term does not include a facility of the Department of Veterans Affairs.

"FDA" means the Food and Drug Administration.

"First allowable time" means the earliest time a resident physician is eligible to take the diagnostic radiology boards from an FDA-designated certifying body. The "first allowable time" may vary with the certifying body.

"Grids" means a set of thin lead strips spaced close to one another, interspaced by carbon fiber for mammographic grids. The grid is placed between the breast and the screen-film image receptor to reduce scattered radiation reaching the image receptor.

"Image noise." See "Radiographic noise."

"Image receptor support device" means, for mammography X-ray systems, that part of the system designed to support the image receptor during a mammographic examination and to provide a primary protective barrier.

"Interpreting physician" means a licensed radiologist who interprets mammograms and who meets the requirements set forth in 41.6(3)*"a."*

"Kerma" means the sum of the initial energies of all the charged particles liberated by uncharged ionizing particles in a material of given mass.

"Laterality" means the designation of either the right or left breast.

"Lead interpreting physician" means the interpreting physician assigned the general responsibility for ensuring that a facility's quality assurance program meets all of the requirements of this chapter. The administrative title and other supervisory responsibilities of the individual, if any, are left to the discretion of the facility.

"Mammogram" means a radiographic image produced through mammography.

"Mammographic modality" means a technology for radiography of the breast. Examples are screen-film mammography, xeromammography, and digital mammography.

"Mammography" means radiography of the breast but, for the purposes of 641—41.6(136C), does not include:

1. Radiography of the breast performed during invasive interventions for localization or biopsy procedures; or
2. Radiography of the breast performed with an investigational mammography device as part of a scientific study conducted in accordance with FDA investigational device exemption regulations; or
3. Radiography of the breast performed as part of either a breast localization procedure or a post-stereotactic clip placement localization procedure.

"Mammography equipment evaluation" means an on-site assessment of the mammography unit or image processor performance by a medical physicist for the purpose of making a preliminary determination as to whether the equipment meets all of the applicable standards.

"Mammography medical outcomes audit" means a systematic collection of mammography results and the comparison of those results with outcomes data.

"Mammography unit(s)" means an assemblage of components for the production of X-rays for use during mammography including, at a minimum: an X-ray generator, an X-ray control, a tube housing assembly, a beam limiting device, and the supporting structures for these components.

"Mean optical density" means the average of the optical densities measured using phantom thicknesses of 2, 4, and 6 centimeters with values of kilovolt peak (kVp) clinically appropriate for those thicknesses.

"Medical physicist" means a person trained in evaluating the performance of mammography equipment and facility quality assurance programs and who meets the qualifications for a medical physicist set forth in 41.6(3)*"c."*

"Mediolateral view" means one of the routine views for mammography in addition to the craniocaudal view. The detector system is placed lateral to the breast and the horizontal X-ray beam is directed from medial to lateral aspect through the breast.

"MQSA" means the Mammography Quality Standards Act of 1992.

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

(5) If a facility's authorization is revoked, no person who owned or operated that facility at the time the act occurred may own or operate a mammography facility in Iowa within two years of the date of revocation.

d. Reinstatement of mammography authorization.

(1) An application for reinstatement shall be submitted and processed the same as an initial application.

(2) The agency shall inspect the radiation machine within 60 days of the approved reinstatement application.

(3) A certificate of reinstatement shall be issued only after the agency has inspected the radiation machine and determined that it meets the requirements of these rules.

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

f. Determination of the quality of the mammograms produced by facilities. To make the determination each facility will:

(1) Provide at the time of initial registration and at renewal (at least every three years) thereafter, two original (not copies) mammography examinations which meet the following criteria:

1. One mammography examination, including craniocaudal and mediolateral oblique views of each breast, of a patient with fatty breasts,
2. One mammography examination, including craniocaudal and mediolateral oblique views of each breast, of a patient with at least 75 percent glandular tissue, and
3. Each mammography examination must have been interpreted as a "normal" examination.

(2) Provide randomly (at least every three years), at the request of agency mammography inspectors, two mammography examinations (mammograms) which meet the criteria in 41.6(2)"*f*"(1).

(3) Have the film returned by the agency for inclusion in the patient's file after quality interpretation by agency radiologists.

(4) Be billed the fee for the quality interpretation as set forth in 641—38.8(1)"*b*"(2).

(5) Be provided with a written explanation of the results of the quality evaluation which will accompany the returned mammograms referred to in 41.6(2)"*f*"(3).

g. Federal mammography regulations. All Iowa facilities performing mammography shall comply with the applicable regulations found in 21 CFR Parts 16 and 900 which have an effective date of April 28, 1999. Persons authorized to perform mammography in Iowa shall be responsible for ensuring compliance with the appropriate CFR regulations or Iowa administrative rules, whichever are more stringent.

41.6(3) *Mammography personnel.* The following requirements apply to all personnel involved in any aspect of mammography, including the production, processing, and interpretation of mammograms and related quality assurance activities:

a. Interpreting physicians. All radiologists interpreting mammograms shall meet the following qualifications:

(1) Initial qualifications. Unless the exemption in 41.6(3)"*a*"(3)"1" applies, before beginning to interpret mammograms independently, the interpreting radiologist shall:

1. Be licensed to practice medicine in Iowa;
2. Be certified in an appropriate specialty area by a body determined by FDA to have procedures and requirements adequate to ensure that physicians certified by the body are competent to interpret radiological procedures, including mammography; or

- Have had at least three months of documented formal training in the interpretation of mammograms and in topics related to mammography. The training shall include instruction in radiation physics, including radiation physics specific to mammography, radiation effects, and radiation protection. The mammographic interpretation component shall be under the direct supervision of a radiologist who meets the requirements of 41.6(3)"*a*";

3. Have a minimum of 60 hours of documented medical education in mammography, which shall include: instruction in the interpretation of mammograms and education in basic breast anatomy, pathology, physiology, technical aspects of mammography, and quality assurance and quality control in mammography. All 60 of these hours shall be category I and at least 15 of the category I hours shall have been acquired within the three years immediately prior to the date that the radiologist qualifies as an interpreting physician. Hours spent in residency specifically devoted to mammography will be considered as equivalent to category I continuing medical education credits and will be accepted if documented in writing by the appropriate representative of the training institution; and

4. Unless the exemption in 41.6(3)*"a"*(3)"2" applies, have interpreted or multi-read at least 240 mammographic examinations within the six-month period immediately prior to the date that the radiologist qualifies as an interpreting physician. This interpretation or multi-reading shall be under the direct supervision of an interpreting physician.

(2) Continuing experience and education. All interpreting physicians shall maintain their qualifications by meeting the following requirements:

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

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

3. Before an interpreting physician may begin independently interpreting mammograms produced by screen-film or full field digital mammographic modalities, the interpreting physician shall have at least 8 hours of category 1 continuing medical education credits in the mammographic modality. An interpreting physician who has previously qualified to interpret digital mammography in another state will have six months to complete this requirement. The six-month time frame starts when the interpreting physician commences Iowa digital mammography interpretation.

4. Units earned through teaching a specific course can be counted only once towards the 15 required by 41.6(3)*"a"*(2)"2" even if the course is taught multiple times during the previous 36 months.

(3) Exemptions.

1. Those physicians who qualified as interpreting physicians under 41.6(3)*"a"* or FDA interim regulations prior to April 28, 1999, are considered to have met the initial requirements of 41.6(3)*"a."* They may continue to interpret mammograms provided they continue to meet the licensure requirements of 41.6(3)*"a"*(1)"1" and the continuing experience and education requirements of this subrule.

2. Physicians who have interpreted or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician in any six-month period during the last two years of a diagnostic radiology residency and who become appropriately board certified at the first allowable time, as defined by an eligible certifying body, are otherwise exempt from 41.6(3)*"a"*(1)"4."

(4) Reestablishing qualifications. Interpreting physicians who fail to maintain the required continuing experience or continuing education requirements shall reestablish their qualifications before resuming the independent interpretation of mammograms, as follows:

1. Interpreting physicians who fail to meet the continuing experience requirements of 41.6(3)*"a"*(2)"1" shall:

- Interpret or multi-read at least 240 mammographic examinations under the direct supervision of an interpreting physician, or

• Interpret or multi-read a sufficient number of mammographic examinations, under the direct supervision of an interpreting physician, to bring the physician's total up to 960 examinations for the prior 24 months, whichever is less.

The interpretations required under 41.6(3)"*a*"(4)"1" shall be done within the six months immediately prior to resuming independent interpretation.

2. Interpreting physicians who fail to meet the continuing education requirements of 41.6(3)"*a*"(2)"2" shall obtain a sufficient number of additional category I continuing medical education credits in mammography to bring their total up to the required 15 credits in the previous 36 months before resuming independent interpretation.

b. Radiologic technologists. All mammographic examinations shall be performed by general radiographers who meet the following general requirements, mammography requirements, and continuing education and experience requirements:

(1) General requirements. Be permitted to operate as a general radiographer in Iowa; and

(2) Mammography requirements. Prior to April 28, 1999, have qualified as a radiologic technologist under 41.6(3)"*b*" or have completed at least 40 contact hours of documented training specific to mammography under the supervision of a qualified instructor. The hours of documented training shall include, but not necessarily be limited to:

1. Training in breast anatomy and physiology, positioning and compression, quality assurance/quality control techniques, and imaging of patients with breast implants, and for full field digital mammography training, physics shall be included;

2. The performance of a minimum of 25 examinations under the direct supervision of an individual qualified under 41.6(3)"*b*"; and

3. At least 8 hours of training in each mammography modality to be used by the technologist in performing mammography examinations. The 8 hours shall not include hours derived from performance of supervised examinations; and

(3) Continuing education requirements.

1. Following the third anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"*b*"(1) were completed, the radiologic technologist 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 MQSA inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 36-month period.

2. Units earned through teaching a specific course can be counted only once towards the 15 required in 41.6(3)"*b*"(3)"1" even if the course is taught multiple times during the previous 36 months.

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

4. Requalification. Radiologic technologists who fail 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 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.

5. Before a radiologic technologist may begin independently performing mammographic examinations using a mammographic modality other than one of those for which the technologist received training under 41.6(3)"*b*"(2)"3," the technologist shall have at least 8 hours of continuing education units in the new modality.

(4) Continuing experience requirements.

1. Following the second anniversary date of the end of the calendar quarter in which the requirements of 41.6(3)"*b*"(1) and (2) were completed or October 28, 1999, whichever is later, the radiologic technologist shall have performed a minimum of 200 mammography examinations during the 24 months immediately preceding the date of the facility's annual inspection or the last day of the calendar quarter preceding the inspection or any date in between the two. The facility will choose one of these dates to determine the 24-month period.

2. Requalification. Radiologic technologists who fail to meet the continuing experience requirements of this subrule shall perform a minimum of 25 mammography examinations under the direct supervision of a qualified radiologic technologist before resuming the performance of unsupervised mammography examinations.

c. Medical physicists. All medical physicists conducting surveys of mammography facilities and providing oversight of the facility quality assurance program under 41.6(3)*"c"*(2) shall meet the following:

(1) Initial qualifications.

1. Be Iowa approved; and

2. Have a master's degree or higher in a physical science from an accredited institution, with no less than 20 semester hours or 30 quarter hours of college undergraduate or graduate level physics;

3. Have 20 contact hours of documented specialized training in conducting surveys of mammography facilities; and

4. Have experience conducting surveys in at least one mammography facility and have a total of at least 10 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. After April 28, 1999, experience conducting surveys must be acquired under the direct supervision of a medical physicist who meets all the requirements of this subrule; or

(2) Alternative initial qualifications.

1. Have qualified as a medical physicist under FDA interim regulations and have retained that qualification by maintenance of the active status of any licensure, approval, or certification required under the interim regulations; and

2. Prior to April 28, 1999, have:

- A bachelor's degree or higher in a physical science from an accredited institution with no less than 10 semester hours or equivalent of college undergraduate or graduate level physics,
- Forty contact hours of documented specialized training in conducting surveys of mammography facilities, and
- Have experience conducting surveys in at least one mammography facility and have a total of at least 20 mammography units. No more than one survey of a specific unit within a period of 60 days can be counted towards the total mammography unit survey requirement. The training and experience requirements must be met after fulfilling the degree requirement.

(3) Continuing qualifications.

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.

2. Continuing experience. Following the second anniversary date of the end of the calendar quarter in which the requirements of this subrule were completed or April 28, 1999, whichever is later, the medical physicist shall have surveyed at least two mammography facilities and a total of at least 6 mammography units during the 24 months immediately preceding the date of the facility's annual MQSA inspection or the last day of the calendar quarter immediately preceding the inspection or any date in between the two. The facility shall choose one of these dates to determine the 24-month period. No more than one survey of a specific facility within a 10-month period or a specific unit within a period of 60 days can be counted towards this requirement.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

III. Therapeutic radiation machines over 150 kV.

In addition to the requirements listed in Section I above, therapeutic radiation machine facilities which produce photons or electrons with a maximum energy in excess of 150 kV or electrons shall submit shielding plans which contain, as a minimum, the following additional information:

A. Equipment specifications including the manufacturer and model number of the therapeutic radiation machine, and gray (rad) at the isocenter and the energy(s) and type(s) of radiation produced (i.e., photon, electron). The target to isocenter distance shall be specified.

B. Maximum design workload for the facility including total weekly radiation output (expressed in gray (rad) at one meter), total beam-on time per day or week, the average treatment time per patient, along with the anticipated number of patients to be treated per day or week.

C. Facility blueprint/drawing (including both floor plan and elevation views) indicating relative orientation of the therapeutic radiation machine, scale (0.25 inch = 1 foot is typical), type(s), thickness and minimum density of shielding material(s), direction of north, the locations and size of all penetrations through each shielding barrier (ceiling, walls and floor), as well as details of the door(s) and maze.

D. The structural composition and thickness or concrete equivalent of all walls, doors, partitions, floor, and ceiling of the room(s) concerned.

E. The type of occupancy of all adjacent areas inclusive of space above and below the room(s) concerned. If there is an exterior wall, show distance to the closest area(s) where it is likely that individuals may be present.

F. Description of all assumptions that were in shielding calculations including, but not limited to, design energy (i.e., room may be designed for 6 MV unit although only a 4 MV unit is currently proposed), workload, presence of integral beam-stop in unit, occupancy and use(s) of adjacent areas, fraction of time that useful beam will intercept each permanent barrier (walls, floor and ceiling) and "allowed" radiation exposure in both restricted and unrestricted areas.

G. At least one example calculation which shows the methodology used to determine the amount of shielding required for each physical condition (i.e., primary and secondary leakage barriers, restricted and unrestricted areas, small angle scatter, entry door(s) and maze) and shielding material in the facility.

(1) If commercial software is used to generate shielding requirements, also identify the software used and the version/revision date.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

IV. Neutron shielding.

In addition to the requirements listed in Section III above, therapeutic radiation machine facilities which are capable of operating above 10 MV shall submit shielding plans which contain, as a minimum, the following additional information:

A. The structural composition, thickness, minimum density and location of all neutron shielding material.

B. Description of all assumptions that were used in neutron shielding calculations including, but not limited to, neutron spectra as a function of energy, neutron fluency rate, absorbed dose and dose equivalent (due to neutrons) in both restricted and unrestricted areas.

C. At least one example calculation which shows the methodology used to determine the amount of neutron shielding required for each physical condition (i.e., restricted and unrestricted areas, entry door(s) and maze) and neutron shielding material utilized in the facility.

(1) If commercial software is used to generate shielding requirements, also identify the software used and the version/revision date.

(2) If the software used to generate shielding requirements is not in the open literature, submit quality control sample calculations to verify the result obtained with the software.

D. The method(s) and instrumentation which will be used to verify the adequacy of all neutron shielding installed in the facility.

V. References.

A. NCRP Report 49, "Structural Shielding Design and Evaluation for Medical Use of X-Rays and Gamma Rays of Energies Up to 10 MeV" (1976).

B. NCRP Report 51, "Radiation Protection Design Guidelines for 0.1-100 MeV Particle Accelerator Facilities" (1977).

C. NCRP Report 79, "Neutron Contamination from Medical Electron Accelerator" (1984).

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

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◊Two ARCs

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

"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.

641—42.2(136C) General requirements.

42.2(1) *Minimum eligibility requirements.*

a. Graduation from high school or its equivalent.

b. Attainment of 18 years of age.

c. Ability to adequately perform necessary duties without constituting a hazard to the health or safety of patients or operators.

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

a. Operating as a diagnostic radiographer, nuclear medicine technologist, or radiation therapist without meeting the requirements of this chapter.

b. Allowing any individual excluding a licensed physician to operate as a diagnostic radiographer, nuclear medicine technologist, or radiation therapist if that individual cannot provide proof of certification by the department.

c. Failing to report to the department any individual whom the certificate holder knows is in violation of this rule.

d. Submitting false information in order to obtain certification or renewal certification as a diagnostic radiographer, nuclear medicine technologist, or radiation therapist.

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

(1) Any medical condition which may impair or limit the individual's ability to perform radiography, nuclear medicine procedures, or radiation therapy;

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

(3) A misdemeanor or felony which may impair or limit the individual's ability to perform radiography, nuclear medicine procedures, or radiation therapy;

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

f. Performing procedures not allowed under the individual's current certification.

g. Failing to pay fees or costs required to meet the requirements of this chapter. The penalty for working without the required permit will be $100 and suspension from performing radiography until the permit is issued.

h. Failure to respond to an audit request or failure to provide proper documentation.

42.2(3) *Continuing education.*

a. Each individual who is certified under these rules shall, during a two-year period, obtain continuing education credit as follows:

(1) General diagnostic radiographer: 24 clock hours, 1.0 hour must be in radiation protection.

(2) Limited in-hospital diagnostic radiographer: 24 clock hours, 1.0 hour must be in radiation protection.

(3) Limited diagnostic radiographer: 12 clock hours, 1.0 hour must be in radiation protection.

(4) General nuclear medicine technologist: 24 hours total.

1. One clock hour in principles of radiation protection and exposure each year, a total of two hours each two-year period.

2. One clock hour in quality assurance each year, a total of two hours each two-year period.

3. The remaining 20 clock hours of continuing education in each two-year period may be in any other subjects directly related to nuclear medicine and approved by the department.

(5) Limited nuclear medicine technologists: 12 hours total, 1.0 hour must be radiation protection and 1.0 hour must be in quality assurance.

(6) Radiation therapist: proof of 24.0 clock hours of continuing education courses in subjects directly related to radiation therapy.

(7) Simulation therapist: proof of 24.0 clock hours of continuing education courses with at least 12.0 hours directly related to radiation therapy. 12.0 hours may be in specified diagnostic radiography courses.

b. Continuing education course approval.

(1) Thirty days prior to conducting a continuing education course, the sponsoring individual must submit the following:

1. The course objectives.

2. An outline of the course which sets forth the subject, the course content, and the length of the course in clock hours.

3. The instructor's name and short résumé detailing qualifications.

(2) Following its review, the department may, in consultation with or under predetermined guidance of the technical advisory committee, approve, disapprove, or request additional information on the proposed course.

(3) The department may, from time to time, audit the continuing education course to verify the adequacy of program content and delivery.

(4) Courses must be at least one clock hour in length and if lasting more than one hour, will be assigned credit in half-hour increments to the closest half-hour.

(5) No continuing education credit is approved for passing a certification examination.

c. Continuing education credit will be awarded under provisions of 42.2(3) by the department to individuals:

(1) Who have successfully completed a continuing education course which has been approved by the department.

(2) Who present a department-approved continuing education course to individuals certified in the presenter's field. Credit granted shall be at a rate of two times the amount of time it takes to present the course up to a maximum of 50 percent of the total hours required.

(3) Only once during a two-year period for the same continuing education course.

d. Continuing education must be directly related to the area of practice of the operator attending the program. Twenty-five percent of the total hours required may be in "special category."

e. Proof of continuing education must be maintained for at least three years. Proof of continuing education may be a sign-in sheet, certificate, or answer sheet. It must be signed and dated by the presenter, program representative, or the individual's supervisor. Individuals authorized for mammography must meed the records requirements in 641—41.6(136C) and 641—41.7(136C).

f. All continuing education requirements shall be completed during the two-year period prior to the certification continuing education due date.

(6) Special techniques, including stereo, body section radiography, pelvimetry, image intensification, photo timing and mobile units; and

(7) Clinical experience sufficient to demonstrate competency in the application of the above as specified in the "Standards for an Accredited Education Program in Radiologic Sciences" as adopted by the Joint Review Committee on Education on Radiologic Technology.

b. Limited diagnostic radiographer.

(1) Completion of an approved course of study to prepare the student to demonstrate competency in the following areas:

1. Radiation protection of patients and workers including monitoring, shielding, units of measurement and permissible levels, biological effects of radiation, and technical considerations in reducing radiation exposure and frequency of retakes;

2. Technique and quality control to achieve diagnostic objectives with minimum patient exposure to include X-ray examination, X-ray production, films, screens, holders and grids, technique conversions, film processing, artifacts, image quality, film systems and control of secondary radiation for the specified category;

3. Patient care including, but not limited to, aseptic techniques, emergency procedures and first aid;

4. Positioning, including normal and abnormal anatomy and projections for the specific category;

5. Radiographic equipment and operator maintenance to include X-ray tubes, grids, standardization of equipment, generators, preventive maintenance, basic electricity, film processors and maintenance, collimators, X-ray control consoles, tilt tables, ancillary equipment, and electrical and mechanical safety;

6. Special techniques limited to those required by the specific category; and

7. Clinical experience sufficient to demonstrate competency in the application of the above as specified by the department. Clinical experience must be directly supervised by a two-year trained general radiographer, licensed physician, chiropractor, or podiatrist who physically observes and critiques the actual X-ray procedures.

8. Permission for a representative of the Iowa department of public health to comprehensively evaluate whether the individual meets the training standard.

(2) Training required for limited radiographers who wish to perform pediatric radiography. The training program must:

1. Be submitted to the agency for approval before training starts.

2. Be taught by a general radiographer.

3. Include 4.0 hours of additional anatomy and physiology, positioning, radiation protection, and technique that are specific to pediatric radiography.

4. Include clinical and film critiques in pediatric chest and extremities radiography, but not spinal radiography.

5. Upon completion, verify each participant's competency, in writing, to the agency.

c. Limited in-hospital diagnostic radiographer. An individual employed in a diagnostic radiography facility which has a workload of less than 5000 examinations per year and which provides 24-hour service in a hospital will be permitted to apply X-radiation to any part of the human body at that facility if the individual completes a training program recognized by the department, as outlined in 42.1(4)*"b"*(1) and submits a letter from a board-certified or board-eligible radiologist who verifies in writing the specific procedures the individual is competent to perform. The training program must cover the areas outlined in 42.1(4)*"b,"* the anatomy and physiology of the entire body, positioning and techniques relative to the procedures to be performed, and appropriate clinical training which includes all parts of the human body. Training received under this subrule is specific to the facility and must be reevaluated by the department before an individual may transfer to another facility.

d. Certification by the American Registry of Radiologic Technologists or the American Registry of Clinical Radiography Technologists meets the minimum requirements of 42.3(136C).

42.3(2) *School accreditation.*

a. Graduates of schools accredited by the Joint Review Committee on Education in Radiologic Technology who have successfully completed an appropriate course of study in diagnostic radiography will be considered to meet the requirements of 42.3(1)*"a."*

b. Graduates of programs recognized by the Iowa department of public health in consultation with the professional societies and boards of examiners for appropriate course of study in diagnostic radiography will be considered to meet the requirements of this rule.

42.3(3) *Examinations.*

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

(1) General diagnostic radiographer and limited in-hospital radiographer: radiation protection, radiation physics, radiographic and fluoroscopic techniques, special procedures, patient care, positioning, equipment maintenance, anatomy, contrast media, physiology, quality control, radiographic processing and clinical experience.

(2) Limited diagnostic radiographer: radiation protection, radiation physics, radiographic techniques, patient care, positioning, equipment maintenance, anatomy, physiology, quality control, and radiographic processing and clinical experience for the specific permit to practice requested.

(3) Contents of the examinations will be established and periodically revised by the department in consultation with the technical advisory committee.

b. Examinations will be given by the department at least annually, or as necessary, at course of study location or other location determined by the department.

c. The department may accept, in lieu of its own examination, evidence of satisfactory performance in an examination given by an appropriate organization or testing service provided that the department finds the organization or service to be competent to examine applicants in the discipline of radiography. For purposes of this subrule, individuals who are registered as general diagnostic radiographers with the American Registry of Radiologic Technologists or American Registry of Clinical Radiography Technologists meet the testing requirements of 42.3(3).

d. Any individual certified under these rules and exempted from examination is exempted from examination requirements as long as the initial certification remains in effect.

42.3(4) *Exemptions.*

a. Students enrolled in and participating in an approved program or approved course of study for diagnostic radiography, or an approved school of medicine, osteopathy, podiatry, and chiropractic who, as a part of their course of study, apply ionizing radiation to a human being while under the supervision of a licensed practitioner.

b. Licensed practitioners as defined in 641—Chapter 38.

c. Individuals who operate processors only.

641—42.4(136C) Specific requirements for nuclear medicine technologists.

42.4(1) *Specific eligibility requirements.*

a. Any individual who is registered in nuclear medicine technology with the following organizations may meet the education and testing requirements of this rule.

(1) American Registry of Radiologic Technologists.

(2) Nuclear Medicine Technology Certification Board.

(3) American Society of Clinical Pathologists.

b. Any individual, other than a licensed physician, who has completed all educational requirements of this rule but has not yet successfully completed the required examination will be issued temporary certification valid for one year from completion of a training program approved by the department.

42.5(4) *Exemptions.*

a. Students enrolled in and participating in an approved program or approved course of study for radiation therapy technology or an approved school of medicine, osteopathy, podiatry, or chiropractic who, as a part of their course of study, administer radiation therapy to a human being while under the supervision of a licensed physician in the state of Iowa.

b. A licensed physician in the state of Iowa.

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

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**Subrule 42.1(4)"*b*"(4) is rescinded two years subsequent to the effective date of rule 42.1(136C).
◊Two or more ARCs.

CHAPTER 45
RADIATION SAFETY REQUIREMENTS FOR INDUSTRIAL RADIOGRAPHIC OPERATIONS

[Prior to 8/5/92, see 641—41.4(136C)]

641—45.1(136C) General requirements for industrial radiography operations.

45.1(1) *Purpose and scope.*

a. The rules in this chapter establish radiation safety requirements for using sources of radiation for industrial radiography. The requirements of this chapter are in addition to, and not in substitution for, other applicable requirements of 641—Chapters 38, 39, and 40. The rules in this chapter apply to all licensees or registrants who use sources of radiation for industrial radiography.

b. All references to any Code of Federal Regulations (CFR) in this chapter are those in effect as of May 5, 2004.

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

45.1(2) *Definitions.* For the purpose of this chapter, the definitions of 641—Chapter 38 may also apply. As used in this chapter, the following definitions apply:

"*Annual refresher safety training*" means a review conducted or provided by the licensee for its employees on radiation safety aspects of industrial radiography. The review may include, as appropriate, the results of internal inspections, new procedures or equipment, new or revised regulations, accidents or errors that have been observed, and should also provide opportunities for employees to ask safety questions.

"*Associated equipment*" means equipment that is used in conjunction with a radiographic exposure device to make radiographic exposures that drives, guides, or comes in contact with the source, e.g., guide tube, control tube, control (drive) cable, removable source stop, "J" tube and collimator when it is used as an exposure head.

"*Cabinet X-ray system*" means an X-ray system with the X-ray tube installed in an enclosure independent of existing architectural structures except the floor on which it may be placed. The cabinet X-ray system is intended to:

1. Contain at least that portion of a material being irradiated;
2. Provide radiation attenuation; and
3. Exclude personnel from its interior during generation of radiation. Included are all X-ray systems designed primarily for the inspection of carry-on baggage at airline, railroad, and bus terminals, and in similar facilities. An X-ray tube used within a shielded part of a building, or X-ray equipment which may temporarily or occasionally incorporate portable shielding, is not considered a cabinet X-ray system.

"*Certifiable cabinet X-ray system*" means an existing uncertified X-ray system that has been modified to meet certification requirements specified in 21 CFR 1020.40.

"*Certified cabinet X-ray system*" means an X-ray system which has been certified in accordance with 21 CFR 1010.2 as being manufactured and assembled pursuant to the provisions of 21 CFR 1020.40.

"*Certifying entity*" means an independent certifying organization meeting the requirements of Appendix A in 10 CFR Part 34.

"*Collimator*" means a small radiation shield of lead or other heavy metal that is placed on the end of a guide tube or directly onto a radiographic exposure device to restrict the size of the radiation beam when the sealed source is cranked into position to make a radiographic exposure.

"*Control (drive) cable*" means the cable that is connected to the source assembly and used to drive the source to and from the exposure location.

"*Control drive mechanism*" means a device that enables the source assembly to be moved to and from the exposure device.

"Control tube" means a protective sheath for guiding the control cable. The control tube connects the control drive mechanism to the radiographic exposure device.

"Crank-out device" means the cable, protective sheath, and handcrank used to move the sealed source from the shielded to the unshielded position to make an industrial radiographic exposure.

"Enclosed radiography" means industrial radiography conducted in an enclosed cabinet or room and includes cabinet radiography and shielded-room radiography.

"Exposure head" means a device that locates the gamma radiography sealed source in the selected working position. (An exposure head is also known as a source stop.)

"Field station" means a facility where licensed material may be stored or used and from which equipment is dispatched.

"Fluoroscopic imaging assembly" means a subsystem in which X-ray photons produce a fluoroscopic image. It includes the image receptors such as the image intensifier and spot-film device, electrical interlocks, if any, and structural material providing linkage between the image receptor and source assembly.

"GED" means general educational development.

"Guide tube (projection sheath)" means a flexible or rigid tube (i.e., "J" tube) for guiding the source assembly and the attached control cable from the exposure device to the exposure head. The guide tube may also include the connections necessary for attachment to the exposure device and to the exposure head.

"Hands-on experience" means experience in all of those areas considered to be directly involved in the radiography process.

"I.D. card" means the document issued by the agency, another Agreement State, a licensing state, or third-party certification to industrial radiographers following completion of requirements stated in 45.1(10)*"b."*

"Independent certifying organization" means an independent organization that meets all of the criteria of Appendix A in 10 CFR Part 34.

"Lay-barge radiography" means industrial radiography performed on any water vessel used for laying pipe.

"Lixiscope" means a portable light-intensified imaging device using a sealed source.

"Lock-out survey" means a radiation survey performed to verify that a sealed source is in its shielded position. The lock-out survey is performed before moving the radiographic exposure device or source changer to a new location or when securing the radiographic exposure device or source changer.

"Minimal threat" means that during the operations of electronic devices capable of generating or emitting fields of radiation:

1. No deliberate exposure of an individual occurs;
2. The radiation is not emitted in an open beam configuration; and
3. No known physical injury to an individual has occurred.

"Offshore" means within the territorial waters of the United States.

"Permanent radiographic installation" means an enclosed shielded room, cell, or vault, not located at a temporary job site, in which radiography is performed.

"Platform radiography" means industrial radiography performed on an offshore platform or other structure.

"Practical examination" means a demonstration through practical application of the safety rules and principles in industrial radiography including use of all appropriate equipment and procedures.

"Radiation safety officer" means an individual named by the licensee or registrant who has a knowledge of, responsibility for, and authority to enforce appropriate radiation protection rules, standards, and practices on behalf of the licensee or registrant and who meets the requirements of 45.1(10)*"d."*

"Radiographer" means any individual who has successfully completed the training, testing, and documentation requirements of 45.1(10)*"b,"* who performs or personally supervises industrial radiographic operations, and is responsible to the licensee or registrant for ensuring compliance with the requirement of these rules and all license and certificate of registration conditions.

"Radiographer certification" means written approval received from a certifying entity stating that an individual has satisfactorily met certain established radiation safety, testing, and experience criteria.

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

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

"Radiographic exposure device" means any instrument containing a sealed source fastened or contained therein, in which the sealed source or shielding thereof may be moved or otherwise changed from a shielded to unshielded position for purposes of making a radiographic exposure (e.g., camera), or any other X-ray industrial system whereby a permanent or semipermanent image is recorded on an image receptor by action of ionizing radiation.

"Radiographic operations" means all activities associated with the presence of radioactive sources in a radiographic exposure device during use of the device or transport (except when being transported by a common or contract transport), to include surveys to confirm the adequacy of boundaries, setting up equipment and any activity inside restricted area boundaries.

"Radiographic personnel" means any radiographer or radiographer's assistant.

"Residential location" means any area where structures in which people lodge or live are located, and the grounds on which such structures are located including, but not limited to, houses, apartments, condominiums, and garages.

"Shielded position" means the location within the radiographic exposure device or source changer where the sealed source is secured and restricted from movement.

"Shielded-room radiography" means industrial radiography conducted in a room shielded so that radiation levels at every location on the exterior meet the limitations specified in 641—40.26(136C).

"Source assembly" means an assembly that consists of the sealed source and a connector that attaches the source to the control cable. The source assembly may also include a stop ball used to secure the source in the shielded position.

"Source changer" means a device designed and used for replacement of sealed sources in radiographic exposure devices, including those source changers also used for transporting and storage of sealed sources.

"Source container" means a shielded device in which sealed sources are secured, transported, and stored.

"Storage area" means any location, facility, or vehicle which is used to store, to transport, or to secure a radiographic exposure device, a storage container, or a sealed source when it is not in use and which is locked or has a physical barrier to prevent accidental exposure, tampering with, or unauthorized removal of the device, container, or source.

"Storage container" means a shielded device in which sealed sources are secured, transported, and stored.

"S-tube" means a tube through which the radioactive source travels when inside a radiographic exposure device.

"Temporary job site" means any location where industrial radiography is performed other than the location(s) listed in a specific license or certificate of registration.

"Trainee status card" means the document issued by the agency following completion of the requirements of 45.1(10)*"a"*(1) and (2).

"Transport container" means a package that is designed to provide radiation safety and security when sealed sources are transported and which meets all applicable requirements of the U.S. Department of Transportation.

"Underwater radiography" means industrial radiography performed when the radiographic exposure device and related equipment are beneath the surface of the water.

45.1(3) *Exemptions.*

a. Uses of certified and certifiable cabinet X-ray systems designed to exclude individuals are exempt from the requirements of this chapter, except for the requirements of 45.2(6)*"b"* and *"c."*

b. Industrial uses of lixiscopes are exempt from the requirements in this chapter.

c. Radiation machines determined by the agency to constitute a minimal threat to human health and safety in accordance with 641—subrule 38.3(1) are exempt from the rules in this chapter, except for the requirements of this subrule.

45.1(4) *Receipt, transfer, and disposal of sources of radiation.* Each licensee and registrant shall maintain records showing the receipt, transfer, and disposal of sources of radiation. These records shall include the date the individual made the record, the radionuclide, number of curies, and the make, model, and serial number of each source of radiation and device, as appropriate. Records shall be maintained for agency inspection until disposal is authorized by the agency.

45.1(5) *Radiation survey instruments.*

a. The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at each location where sources of radiation are present to make physical radiation surveys as required by this chapter and 641—subrule 40.36(1). Instrumentation required by this subrule shall have a range such that 2 millirems (0.02 millisievert) per hour through 1 rem (0.01 sievert) per hour can be measured.

b. Notwithstanding the requirements of 641—subrule 40.36(2) each radiation survey instrument shall be calibrated:

(1) At energies appropriate for use and at intervals not to exceed six months and after each instrument servicing;

(2) Such that accuracy within plus or minus 20 percent can be demonstrated;

(3) At 2 points located approximately 1/3 and 2/3 of full-scale on each scale for linear scale instruments; at midrange of each decade, and at 2 points of at least 1 decade for logarithmic scale instruments; and at 3 points between 2 and 1000 mrem per hour for digital instruments; and

(4) By a person licensed or registered by the agency, another agreement state, or the U.S. Nuclear Regulatory Commission to perform such service.

c. Records of these calibrations shall be maintained for three years after the calibration date for inspection by the agency.

d. Each radiation survey instrument shall be checked with a radiation source at the beginning of each day of use and at the beginning of each work shift to ensure it is operating properly.

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

45.1(7) *Utilization logs.*

a. Each licensee shall maintain current logs of the use of each sealed source. The logs shall include:

(1) A unique identification, which includes the make, model and serial number of each radiographic exposure device containing a sealed source, and each sealed source;

(2) The identity of the radiographer using the sealed source;

(3) Locations where each sealed source is used; and

(4) The date(s) each sealed source is removed from storage and returned to storage.

b. Each registrant shall maintain current logs of the use of each source of radiation. The logs shall include:

(1) A unique identification, which includes the make, model and serial number of each source of radiation;

(2) The identity of the radiographer using the source of radiation;

(3) The date(s) each source of radiation is energized or used and the number of exposures made.

c. Utilization logs may be kept on clear, legible records containing all the information required by 45.1(7)*"a"* or *"b."* Copies of utilization logs shall be maintained for agency inspection for three years from the date of the recorded event. The records shall be kept at the location specified by the license or certificate of registration.

45.1(8) *Inspection and maintenance.*

a. Each licensee or registrant shall perform visual and operability checks on survey meters, radiographic exposure devices, transport and storage containers, associated equipment and source changers before use on each day the equipment is to be used to ensure that the equipment is in good working condition, that the sources are adequately shielded, and that required labeling is present. Survey instrument operability must be performed using check sources or other appropriate means.

b. Each licensee or registrant shall conduct a program, at intervals not to exceed three months, or prior to the first use thereafter, of inspection and maintenance of radiation machines, radiographic exposure devices, transport and storage containers, source changers, survey instruments, and associated equipment to ensure proper functioning of components important to safety. All appropriate parts shall be maintained in accordance with manufacturer's specifications. Replacement components shall meet design specifications. This program shall cover, as a minimum, the items in Appendix B of this chapter.

c. Each licensee shall have a program and written procedures for the inspection and maintenance necessary to maintain the Type B packaging used to transport radioactive materials. The program must include procedures to ensure that Type B packages are shipped and maintained in accordance with the certificate of compliance or other approval.

d. If equipment problems are found, the equipment must be removed from service until repaired.

e. The record of equipment problems and of any maintenance performed under 45.1(8) must be retained for three years after the record is made. The record must include the date of check or inspection, name of inspector, equipment involved, any problems found, and what repair or maintenance, if any, was performed.

45.1(9) *Permanent radiographic installations.* Permanent radiographic installations having high radiation area entrance controls of the type described in 641—paragraphs 40.42(1)*"b"* and *"c"* shall also meet the following requirements:

a. Each entrance that is used for personnel access to the high radiation area shall have both visible and audible warning signals to warn of the presence of radiation. The visible signal shall be activated by radiation. The audible signal shall be activated when an attempt is made to enter the installation while the source is exposed.

b. The control device or alarm system shall be tested for proper operation at the beginning of each day of equipment use. If a control device or alarm system is operating improperly, it shall be immediately labeled as defective and repaired before industrial radiographic operations are resumed. Records of these tests shall be maintained for inspection by the agency for three years from the date of the event.

45.1(10) *Training and testing for radiographic personnel.*

a. Radiographer's assistant requirements. No licensee or registrant shall permit any individual to act as a radiographer's assistant, as defined in this chapter, until:

(1) It has been documented on the appropriate agency form or equivalent that such individual has received copies of and has demonstrated an understanding of:

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

2. The rules contained in this chapter and the applicable sections of 641—Chapters 38, 39, and 40;

3. The appropriate conditions of license(s) or certificate(s) of registration; and

4. The licensee's or registrant's operating and emergency procedures.

(2) The individual possesses a current agency-issued trainee status card issued after completion of 45.1(10)*"a"*(1). Trainee status will be granted only once for each individual and is valid for no longer than two years.

b. Radiographer requirements. No licensee or registrant shall permit any individual to act as a radiographer:

(1) Until it has been documented to the agency that such individual:

1. Has completed the requirements of 45.1(10)*"a"*(1);

2. Has completed on-the-job training as a radiographic trainee supervised by one or more radiographic trainers. The on-the-job training shall be documented on the appropriate agency form or equivalent and shall include a minimum of two months (320 hours) of active participation in the performance of industrial radiography utilizing radioactive material or one month (160 hours) of active participation in the performance of industrial radiography utilizing radiation machines, or both. Individuals performing industrial radiography utilizing radioactive materials and radiation machines must complete both segments of the on-the-job training (three months or 480 hours). Active participation does not include safety meetings or classroom training;

3. Has demonstrated competence in the use of sources of radiation, radiographic exposure devices, related handling tools, and radiation survey instruments which may be employed in industrial radiographic assignments;

(2) Unless the individual has successfully completed within the last five years the appropriate agency-administered examination prescribed in 45.1(10)*"f"*(2) or equivalent examination; and

(3) Unless the individual possesses a current I.D. card.

c. Radiographer trainer. No individual shall act as a radiographer trainer unless such individual:

(1) Has met the requirements of 45.1(10)*"a"*(1) and *"b"*;

(2) Has one year of documented experience as an industrial radiographer; and

(3) Is named on the specific license or certificate of registration issued by the agency and under which an individual is acting as a radiographer trainer, or

(4) Possesses a valid radiographer trainer card issued by the agency.

d. Radiation safety officer. The radiation safety officer shall ensure that radiation safety activities are being performed in accordance with approved procedures and regulatory requirements in the daily operation of the licensee's program.

(1) A radiation safety officer (RSO) shall be designated for every industrial radiography license and certificate of registration issued by the agency.

(2) The RSO's qualifications shall include:

1. Possession of a high school diploma or a certificate of high school equivalency based on the GED test;

2. Completion of the training and testing requirements of 45.1(10)*"a"*(1) and 45.1(10)*"b"*(1)"3," (2), and (3); and

3. Two years of documented radiation protection experience, including knowledge of industrial radiographic operations with at least 40 hours of active participation in industrial radiographic operations.

(3) The specific duties of the RSO include, but are not limited to, the following:

1. To establish and oversee operating, emergency, and ALARA procedures and to review them regularly to ensure that the procedures are current and conform with these rules;

2. To oversee and approve all phases of the training program for radiographic personnel so that appropriate and effective radiation protection practices are taught;

3. To ensure that required radiation surveys and leak tests are performed and documented in accordance with these rules, including any corrective measures when levels of radiation exceed established limits;

4. To ensure that personnel monitoring devices are calibrated and used properly by occupationally exposed personnel, that records are kept of the monitoring results, and that timely notifications are made as required by 641—Chapter 40;

5. To ensure that any required interlock switches and warning signals are functioning and that radiation signs, ropes, and barriers are properly posted and positioned;

6. To investigate and report to the agency each known or suspected case of radiation exposure to an individual or radiation level detected in excess of limits established by these rules and each theft or loss of source(s) of radiation, to determine the cause, and to take steps to prevent its recurrence;

7. To have a thorough knowledge of management policies and administrative procedures of the licensee or registrant;

8. To assume control and have the authority to institute corrective actions including shutdown of operations when necessary in emergency situations or unsafe conditions;

9. To maintain records as required by these rules (see Appendix C);

10. To ensure the proper storing, labeling, transport, and use of exposure devices and sources of radiation;

11. To ensure that quarterly inventory and inspection and maintenance programs are performed in accordance with 45.1(6), 45.1(8), 45.2(3), and 45.3(6)*"b"*; and

12. To ensure that personnel are complying with these rules, the conditions of the license or the registration, and the operating and emergency procedures of the licensee or registrant.

e. Training and testing records. Each licensee and registrant shall maintain, for agency inspection, training and testing records which demonstrate that the applicable requirements of 45.1(10)*"a"* and *"b"* are met for all industrial radiographic personnel. Records shall be maintained until disposal is authorized by the agency. The agency shall not release records for disposal unless the records have been maintained at least three years.

f. Applications and examinations.

(1) Application.

1. An application for taking the examination shall be on forms prescribed and furnished by the agency along with the fee required in 641—38.8(3).

2. An individual whose I.D. card has been suspended or revoked shall obtain prior approval from the agency to apply to take the examination.

(2) Examination. The examination shall be given for the purpose of determining the qualifications of applicants.

1. A written examination shall be held at such times and places as the agency shall determine. The scope of the examination and the methods of procedure, including determination of the passing score, shall be prescribed by the agency. The examination will emphasize the applicant's ability to safely use sources of radiation and related equipment and the applicant's knowledge of these rules.

2. A candidate failing an examination may apply for reexamination in accordance with 45.1(10)*"f"*(1) and will be reexamined. A candidate shall not retake the same version of the agency-administered examination.

3. The examination will be held at locations designated by the agency. The examination shall normally be offered quarterly. Dates, times, and locations of the examinations will be provided by the agency.

4. The examination will be in the English language.

5. To take the examination, an individual shall have a picture identification card (such as an Iowa driver's license) at the time of the examination.

6. Calculators will be permitted during the examination; however, calculators or computers with preprogrammed data or formulas, including exposure calculations, will not be permitted.

7. The examination will be a "closed book" examination.

8. Examination material shall be returned to the agency at the end of the examination. No photographic or other copying of examination questions or materials shall be permitted. Disclosure by any individual of the contents of any examination prior to the administration is prohibited.

9. Any individual observed by an agency proctor to be compromising the integrity of the examination shall be required to surrender the examination, the answer sheet, and any work paper. Such individual will not be allowed to complete the examination, will forfeit the examination fee, and will leave the examination site to avoid disturbing other examinees. Such individual may resubmit an application and an additional examination fee to take the examination not earlier than three months later.

10. The names and scores of individuals taking the examination shall be a public record.

g. Identification procedures.

(1) I.D. card.

1. An I.D. card shall be issued to each person who successfully completes the requirements of 45.1(10)*"b"* and the examination prescribed in 45.1(10)*"f"*(2) or an equivalent examination.

2. Each person's I.D. card shall contain the person's photograph.

3. The I.D. card remains the property of the state of Iowa and may be revoked or suspended under the provisions of 45.1(10)*"h."*

4. Any individual who wishes to replace the I.D. card shall submit to the agency a written request for a replacement I.D. card, stating the reason a replacement I.D. card is needed and the fee required in 641—subrule 38.8(3). The individual shall maintain in possession a copy of the request while performing industrial radiographic operations until a replacement I.D. card is received from the agency.

(2) Expiration of I.D. card. Each I.D. card expires at the end of the day, in the month and year stated on the I.D. card.

(3) Renewal of I.D. card.

1. Applications for examination to renew an I.D. card shall be filed in accordance with 45.1(10)*"f"*(1).

2. The examination for renewal of an I.D. card shall be administered in accordance with 45.1(10)*"f"*(2).

3. A renewed I.D. card shall be issued in accordance with 45.1(10)*"g"*(1).

h. Revocation or suspension of an I.D. card.

(1) Any radiographer who violates these rules may be required to show cause at a formal hearing why the I.D. card should not be revoked or suspended.

(2) When an agency order has been issued for an industrial radiographer to cease and desist from the use of radioactive material or revoking or suspending the I.D. card, the industrial radiographer shall surrender the I.D. card to the agency until such time as the order is changed or the suspension expires.

(3) An agency's inspector may, in certain instances, confiscate any radiographer's I.D. card on the spot while conducting an inspection or investigation. If the inspector determines that the activities being conducted by the radiographer are significant enough to be classified as severity I, II, or III, as specified in 641—38.5(136C), and after obtaining the approval of agency management, the inspector may take any radiographer's I.D. card. The agency will then issue a cease and desist order to the radiographer's employer, forward the I.D. card(s) to the issuing entity, and notify the U.S. Nuclear Regulatory Commission and other agreement states.

i. Exemptions. Any person using a source of radiation to determine the presence of explosives in a package or the authenticity of a piece of art is exempt from the provisions of 45.1(10)*"a"* to *"h."*

j. Reciprocity.

(1) Reciprocal recognition by the agency of an individual radiographer certification will be granted provided that:

1. The individual holds a valid certification in the appropriate category and class issued by a certifying entity as defined in 45.1(2).

2. The requirements and procedures of the certifying entity issuing the certification require the same or comparable certification standards as those required by 45.1(10)*"a"* through *"e"*; and

3. The individual submits a legible copy of the certification to the agency prior to entry into Iowa.

(2) Enforcement actions with the agency, another agreement state, or the U.S. Nuclear Regulatory Commission or any sanctions by an independent certifying entity may be considered when reviewing a request for reciprocal recognition from a licensee, registrant, or certified radiographer.

(3) Certified radiographers who are granted reciprocity by the agency shall maintain the certification upon which the reciprocal recognition was granted, or prior to the expiration of such certification, shall meet the requirements of 45.1(10)*"b."*

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

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

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

c. The agency may consider alternatives in those situations where the individual serves as both radiographer and RSO.

d. Records of audits shall be maintained by the licensee or registrant for agency inspection for three years from the date of the audit.

45.1(12) *Personnel monitoring control.*

a. The personnel monitoring program shall meet the applicable requirements of 641—Chapter 40.

b. When performing industrial radiographic operations:

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

(2) Pocket dosimeters or electronic personal dosimeters shall meet the criteria in ANSI N322-1977 and shall have a range of zero to at least 200 millirems. Electronic personal dosimeters may only be used in place of ion-chamber pocket dosimeters.

(3) Pocket dosimeters or electronic personal dosimeters shall be recharged at the start of each work shift.

(4) Pocket dosimeters or electronic personal dosimeters shall be read and exposures recorded at the beginning and at the end of each work shift, and before each recharging.

(5) If an individual's pocket dosimeter is discharged beyond its range (i.e., goes "off scale"), or if the electronic personal dosimeter reads greater than 200 millirem (2 millisievert), and the possibility of radiation exposure cannot be ruled out as the cause, industrial radiographic operations by that individual shall cease and the individual's film badge, OSL device, or TLD shall be within 24 hours sent for processing. The individual shall not return to work with sources of radiation until a determination of the radiation exposure has been made. This determination must be made by the RSO or the RSO's designee. The results of this determination must be included in the exposure records maintained in accordance with 641—Chapter 40.

(6) Each individual monitoring device shall be assigned to and worn by only one individual.

(7) Film badges, OSL devices and TLDs must be replaced at least monthly.

(8) If an individual monitoring device is lost or damaged, the worker shall cease work immediately until a replacement individual monitoring device is provided and the exposure is calculated for the time period from issuance to loss or damage of the individual monitoring device. The results of the calculated exposure and the time period for which the individual monitoring device was lost or damaged must be included in the records maintained in 45.1(12)*"c."*

c. Records of pocket dosimeter readings of personnel exposures and yearly operability checks required in 45.1(12)*"d"* shall be maintained for three years by the licensee or registrant for agency inspection. If the dosimeter readings were used to determine external radiation dose (i.e., no TLD or film badge exposure records exist), the records shall be maintained for three years after they are recorded. Records of estimates of exposures as a result of off-scale personal direct reading dosimeters, or lost or damaged film badges, OSLs, or TLDs, shall be maintained until the agency terminates the license.

d. Pocket dosimeters shall be checked for correct response to radiation at periods not to exceed one year. Acceptable dosimeters shall read within plus or minus 20 percent of the true radiation exposure. Records of this check shall be maintained for inspection by the agency for two years from the date of the event.

e. Reports received from the film badge, OSL device or TLD processor shall be kept for inspection by the agency until the agency authorizes disposition.

f. Each alarm ratemeter must:

(1) Be checked to ensure that the alarm functions properly (sounds) prior to use at the start of each shift. Records of alarm function checks shall be maintained for two years by the licensee or registrant for agency inspection;

(2) Be set to give an alarm signal at a preset dose rate of 500 mR/hr;

(3) Require special means to change the preset alarm function; and

(4) Be calibrated at periods not to exceed one year for correct response to radiation: Acceptable ratemeters must alarm within plus or minus 20 percent of the true radiation dose rate. Records of the alarming ratemeter calibrations shall be maintained for two years by the licensee or registrant for agency inspection.

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

a. The radiographer's physical presence at the site where the source(s) of radiation is being used;

b. The availability of the radiographer to give immediate assistance if required; and

c. The radiographer's direct observation of the trainee's performance of the operations referred to in this subrule.

45.1(14) *Access control.*

a. During each industrial radiographic operation, a radiographer shall maintain visual surveillance of the operation to protect against unauthorized entry into a restricted area, radiation area or high radiation area, except:

(1) Where the high radiation area is equipped with a control device or an alarm system as described in 641—subrule 40.42(1); or

(2) Where the high radiation area is locked to protect against unauthorized or accidental entry.

b. Radiographic exposure devices shall not be left unattended except when in storage or physically secured against unauthorized removal.

45.1(15) *Posting.*

a. Notwithstanding any provisions in 641—subrule 40.62(1) areas in which radiography is being performed shall be conspicuously posted as required by 641—subrules 40.61(1) and 40.61(2).

b. Whenever practicable, ropes or barriers shall be used in addition to appropriate signs to designate areas in accordance with 641—subrule 40.26(1) and to help prevent unauthorized entry.

c. During pipeline industrial radiography operations, sufficient radiation signs and other barriers shall be posted to prevent unmonitored individuals from entering the radiation area.

d. Notwithstanding the requirements of 45.1(15)*"a,"* a restricted area may be established in accordance with 641—subrule 40.26(1) and may be posted in accordance with 40.61(1) and 40.61(2), i.e., both signs may be posted at the same location at the boundary of the restricted area.

45.1(16) *Temporary job site requirements.*

a. Documents and records. Each licensee or registrant conducting industrial radiography at a temporary job site shall have the following records available at that site for inspection by the agency:

(1) Appropriate license or certificate of registration or equivalent document;

(2) The appropriate operating and emergency procedures;

(3) The applicable agency rules;

(4) Survey records required pursuant to 45.2(5)*"d"* and 45.3(7)*"j"* for the period of operation at the site;

(5) Daily pocket dosimeter records for the period of operation at the site;

(6) The daily alarming ratemeter records for the period of operation at the site; and

(7) The latest radiation survey instrument calibration and leak test records for specific devices and sealed sources in use at the site. Acceptable records include tags or labels which are affixed to the device or survey meter and decay charts for sources which have been manufactured within the last six months.

b. Reserved.

45.1(17) *Specific requirements for radiographic personnel performing industrial radiography.*

a. At a job site, the following shall be supplied by the licensee or registrant:

(1) At least one operable, calibrated radiation survey instrument;

(2) A current whole body personnel monitor (TLD, OSL device or film badge) for each individual;

(3) An operable, calibrated pocket dosimeter with a range of 0 to 200 milliroentgens (5.16×10^{-5} C/kg) for each worker; and

(4) An operable, calibrated alarm ratemeter for each worker; and

(5) The appropriate barrier ropes and signs.

b. Each radiographer at a job site shall possess a valid I.D. card.

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

d. Industrial radiographic operations shall not be performed if any of the items in 45.1(17)*"a," "b,"* and *"c"* are not available at the job site or are inoperable.

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

f. During an inspection by the agency, the agency inspector may terminate an operation if any of the items in 45.1(17)*"a"* are not available and operable or if the required number of radiographic personnel are not present. Operations shall not be resumed until such conditions are met.

45.1(18) *Notification of incidents.*

a. The agency shall be notified of thefts or losses of sources of radiation, overexposures, and excessive levels in accordance with 641—40.95(136C) and 40.97(136C).

b. Each licensee or registrant shall submit a written report within 30 days to the agency whenever one of the following events occurs:

(1) The source assembly cannot be returned to the fully shielded position and properly secured;

(2) The source assembly becomes disconnected from the drive cable;

(3) The failure of any component (critical to safe operation of the radiographic exposure device) to properly perform its intended function; or

(4) An indicator on a radiation-producing machine fails to show that radiation is being produced or an exposure switch fails to terminate production of radiation when turned to the off position.

c. The licensee or registrant shall include the following information in each report submitted in accordance with 45.1(18)*"b"*:

(1) A description of the equipment problem;

(2) Cause of each incident, if known;

(3) Manufacturer and model number of equipment involved in the incident;

(4) Location, time, and date of the incident;

(5) Actions taken to establish normal operations;

(6) Corrective actions taken or planned to prevent recurrence; and

(7) Names of personnel involved in the incident.

45.1(19) *Copies of operating and emergency procedures.* Each licensee or registrant shall maintain a copy of current operating and emergency procedures until the agency terminates the license. Superseded material must be retained for three years after the change is made.

641—45.2(136C) Radiation safety requirements for the use of radiation machines in industrial radiography.

45.2(1) *Locking of sources of radiation.* The control panel of each radiation machine shall be equipped with a locking device that will prevent the unauthorized use of an X-ray system or the accidental production of radiation. The radiation machine shall be kept locked and the key removed at all times except when under the direct visual surveillance of a radiographer.

45.2(2) *Permanent storage precautions.* Radiation machines shall be secured while in storage to prevent tampering or removal by unauthorized individuals.

45.2(3) *Requirements for radiation machines used in industrial radiographic operations.*

a. Equipment used in industrial radiographic operations involving radiation machines manufactured after January 1, 1992, shall be certified at the time of manufacture to meet the criteria set forth by ANSI N537-1976.

b. The registrant's name and city or town where the main business office is located shall be prominently displayed with a durable, clearly visible label(s) on all vehicles used to transport radiation machines for temporary job site use.

45.2(4) *Operating and emergency procedures.*

a. The registrant's operating and emergency procedures shall include instructions in at least the following:

(1) Operation and safety instruction on the radiation machine(s) to be used;

(2) Methods and occasions for conducting radiation surveys;

(3) Methods for controlling access to radiographic areas;

(4) Methods and occasions for locking and securing sources of radiation;

(2) The device must automatically secure the source assembly when it is cranked back into the fully shielded position within the device. This securing system may only be released by means of a deliberate operation on the exposure device;

(3) The outlet fittings, lock box, and drive cable fittings on each radiographic exposure device must be equipped with safety plugs or covers which must be installed during storage and transportation to protect the source assembly from water, mud, sand, or other foreign matter;

(4) Each sealed source or source assembly must have attached to it or engraved in it, a durable, legible, visible label with the words: "DANGER—RADIOACTIVE." The label must not interfere with safe operation of the exposure device or associated equipment;

(5) The guide tube must be able to withstand a crushing test that closely approximates the crushing forces that are likely to be encountered during use, and be able to withstand a kinking resistance test that closely approximates the kinking forces that are likely to be encountered during use;

(6) Guide tubes must be used when moving the source out of the device;

(7) An exposure head or similar device designed to prevent the source assembly from passing out of the end of the guide tube must be attached to the outermost end of the guide tube during radiographic operations;

(8) The guide tube exposure head connection must be able to withstand the tensile test for control units specified in ANSI N432-1980;

(9) Source changers must provide a system for ensuring that the source will not be accidentally withdrawn from the changer when connecting or disconnecting the drive cable to or from a source assembly.

d. All newly manufactured radiographic exposure devices and associated equipment acquired by licensees after January 10, 1992, must comply with the requirements of this subrule.

e. All radiographic exposure devices and associated equipment in use after January 10, 1996, must comply with the requirements of this subrule.

f. Notwithstanding the requirements of 45.3(4)*"a,"* equipment used in industrial radiographic operations need not comply with § 8.9.2(c) of the Endurance Test in American National Standards Institute N432-1980, if the prototype equipment has been tested using a torque value representative of the torque that an individual using the radiography equipment can realistically exert on the lever or crankshaft of the drive mechanism.

g. Engineering analysis may be submitted by an applicant or licensee to demonstrate the applicability of previously performed testing on similar individual radiography equipment components. Upon review, the agency may find this an acceptable alternative to actual testing of the component pursuant to the above-referenced standard.

45.3(5) *Leak testing, repair, tagging, opening, modification, and replacement of sealed sources.*

a. The replacement of any sealed source fastened to or contained in a radiographic exposure device and leak testing, repair, tagging, opening, or any other modification of any sealed source shall be performed only by persons specifically authorized to do so by the agency, the U.S. Nuclear Regulatory Commission, or an agreement state.

b. Leak testing.

(1) Each sealed source shall be tested for leakage at intervals not to exceed 6 months. In the absence of a certificate from a transferor indicating that a test has been made within the 6-month period prior to the transfer, the sealed source shall not be put into use until tested.

(2) Each exposure device using depleted uranium (DU) shielding and an S-tube configuration must be tested for DU contamination at intervals not to exceed 12 months. Should the leak test reveal that the S-tube is worn through, the device may not be used again. DU shielded devices do not have to be tested for DU contamination while in storage and not in use. Before using or transferring such a device, however, the device must be tested for DU contamination if the interval of storage exceeded 12 months.

c. The leak test shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of removable contamination on the sealed source. An acceptable leak test for sealed sources in the possession of a radiography licensee would be to test at the nearest accessible point to the sealed source storage position, or other appropriate measuring point, by a procedure to be approved pursuant to 641—subparagraph 39.4(27)*"e"*(5). Records of leak test results shall be kept in units of microcuries (becquerels) and maintained for inspection by the agency for three years after the next required leak test is performed or until the sealed source is transferred or disposed of.

d. Any test conducted pursuant to 45.3(5)*"b"* and *"c"* which reveals the presence of 0.005 microcurie (185 Bq) or more of removable radioactive material shall be considered evidence that the sealed source is leaking. The licensee shall immediately withdraw the equipment involved from use and shall cause it to be decontaminated and repaired or to be disposed of in accordance with rules of the agency. Within five days after obtaining results of the test, the licensee shall file a report with the agency describing the equipment involved, the test results, and the corrective action taken.

e. Each radiographic exposure device shall have permanently attached to it a durable label which has, as a minimum, the instruction: "Danger—Radioactive Material—Do Not Handle—Notify Civil Authorities if Found."

b. The licensee shall retain a copy of the written agreement for three years after the completion of the well-logging operation.

c. A licensee may apply, pursuant to 641—38.3(136C), for agency approval, on a case-by-case basis, of proposed procedures to abandon an irretrievable well-logging source in a manner not otherwise authorized in 45.6(26)*"a"*(5).

d. A written agreement between the licensee and the well owner or operator is not required if the licensee and the well owner or operator are part of the same corporate structure or otherwise similarly affiliated. However, the licensee shall still otherwise meet the requirements in 45.6(26)*"a"*(1) through (5).

45.6(5) *Limits on levels of radiation.* Sources of radiation shall be used, stored, and transported in such a manner that the transportation requirements of 641—39.5(136C) and the dose limitation requirements of 641—Chapter 40 are met.

45.6(6) *Storage precautions.*

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.

b. Sources of radiation shall be stored in a manner which will minimize danger from explosion or fire.

45.6(7) *Transport precautions.* Transport containers shall be physically secured to the transporting vehicle to prevent accidental loss, tampering, or unauthorized removal.

45.6(8) *Radiation survey instruments.*

a. The licensee or registrant shall maintain sufficient calibrated and operable radiation survey instruments at each field station to make physical radiation surveys as required by this subrule and by 641—40.36(136C). Instrumentation shall be capable of measuring 0.1 milliroentgen (25.8 nanocoulombs/kg) per hour through at least 50 milliroentgens (12.9 microcoulombs/kg) per hour.

b. Each radiation survey instrument shall be calibrated:

(1) At intervals not to exceed six months and after each instrument servicing;

(2) For linear scale instruments, at two points located approximately 1/3 and 2/3 of full-scale on each scale; for logarithmic scale instruments, at midrange of each decade, and at two points of at least one decade; and for digital instruments, at appropriate points; and

(3) So that accuracy within 20 percent of the true radiation level can be demonstrated on each scale.

c. Calibration records shall be maintained for a period of two years for inspection by the agency.

45.6(9) *Leak testing of sealed sources.*

a. Testing and record-keeping requirements. Each licensee using sealed sources of radioactive material shall have the sources tested for leakage periodically. Records of leak test results shall be kept in units of microcuries (Bq) and maintained for three years after the leak test is performed.

b. Method of testing. Tests for leakage shall be performed only by persons specifically authorized to perform such tests by the NRC, an agreement state, or a licensing state. The wipe of a sealed source must be performed using a leak test kit or method approved by the NRC, an agreement state, or a licensing state. The wipe sample must be taken from the nearest assessable point to the sealed source where contamination might accumulate. The test sample shall be analyzed for radioactive contamination, and the analysis shall be capable of detecting the presence of 0.005 microcurie (185 Bq) of radioactive material on the test sample.

c. Interval of testing.

(1) Each sealed source of radioactive material (except an energy compensation source (ECS)) shall be tested at intervals not to exceed six months. In the absence of a certificate from a transferor indicating that a test has been made six months prior to the transfer, the sealed source shall not be put into use until tested. If, for any reason, it is suspected that a sealed source may be leaking, it shall be removed from service immediately and tested for leakage as soon as practical.

(2) Each ECS that is not exempt from testing in accordance with 45.6(9)*"c"*(1) must be tested at intervals not to exceed three years. In the absence of a certificate from a transferor that a test has been made within the three years before the transfer, the ECS may not be used until tested.

d. Leaking or contaminated sources.

(1) If the test in 45.6(9)*"c"* reveals the presence of 0.005 microcurie (185 Bq) or more of removable radioactive material, the licensee shall immediately withdraw the source from use and shall cause it to be decontaminated, repaired, or disposed of by an NRC, agreement state, or licensing state licensee that is authorized to perform these functions. The licensee shall check the equipment associated with the leaking source for radioactive contamination and, if contaminated, have it decontaminated or disposed of by an NRC, agreement state, or licensing state licensee that is authorized to perform these functions.

(2) A report describing the equipment involved, the test results, any contamination which resulted from the leaking source, and the corrective action taken up to the time of the report shall be filed with the agency within five days of receiving the test results.

e. Exemptions. The following sources are exempted from the periodic leak test requirements of 45.6(9)*"a"* to *"d"*:

(1) Hydrogen-3 (tritium) sources;

(2) Sources of radioactive material with a half-life of 30 days or less;

(3) Sealed sources of radioactive material in gaseous form;

(4) Sources of beta- or gamma-emitting radioactive material with an activity of 100 microcuries (3.7 MBq) or less; and

(5) Sources of alpha- or neutron-emitting radioactive material with an activity of 10 microcuries (0.370 MBq) or less.

45.6(10) *Quarterly inventory.* Each licensee or registrant shall conduct a quarterly physical inventory to account for all sources of radiation. Records of inventories shall be maintained for two years from the date of the inventory for inspection by the agency and shall include the quantities and kinds of sources of radiation, the location where sources of radiation are assigned, the date of the inventory, and the name of the individual conducting the inventory.

45.6(11) *Utilization records.* Each licensee or registrant shall maintain current records, which shall be kept available for inspection by the agency for two years from the date of the recorded event, showing the following information for each source of radiation:

a. Make, model number, and a serial number or a description of each source of radiation used;

b. The identity of the well-logging supervisor or field unit to whom assigned;

c. Locations where used and dates of use; and

d. In the case of tracer materials and radioactive markers, the utilization record shall indicate the radionuclide and activity used in a particular well.

45.6(12) *Design, performance, and certification criteria for sealed sources used in well-logging operations.*

a. A licensee may use a sealed source for use in well-logging applications if:

(1) The sealed source is doubly encapsulated construction;

(2) The sealed source contains chemical and physical forms that are as insoluble and nondispersible as practical; and

(3) The sealed source meets the requirements of 45.6(12)*"b," "c,"* and *"d."*

b. For a sealed source manufactured on or before July 14, 1989, a licensee may use the sealed source for use in well-logging applications if it meets the requirements of USASI N5.10-1968, "Classification of Sealed Radioactive Sources," or the requirements in 45.6(12)*"c"* or *"d."*

c. For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for well-logging applications if it meets the oil-well-logging requirements of ANSI/HPS N43.6-1997, "Sealed Radioactive Sources—Classification."

d. For a sealed source manufactured after July 14, 1989, a licensee may use the sealed source for use in well-logging applications if the sealed source's prototype has been tested and found to maintain its integrity after each of the following tests.

(1) Temperature. The test source must be held at –40 degrees C for 20 minutes, 600 degrees C for one hour, and then be subject to a thermal shock test with a temperature drop from 600 degrees C within 15 seconds.

(2) Impact test. A 5 kg steel hammer, 2.5 cm in diameter, must be dropped from a height of 1 m onto the test source.

(3) Vibration test. The test source must be subject to a vibration from 25 Hz to 500 Hz at 5 g amplitude for 30 minutes.

(4) Puncture test. A one gram hammer and pin, 0.3 cm pin diameter, must be dropped from a height of 1 m onto the test source.

(5) Pressure test. The test source must be subject to an external pressure of 1.695×10^7 pascals (24,600 pounds per square inch absolute).

e. The requirements in 45.6(12)*"a," "b," "c,"* and *"d"* do not apply to sealed sources that contain licensed material in gaseous form.

f. The requirements of 45.6(12)*"a," "b," "c,"* and *"d"* do not apply to energy compensation sources (ECS). ECSs must be registered with the NRC, licensing state, or agreement state.

45.6(13) *Labeling.*

a. Each source, source holder, or logging tool containing radioactive material shall bear a durable, legible, and clearly visible marking or label, which has, as a minimum, the standard radiation caution symbol, without the conventional color requirement, and the following wording:

DANGER[1]
RADIOACTIVE

This labeling shall be on the smallest component transported as a separate piece of equipment.

b. Each transport container shall have permanently attached to it a durable, legible, and clearly visible label which has, as a minimum, the standard radiation caution symbol and the following wording:

DANGER[1]
RADIOACTIVE

NOTIFY CIVIL AUTHORITIES
[OR NAME OF COMPANY]

[1]or CAUTION

45.6(14) *Inspection and maintenance.*

a. Each licensee or registrant shall conduct, at intervals not to exceed six months, a program of inspection and maintenance of source holders, logging tools, source handling tools, storage containers, transport containers, and injection tools to ensure proper labeling and physical condition. Records of inspection and maintenance shall be maintained for a period of two years for inspection by the agency.

b. If any inspection conducted pursuant to 45.6(14)*"a"* reveals damage to labeling or components critical to radiation safety, the device shall be removed from service until repairs have been made.

c. If a sealed source is stuck in the source holder, the licensee shall not perform any operation, such as drilling, cutting, or chiseling, on the source holder unless the licensee is specifically approved by the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state to perform this operation.

d. The repair, opening, or modification of any sealed source shall be performed only by persons specifically authorized to do so by the agency, the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state.

45.6(15) *Training requirements.*

a. No licensee or registrant shall permit any individual to act as a logging supervisor as defined in this rule until such individual has:

(1) Received, in a course recognized by the agency, the U.S. Nuclear Regulatory Commission, an agreement state, or a licensing state, instruction in the subjects outlined in Appendix E of this chapter and demonstrated an understanding thereof;

(2) Read and received instruction in the rules contained in this chapter and the applicable sections of 641—Chapters 38, 39, and 40 or their equivalent, conditions of appropriate license or certificate of registration, and the licensee's or registrant's operating and emergency procedures, and demonstrated an understanding thereof; and

(3) Demonstrated competence to use sources of radiation, related handling tools, and radiation survey instruments which will be used on the job.

b. No licensee or registrant shall permit any individual to assist in the handling of sources of radiation until such individual has:

(1) Read or received instruction in the licensee's or registrant's operating and emergency procedures and demonstrated an understanding thereof; and

(2) Demonstrated competence to use, under the direct supervision of the logging supervisor, the sources of radiation, related handling tools, and radiation survey instruments which will be used on the job.

c. The licensee or registrant shall maintain employee training records for inspection by the agency for two years following termination of the individual's employment.

45.6(16) *Operating and emergency procedures.* Each licensee or registrant shall develop and follow written operating and emergency procedures that cover:

a. The handling and use of sources of radiation, including the use of sealed sources in wells without surface casing for protecting fresh water aquifers, if appropriate;

b. The use of remote handling tools for handling sealed sources and radioactive tracer material except low-activity calibration sources;

c. Methods and occasions for conducting radiation surveys, including surveys for detecting contamination, as required by 45.6(22);

d. Minimizing personnel exposure, including exposures from inhalation and ingestion of licensed tracer materials;

e. Methods and occasions for locking and securing stored licensed or registered materials;

f. Personnel monitoring and the use of personnel monitoring equipment;

g. Transportation of licensed or registered materials to field stations or temporary job sites, packaging of licensed or registered materials for transport in vehicles, placarding of vehicles when needed, and physically securing licensed materials in transport vehicles during transportation to prevent accidental loss, tampering, or unauthorized removal;

h. Picking up, receiving, and opening packages containing licensed or registered materials, in accordance with 641—40.65(136C);

i. For the use of tracers, decontamination of the environment, equipment, and personnel;

j. Maintenance of records generated by well logging personnel at temporary job sites;

k. The inspection and maintenance of sealed sources, source holders, logging tools, injection tools, source handling tools, storage containers, transport containers, and uranium sinker bars as required by 45.6(14);

l. Identifying and reporting defects and noncompliance;

m. Actions to be taken if a sealed source is lodged in a well;

n. Notifying proper persons in the event of an accident; and

o. Actions to be taken if a sealed source is ruptured that include actions to prevent the spread of contamination and minimize inhalation and ingestion of licensed materials and actions to obtain suitable radiation survey instruments as required in 45.6(8).

CHAPTER 45—APPENDIX B

GENERAL REQUIREMENTS FOR INSPECTION OF INDUSTRIAL RADIOGRAPHIC EQUIPMENT

I. Panoramic devices (devices in which the sealed source is physically removed from the shielded container during exposure) shall be inspected for:
   A. Radiographic exposure unit
      1. Abnormal surface radiation levels anywhere on camera, collimator, or guide tube;
      2. Condition of safety plugs;
      3. Proper operation of locking mechanism;
      4. Condition of pigtail connector;
      5. Condition of carrying device (straps, handle, etc.);
      6. Proper labeling.
   B. Source tube
      1. Rust, dirt, or sludge buildup inside the source tube;
      2. Condition of source tube connector;
      3. Condition of source stop;
      4. Kinks or damage that could prevent proper operation;
      5. Presence of radioactive contamination.
   C. Control cables and drive mechanism
      1. Proper drive mechanism with camera, as appropriate;
      2. Changes in general operating characteristics;
      3. Condition of connector on drive cable;
      4. Drive cable flexibility, wear, and rust;
      5. Excessive wear or damage to crank assembly parts;
      6. Damage to drive cable conduit that could prevent the cable from moving easily;
      7. Connection of the control cable connector with the pigtail connector for proper mating;
      8. Proper operation of source position indicator, if applicable;
      9. Presence of radioactive contamination.

II. Directional beam devices shall be inspected for:
   A. Abnormal surface radiation;
   B. Changes in the general operating characteristics of the unit;
   C. Proper operation of shutter mechanism;
   D. Chafing or binding of shutter mechanism;
   E. Damage to the device that might impair its operation;
   F. Proper operation of locking mechanism;
   G. Proper drive mechanism with camera, as appropriate;
   H. Condition of carrying device (strap, handle, etc.);
   I. Proper labeling.

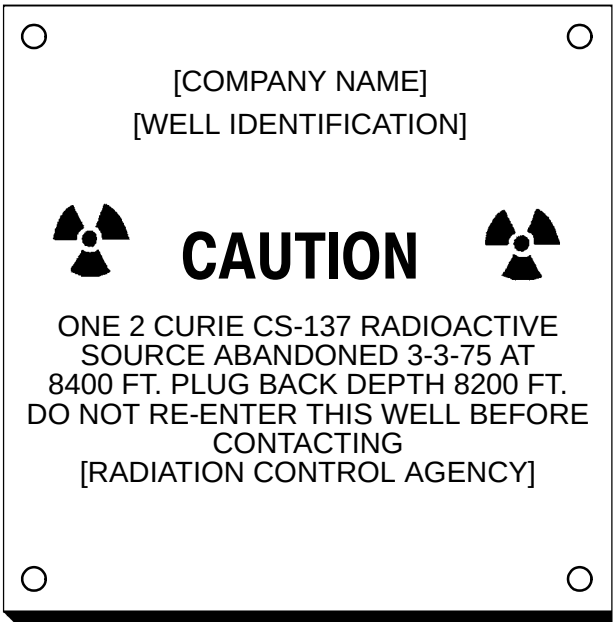
III. X-ray equipment shall be inspected for:
   A. Change in the general operating characteristics of the unit;
   B. Wear of electrical cables and connectors;
   C. Proper labeling of console;
   D. Proper console with machine, as appropriate;
   E. Proper operation of locking mechanism;
   F. Timer run-down cutoff;
   G. Damage to tube head housing that might result in excessive radiation levels.

CHAPTER 45—APPENDIX C

TIME REQUIREMENTS FOR RECORD KEEPING

Specific Section	Name of Record	Time Interval Required for Record Keeping
45.1(4)	Receipt, transfer and disposal.	Until disposal is authorized by the agency.
45.1(5)	Survey instrument calibrations.	3 years.
45.3(5)	Leak tests.	3 years.
45.1(6)	Quarterly inventory.	3 years.
45.1(7)	Utilization logs.	3 years.
45.1(8)	Quarterly inspection and maintenance.	3 years.
45.1(9)	High radiation area control devices or alarm systems.	Until disposal is authorized by the agency.
45.1(10)	Training and testing records.	3 years.
45.1(12)	Pocket dosimeter readings.	3 years.
	Pocket dosimeter calibrations.	2 years.
	Film badge, OSL device, or TLD reports.	Until disposal is authorized by the agency.
	Alarming ratemeter calibrations.	2 years.
	Alarming ratemeter functions.	2 years.
45.1(19)	Current operating and emergency procedures.	Until the license is terminated.
	Superseded material.	3 years after change.
40.81(1)	Internal audit program.	3 years.
45.1(11)	Radiographer audits.	3 years.
45.2(5) and 45.3(7)	Radiation surveys.	2 years or until disposal is authorized by the agency if a survey was used to determine an individual's exposure.
45.1(16)	Records at temporary job sites.	During temporary job site operations.
45.2(6) and 45.3(8)	Annual evaluation of enclosed X-ray systems.	2 years.
45.1(9)	Tests of Chapter 45 high radiation control devices and alarm systems.	Until disposal is authorized by the agency.
45.2(6)	Evaluation of certified cabinet X-ray systems.	2 years.

CHAPTER 45—APPENDIX F
EXAMPLE OF PLAQUE FOR IDENTIFYING WELLS CONTAINING SEALED SOURCES CONTAINING RADIOACTIVE MATERIAL ABANDONED DOWNHOLE



The size of the plaque should be convenient for use on active or inactive wells, e.g., a 7-inch square. Letter size of the word "CAUTION" should be approximately twice the letter size of the rest of the information, e.g., ½-inch and ¼-inch letter size, respectively.

These rules are intended to implement Iowa Code chapters 136B and 136C.

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CHAPTER 46
MINIMUM REQUIREMENTS FOR TANNING FACILITIES

641—46.1(136D) Purpose and scope. This chapter provides for the permitting and regulation of tanning facilities and devices used for the purpose of tanning human skin through the application of ultraviolet radiation. This includes, but is not limited to, public and private businesses, hotels, motels, apartments, condominiums, and health and country clubs.

All references to Code of Federal Regulations (CFR) in this chapter are those in effect as of May 5, 2004.

These rules stipulate minimum safety requirements relating to the operation of tanning devices; procedures for obtaining a permit; qualifications for tanning facility operators; and procedures for health departments to provide for the inspection of tanning facilities and enforcement of these rules. Tanning facilities which are in compliance with these rules are not relieved from the requirements of any other federal and state regulations or local ordinances.

641—46.2(136D) Definitions.

"Board of health" means a county, city, or district board of health that has a 28E agreement with the Iowa department of public health to perform inspections under this chapter.

"Cleansing" means to remove soil, dirt, oils or other residues from the surface of the tanning unit which may come into contact with the skin.

"Cleansing agent" means a substance capable of producing the effect of "cleansing." These agents shall not adversely affect the equipment or the health of the consumer and shall be acceptable to the department or board of health.

"Consumer" means any member of the public who is provided access to a tanning facility in exchange for a fee or other compensation, or any individual who, in exchange for a fee or other compensation, is afforded use of a tanning facility as a condition or benefit of membership or access.

"Department" means the Iowa department of public health.

"Director" means the director of public health or the director's designee.

"Exposure position" means any position, distance, orientation, or location relative to the radiation surfaces of a tanning device at which the user is intended to be exposed to ultraviolet radiation from the product, as recommended by the manufacturer.

"Formal training" means a course of instruction approved by the department for operators of tanning facilities.

"Health care professional" means an individual, licensed by the state of Iowa, who has received formal medical training in the use of phototherapy.

"Inspection" means an official examination or observation including but not limited to tests, surveys, and monitoring to determine compliance with rules, orders, requirements, and conditions of these rules.

"Manufacturer's recommendations" means written guidelines established by a manufacturer and approved by the U.S. Food and Drug Administration for the installation and operation of the manufacturer's equipment.

"Operator" means an individual designated to control operation of the tanning facility and to instruct and assist the consumer in the proper operation of the tanning devices.

"Permit" or *"permit to operate"* means a document issued by the department which authorizes a person to operate a tanning facility in Iowa.

"Person" means any individual, corporation, partnership, firm, association, trust, estate, public or private institution, group, agency, political subdivision of this state, any other state or political subdivision or agency thereof, and any legal successor, representative, agent, or agency of the foregoing, but shall not include federal government agencies.

"Phototherapy device" means a piece of equipment that emits ultraviolet radiation and is used by a health care professional in the treatment of disease.

"Tanning device" means any equipment that emits electromagnetic radiation with wavelengths in air between 200 and 400 nanometers and that is used for tanning of human skin, such as sunlamps, tanning booths, or tanning beds. The terms also include any accompanying equipment such as protective eyewear, timers, and handrails.

"Tanning facility" means a place that provides access to tanning devices for compensation.

"Ultraviolet radiation" means electromagnetic radiation with wavelengths in air between 200 and 400 nanometers.

641—46.3(136D) Exemptions. The department may, upon application or upon its own initiative, grant exemptions from the requirements of these rules as long as it will not result in undue hazard to public health and safety. The following categories of devices are exempt from the provisions of this chapter:

46.3(1) *Other purposes.* Devices intended for purposes other than the deliberate exposure of human skin to ultraviolet radiation which produce or emit ultraviolet radiation incidental to their proper operation.

46.3(2) *Personal use.* Tanning devices which are limited exclusively to personal use by an individual and this individual's immediate family. Multiple ownership of the device by persons for personal use only does not qualify it for the "personal use only" exemption.

46.3(3) *Phototherapy devices.* Phototherapy devices used by a properly trained health care professional in the treatment of disease.

641—46.4(136D) Permits and fees.

46.4(1) *Permit to operate.* No tanning facility shall be operated in the state without having a permit to operate issued by the department.

46.4(2) *Application requirements for permit.* Each person acquiring or establishing a tanning facility shall:

a. Apply for a permit prior to beginning operation. The application shall be completed on forms provided by the department or board of health and shall contain all information required by the form and accompanying instructions. A nonrefundable application fee of $5 shall be remitted with the application.

b. A $15 returned check fee will be charged for each check returned for insufficient funds.

c. The permit holder shall notify the department in writing within 30 days of any changes, additions, or deletions to the initial or renewal application as appropriate. This request does not apply to changes involving replacement of components in tanning equipment.

46.4(3) *Expiration of permit.* Except as provided in 46.4(4)*"b,"* each permit shall expire at the end of the specified day in the month and year stated therein.

i. The operator shall limit the exposure of the consumer to the maximum exposure frequency and session duration recommended by the manufacturer.

j. When a tanning device is being used, no other person shall be allowed to remain in the tanning device area.

k. No person or facility shall advertise or promote tanning packages labeled as "unlimited" unless tanning frequency limits set by the manufacturer are included in advertisements.

46.5(10) Training of operators.

a. No individual shall begin functioning as an operator unless the individual has satisfactorily completed a training program. Training shall include but not be limited to:

(1) The requirements of this chapter;

(2) Procedures for correct operation of the tanning facility and tanning devices;

(3) The determination of skin type of consumers and appropriate determination of duration of exposure to tanning devices;

(4) Recognition of reaction or overexposure;

(5) Manufacturer's procedures for operation and maintenance of tanning devices;

b. Owners and managers must complete formal training approved by the department. All owners and managers trained after December 31, 1997, must satisfactorily pass a certification examination approved by the department before operating a tanning facility or training employees.

c. For operators trained after December 31, 1997. Owners and managers are responsible to train operators in the above topics and to provide review as necessary. Training programs shall be approved by the department and include final testing. Operators shall be questioned during inspections as to the level of their understanding and competency in operating the tanning device.

d. Proof of training for both owner/managers and employees must be maintained in the tanning facility and available for inspection. For operators trained after December 31, 1997, the employee record shall be the original test which bears the signature of the employee, the date, and a statement signifying that all answers have been completed by the employee and without prior knowledge of the scoring key.

e. Operators shall be at least 16 years of age.

f. Operators shall complete the required training and testing every five years.

46.5(11) Promotional materials. A tanning facility shall not claim, or distribute promotional materials that claim, that using a tanning device is safe or free from risk or that the use of the device will result in medical or health benefits. The only claim that may be made is that the device is for cosmetic use only.

641—46.6(136D) Inspections, violations and injunctions.

46.6(1) The director or an authorized agent shall have access at all reasonable times to any tanning facility to inspect the facility to determine if this chapter is being violated.

46.6(2) A person who operates or uses a tanning device or tanning facility in violation of this chapter or of any rule adopted pursuant to this chapter is guilty of a simple misdemeanor.

46.6(3) If the director finds that a person has violated, or is violating or threatening to violate, this chapter and that the violation creates an immediate threat to the health and safety of the public, the director may petition the district court for a temporary restraining order to restrain the violation or threat of violation.

46.6(4) On application for injunctive relief and a finding that a person is violating or threatening to violate this chapter, the district court shall grant any injunctive relief warranted by the facts.

46.6(5) Enforcement.

a. The department shall take the following steps or use county ordinances or any other applicable ordinances, resolutions, rules or regulations when enforcement of these rules is necessary.

(1) Cite each section of the Iowa Code or rules violated.

(2) Specify the manner in which the owner or operator failed to comply.

(3) Specify the steps required for correcting the violation.

(4) Request a corrective action plan, including a time schedule for completion of the plan.

(5) Set a reasonable time limit, not to exceed 30 days from the receipt of the notice, within which the permit holder must respond.

b. The department shall review the corrective action plan and approve it or require that it be modified.

c. In cases where the permit holder fails to comply with conditions of the written notice, the department shall send a regulatory letter, via certified mail, advising the permit holder that unless action is taken within five days of receipt, the case shall be turned over to the city/county attorney for court action.

These rules are intended to implement Iowa Code chapter 136D.

Appendix 1
POTENTIAL PHOTOSENSITIZING AGENTS

1. Not all individuals who use or take these agents will experience a photosensitive reaction or the same degree of photosensitive reaction. An individual who experiences a reaction on one occasion will not necessarily experience it again or every time.
2. Names of agents should be considered only as examples. They do not represent all the names under which a product may be sold. A more complete list is available from the facility operator.
3. If you are using an agent in any of these classes, you should reduce UV exposure even if your particular medication is not listed.

Acne treatment (Retinoic acid, Retin-A) Psoralens (5-Methoxypsoralen, 8-Methoxypsoralen, 4,5,8-trimethyl-psoralen)

Antibacterials (deodorant bar soaps, antiseptics, cosmetics, halogenated carbanilides, halogenated phenols, halogenated salicylanilides, bithionol, chlorhexidine, hexachlorophene)

Antibiotics, anti-infectives (Tetracyclines)

Anticonvulsants (carbamazepine, trimethadione, promethazine)

Antidepressants (amitriptyline, Desipramine, Imipramine, Nortiptyline, Protiptyline), Tranquilizers, anti-emetics (Phenothiazines)

Antidiabetics (glucose-lowering agents) (sulfonylureas, oral antidiabetics, hypoglycemics)

Antihistamines (diphenhydramine, promethazine, triprolidine, chlorpheniramine)

Anti-inflammatory (Piroxicam), Non-steroidal anti-inflammatory drugs (Ibuprofen, Naproxen, Piroxicam)

Antimicrobials (griseofulvin), Sulfonamides (“Sulfa drugs,” antimicrobials, anti-infectives)

Atropine-like drugs (anticholinergics, antiparkinsonism drugs, antispasmodics, synthetic muscle relaxants)

Coal tar and derivatives (Denorex, Tegrin, petroleum products used for psoriasis and chronic eczema and in shampoos)

Contraceptives, oral and estrogens (birth control pills, estrogens, progesterones)

Dyes (used in cosmetic ingredients, acridine, anthracene, cosin (lipstick), erythrosine, fluorescein, methyl violet, methylene blue, rose bengal)

Perfumes and toilet articles (musk ambrette, oil of bergamot, oil of cedar, oil of citron, oil of lavender, oil of lemon, oil of lime, oil of rosemary, oil of sandalwood)

Thiazide diuretics (“water pills”)

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 white or light brown.
V	Rarely burns, tans easily and substantially. Always exhibits IPD reaction.	Brown-skinned persons (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 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

These rules are intended to implement Iowa Code chapters 136B, 136C, and 136D.

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CHAPTER 69
RENOVATION, REMODELING, AND REPAINTING— LEAD HAZARD NOTIFICATION PROCESS

641—69.1(135) Applicability. This chapter applies to all persons who perform renovation, remodeling, and repainting for compensation in target housing.

641—69.2(135) Definitions.

"Arithmetic mean" means the algebraic sum of data values divided by the number of data values. For example, the sum of the concentration of lead in several soil samples divided by the number of samples is the arithmetic mean.

"Certificate of mailing" means certified mail with return receipt or its equivalent.

"Chewable surface" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew.

"Common area" means a portion of the building that is generally accessible to all occupants. This includes, but is not limited to, hallways, stairways, laundry and recreational rooms, playgrounds, community centers, garages, and boundary fences.

"Components" means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, countertops, and air conditioners; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, latticework, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casing, sashes and wells, and air conditioners.

"Department" means the department of public health.

"Dripline" means the area within three feet surrounding the perimeter of a building.

"Dust-lead hazard" means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead equal to or exceeding 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is equal to or greater than 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property.

"Dwelling unit" means a single, unified combination of rooms designed for use as a dwelling by one family.

"Emergency renovation, remodeling, and repainting" means renovation, remodeling, and repainting activities necessitated by nonroutine failures of equipment that were not planned but resulted from a sudden, unexpected event that, if not immediately attended to, presents a safety or public health hazard or threatens equipment or property with significant damage.

"Friction surface" means an interior or exterior surface that is subject to abrasion or friction including, but not limited to, certain window, floor, and stair surfaces.

"Hazardous lead-based paint" means lead-based paint that is present on a friction surface where there is evidence of abrasion or where the dust-lead level on the nearest horizontal surface underneath the friction surface (e.g., the windowsill or floor) is equal to or greater than the dust-lead hazard level, lead-based paint that is present on an impact surface that is damaged or otherwise deteriorated from impact, lead-based paint that is present on a chewable surface, or any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

"Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

"Lead-based paint" means paint or other surface coatings that contain lead equal to or in excess of 1.0 milligram per square centimeter or more than 0.5 percent by weight.

"Lead-based paint hazard" means hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard.

"Living area" means any area of a residential dwelling used by at least one child six years of age or less including, but not limited to, living rooms, kitchen areas, dens, playrooms, and children's bedrooms.

"Mid-yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or is intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Play area" means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, factors including the following: the presence of play equipment (sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, caregivers, or property owners.

"Regulated entity" means any individual or company that is regulated by the department by virtue of these rules, the Iowa Code, or other official regulatory promulgation.

"Renovation, remodeling, repainting" means modifying any existing structure or portion of a structure where painted surfaces are disturbed, unless the activity fits the criteria of lead abatement as defined in 641—70.2(135) and is performed by a certified lead abatement contractor as defined in 641—70.2(135). This includes, but is not limited to, removing walls, ceilings, and other painted building components; window replacement; floor refinishing; and sanding, scraping, stripping, water blasting, or otherwise removing paint.

"Residential dwelling" means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures including, but not limited to, garages, farm buildings, and fences, or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or part, as the home or residence of one or more persons.

"Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead in excess of 400 parts per million for the dripline, mid-yard, and play areas. A soil-lead hazard is present in a dripline, mid-yard, or play area when the soil-lead concentration from a composite sample of bare soil is equal to or greater than 400 parts per million.

"Target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities, unless at least one child under the age of six years resides or is expected to reside in the housing, and housing which does not contain a bedroom.

641—69.3(135) Notification required. Beginning on June 1, 1999, individuals who perform renovation, remodeling, and repainting of target housing for compensation, except for emergency renovation, remodeling, and repainting of target housing, and except for minor repair and maintenance activities that disrupt less than 0.1 square feet or less of painted surface, must do the following no more than 60 days prior to commencing the work:

69.3(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, to the owner and adult occupant of each dwelling unit where renovation, remodeling, and repainting will be performed.

69.3(2) Obtain a signed, dated acknowledgment from the owner and known adult occupant of each dwelling unit where renovation, remodeling, and repainting will be performed affirming that they have received the pamphlet prior to the start of renovation, remodeling, or repainting and are aware of the potential health hazards from remodeling, renovating, or repainting housing containing lead-based paint.

a. The acknowledgment shall include the owner's and occupant's names and the address of the residential dwelling undergoing renovation, remodeling, or repainting.

b. The acknowledgment shall include the following language:

> I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, Protect Your Family from Lead in Your Home, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting housing containing lead-based paint or lead-based paint hazards.

c. Below the statement, the acknowledgment shall require the signature of the owner and occupant, along with their dates of signature.

d. If a signature cannot be obtained from an adult occupant, the individual must certify in writing that the pamphlet has been delivered to the dwelling and that a written acknowledgment could not be obtained from an adult occupant. Such certification must include the address of the unit to be remodeled, renovated, or repainted, the date and method of delivery of the pamphlet, the name of the person delivering the pamphlet, the reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the person conducting the renovating, remodeling, or repainting, and the date of signature.

e. The type shall be clear and legible.

f. The acknowledgment may be included as a separate sheet or as a part of any written contract or service agreement. The acknowledgment must be completed prior to commencing the work.

g. If the parties use a written contract or agreement which is written in a language other than English, the acknowledgment text shall be written in the same language as the text of the contract or agreement.

69.3(3) In lieu of delivering the pamphlet and written acknowledgment, the person conducting the renovating, remodeling, or repainting may obtain a certificate of mailing the pamphlet and written acknowledgment at least seven days prior to beginning the work.

69.3(4) If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, and repainting change after the initial notification has been conducted, the individual conducting the renovation, remodeling, and repainting shall provide further notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the individual conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

641—69.4(135) Notification required in multifamily housing. Beginning on June 1, 1999, individuals who perform renovation, remodeling, and repainting of common areas for compensation, except for emergency renovation, remodeling, and repainting of target housing, and except for minor repair and maintenance activities that disrupt less than 0.1 square feet or less of painted surface, must do the following no more than 60 days prior to commencing the work:

69.4(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, to the owner of the multifamily target housing where renovation, remodeling, and repainting will be performed.

69.4(2) Obtain a signed, dated acknowledgment from the owner of the multifamily target housing where renovation, remodeling, and repainting will be performed affirming that the owner has received the pamphlet prior to the start of renovation, remodeling, or repainting and is aware of the potential health hazards from remodeling, renovating, or repainting housing containing lead-based paint.

a. The acknowledgment shall include the owner's name and the address of the multifamily dwelling undergoing renovation, remodeling, or repainting.

b. The acknowledgment shall include the following language:

> I have received the pamphlet entitled Lead Poisoning: How to Protect Iowa Families or the federal pamphlet, Protect Your Family from Lead in Your Home, prior to the start of renovation, remodeling, or repainting and am aware of the potential health risk associated with remodeling, renovating, or repainting housing containing lead-based paint or lead-based paint hazards.

c. Below the statement, the acknowledgment shall require the signature of the owner, along with the date of signature.

d. The type shall be clear and legible.

e. The acknowledgment may be included as a separate sheet or as a part of any written contract or service agreement. The acknowledgment must be completed prior to commencing the work.

f. If the parties use a written contract or agreement which is written in a language other than English, the acknowledgment text shall be written in the same language as the text of the contract or agreement.

g. Notify each occupant of the multifamily housing, in writing, of the intended remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each occupant of the target housing. The notice shall describe:

(1) The general nature and location of the planned renovation, remodeling, and repainting activity.

(2) The expected starting and ending dates of the planned renovation, remodeling, and repainting activity.

(3) A statement of how the owners and occupants can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, at no charge from the individual conducting the renovation, remodeling, and repainting activity.

h. These activities shall be conducted by the individual planning to perform the renovation, remodeling, and repainting, or by the owner on behalf of this individual.

i. The individual planning to perform the renovation, remodeling, and repainting must prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation, remodeling, and repainting, and to provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, at no charge upon request. Regardless of who performs the notification activities required in this subrule, the individual planning to conduct the renovation, remodeling, and repainting shall be responsible for ensuring compliance with this subrule and shall be liable for any failures to comply with the notification requirements in this subrule.

69.4(3) In lieu of delivering the pamphlet and written acknowledgment to the owner, the person conducting the renovating, remodeling, or repainting may obtain a certificate of mailing the pamphlet and written acknowledgment at least seven days prior to beginning the work.

69.4(4) If the general nature, location, and expected starting and ending dates of the planned renovation, remodeling, and repainting change after the initial notification has been conducted, the individual conducting the renovation, remodeling, and repainting shall provide further notification to the owners and occupants providing revised information on the ongoing or planned activities. This subsequent notification must be provided before the individual conducting the renovation, remodeling, or repainting initiates work beyond that which was described in the original notice.

641—69.5(135) Emergency renovation, remodeling, and repainting. Beginning on June 1, 1999, individuals who perform emergency renovation, remodeling, and repainting of target housing for compensation, except for minor repair and maintenance activities that disrupt less than 0.1 square feet or less of painted surface, must do the following:

69.5(1) Provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, to the owner of the target housing where renovation, remodeling, and repainting are performed.

69.5(2) Notify each owner and occupant of the target housing, in writing, of the remodeling, repainting, or renovation, and make the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, available upon request. At a minimum, this notification shall be accomplished by distributing written notice to each owner and occupant of the target housing. The notice shall describe:

a. The general nature and location of the renovation, remodeling, and repainting activity.

b. The starting and ending dates of the renovation, remodeling, and repainting activity.

c. A statement of how the owners and occupants can obtain the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, at no charge from the individual conducting the renovation, remodeling, and repainting activity.

69.5(3) These activities shall be conducted by the individual performing the renovation, remodeling, and repainting, or by the owner on behalf of this individual. The individual planning to perform the renovation, remodeling, and repainting must prepare, sign, and date a statement describing the steps performed to notify all occupants of the intended renovation, remodeling, and repainting, and to provide the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, at no charge upon request. Regardless of who performs the notification activities required in this subrule, the individual conducting the renovation, remodeling, and repainting shall be responsible for ensuring compliance with this rule and shall be liable for any failures to comply with the notification requirements in this rule.

641—69.6(135) Certification of attempted delivery. When an adult occupant is unavailable for signature or refuses to sign the acknowledgment of receipt of the pamphlet, the individual conducting the renovating, remodeling, or repainting is permitted by subrule 69.3(2) to certify delivery for each instance. The certification shall include the address of the unit undergoing renovation, remodeling, or repainting, the date and method of delivery of the pamphlet, names of the persons delivering the pamphlet, reason for lack of acknowledgment (e.g., occupant refuses to sign, no adult occupant available), the signature of the individual conducting the renovation, remodeling, and repainting, and the date of signature.

69.6(1) *Unavailable for signature.*

a. If an adult occupant is unavailable for signature, the certification shall contain the following language:

> I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, to the unit listed below at the dates and times indicated, and that an adult occupant was unavailable to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit with the occupant.

b. Below the statement, the certification shall require the printed name and signature of the individual conducting the renovating, remodeling, or repainting, the address of the unit, the attempted delivery dates and times, and the date of signature.

69.6(2) *Refused to sign.*

a. If the occupant refuses to sign the acknowledgment, the certification shall contain the following language:

> I certify that I have made a good-faith effort to deliver the pamphlet, Lead Poisoning: How to Protect Iowa Families, or the federal pamphlet, Protect Your Family from Lead in Your Home, to the unit listed below at the dates and times indicated, and that the occupant refused to sign the acknowledgment. I further certify that I have left a copy of the pamphlet at the unit.

b. Below the statement, the certification shall require the printed name and signature of the individual conducting the renovating, remodeling, or repainting, the address of the unit, the attempted delivery dates and times, the location where the pamphlet was left at the unit (e.g., taped to the door, slipped under the door), and the date of signature.

641—69.7(135) Exemption. Renovation, remodeling, and repainting in target housing in which a lead inspector or elevated blood lead (EBL) inspector certified pursuant to 641—Chapter 70 has made a written determination that the components affected by the renovation are free of lead-based paint and where the person conducting the renovation, remodeling, or repainting has obtained a copy of the written determination are exempt from the provisions of 641—Chapter 69.

641—69.8(135) Record-keeping requirements. Beginning on June 1, 1999, individuals who conduct renovation, remodeling, and repainting for compensation in target housing shall retain all records necessary to demonstrate compliance with this chapter for a minimum of three years following completion of the renovation, remodeling, and repainting. The records shall include:

69.8(1) The address or location of the target housing where remodeling, renovation, or repainting was conducted.

69.8(2) A list of all known occupants of the dwelling units where renovation, remodeling, or repainting was conducted at the commencement of the work.

69.8(3) Copies of signed, dated acknowledgments as required by subrule 69.3(2) from each owner and occupant of a dwelling unit where renovation, remodeling, or repainting was conducted.

69.8(4) Copies of signed, dated acknowledgments as required by subrule 69.4(2) from each owner of multifamily target housing where renovation, remodeling, or repainting was conducted in common areas.

69.8(5) Copies of all signed, dated statements of notification, as well as copies of all notification materials to all owners and occupants and acknowledgments as required by subrule 69.4(2) from each owner and occupant of multifamily target housing where renovation, remodeling, or repainting was conducted in common areas.

69.8(6) Reports showing that a lead inspector or elevated blood level (EBL) inspector certified pursuant to 641—Chapter 70 has made a written determination that the components affected by the renovation are free of lead-based paint.

69.8(7) Certifications of attempted delivery as described in 641—69.6(135).

69.8(8) Certificates of mailing as described in subrules 69.3(3) and 69.4(3).

641—69.9(135) Compliance inspections.

69.9(1) The department may enter the place of business of an individual who conducts renovation, remodeling, and repainting for the purpose of enforcing the notification required by this chapter.

69.9(2) Rescinded IAB 3/31/04, effective 5/5/04.

641—69.10(135) Enforcement.

69.10(1) The department may impose a civil penalty pursuant to Iowa Code section 135.105C and this rule or may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that a person has committed any of the following acts:

a. Failed or refused to comply with any requirements of this chapter.

b. Failed or refused to establish, maintain, provide, copy, or permit access to records or reports as required by this chapter.

c. Failed or refused to permit entry or inspection as described in subrule 69.9(1).

d. Falsified reports and records required by this chapter.

e. Accepted any fee by fraud or misrepresentation.

f. Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.

g. Failed to respond within 30 days of receipt of communication sent by the department by registered or certified mail.

h. Engaged in any conduct that subverts or attempts to subvert a department investigation.

i. Failed to comply with a subpoena issued by the department or failed to cooperate with a department investigation.

j. Failed to pay costs assessed in any disciplinary action.

69.10(2) Complaints and other requests for action under this rule. Complaints regarding a certified lead professional, a certified elevated blood lead (EBL) inspection agency, a certified firm, or an approved course shall be submitted in writing to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. The name of the certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm and the specific details of the action(s) by the certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm that did not comply with the rules; or

b. The name of the lead professional or firm that conducted lead professional activities without the appropriate certification or approval as required by the rules; or

c. The name of the sponsoring person or organization of an approved course and the specific way(s) that an approved course did not comply with the rules; or

d. The name of the sponsoring person or organization that provided a course without the approval required by these rules.

69.10(3) Civil penalties.

a. Before instituting any proceeding to impose a civil penalty under Iowa Code section 135.105A, the department shall serve a written notice of violation upon the person charged. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and shall identify specifically the particular provision or provisions of the law, rule, regulation, certification, approval, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the department, if any, unless compromised, remitted, or mitigated, the fee shall be collected by civil action, pursuant to Iowa Code section 135.105A.

b. Within 20 days of the date of a notice of violation or other time specified in the notice, the person charged may either pay the penalty in the amount proposed or answer the notice of violation. The answer to the notice of violation shall state any facts, explanations, and arguments denying the charges of violation or demonstrating any extenuating circumstances, error in the notice of violation, or other reason why the penalty should not be imposed and may request remission or mitigation of the penalty.

c. If the person charged with a violation fails to answer within the time specified in paragraph 69.10(3)*"b,"* an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph 69.10(3)*"a."*

d. If the person charged with a violation files an answer to the notice of violation, the department, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within 20 days of the date of the order or other time specified in the order, request a hearing.

e. If the person charged with a violation requests a hearing, the department will issue an order designating the time and place of hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

f. If a hearing is held, an order will be issued after the hearing by the presiding officer or the department dismissing the proceeding or imposing, mitigating, or remitting the civil penalty.

g. The department may compromise any civil penalty. If the civil penalty is not compromised or is not remitted by the presiding officer or the department or if the time for requesting a hearing described in paragraph 69.10(3)*"d"* has expired, the department may refer the matter to the attorney general for collection.

h. Except when payment is made after compromise or mitigation by the department of justice or as ordered by a court of the state, following reference of the matter to the attorney general for collection, payment of civil penalties imposed under Iowa Code section 135.105A shall be made by check, draft, or money order payable to the Iowa Department of Public Health.

69.10(4) Appeals.

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

b. An appeal of a denial, suspension or revocation shall be submitted by certified mail, return receipt requested, to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075, within 30 days of the receipt of the department's notice. If such a request is made within the 30-day time period, the notice of denial, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, suspension or revocation. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

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

d. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

e. When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. The proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in paragraph 69.10(4)*"f."*

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

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

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

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

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

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

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

641—69.11(135) Waivers. Rules in this chapter are not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

These rules are intended to implement Iowa Code section 135.105C.

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CHAPTER 70
LEAD-BASED PAINT ACTIVITIES

641—70.1(135) Applicability. Prior to March 1, 2000, this chapter applied to all persons who were certified lead professionals in Iowa. Beginning March 1, 2000, this chapter applies to all persons who are lead professionals in Iowa. Beginning July 1, 2004, this chapter also applies to agencies that provide lead-safe work practices training programs in Iowa and to those who are registered lead-safe work practices contractors in Iowa. This chapter requires lead professionals to be certified and establishes specific requirements for how to perform lead-based paint activities if a property owner, manager, or occupant chooses to undertake them. However, nothing in this chapter requires a property owner, manager, or occupant to undertake any particular lead-based paint activity. This chapter also provides for the approval of lead-safe work practices courses and the voluntary registration of lead-safe work practices contractors.

641—70.2(135) Definitions.

"*Adequate quality control*" means a plan or design which ensures the authenticity, integrity, and accuracy of samples, including dust, soil, and paint chip or paint film samples. Adequate quality control also includes provisions for representative sampling.

"*Approved course*" means a course that has been approved by the department for the training of lead professionals.

"*Approved lead-safe work practices training program*" means a lead-safe work practices training program that has been approved by the department.

"*Arithmetic mean*" means the algebraic sum of data values divided by the number of data values. For example, the sum of the concentration of lead in several soil samples divided by the number of samples is the arithmetic mean.

"*Certified elevated blood lead (EBL) inspection agency*" means an agency that has met the requirements of 641—70.5(135) and that has been certified by the department.

"*Certified elevated blood lead (EBL) inspector/risk assessor*" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"*Certified firm*" means a firm that has met the requirements of 641—70.7(135) for certification and has been certified by the department.

"*Certified lead abatement contractor*" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"*Certified lead abatement worker*" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"*Certified lead inspector/risk assessor*" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"*Certified lead professional*" means a person who has been certified by the department as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, lead abatement worker, project designer, or sampling technician.

"*Certified project designer*" means a person who has met the requirements of 641—70.5(135) for certification or interim certification and who has been certified by the department.

"*Certified sampling technician*" means a person who has met the requirements of 641—70.5(135) and who has been certified by the department.

"*Chewable surface*" means an interior or exterior surface painted with lead-based paint that a young child can mouth or chew.

"Child-occupied facility" means a building, or portion of a building, constructed prior to 1978, visited by the same child under the age of six years on at least two different days within any week (Sunday through Saturday period, provided that each day's visit lasts at least three hours and the combined weekly visits last at least six hours). Child-occupied facilities may include, but are not limited to, day-care centers, preschools and kindergarten classrooms.

"Clearance level" means the value at which the amount of lead in dust on a surface following completion of interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation is a dust-lead hazard and fails clearance testing. The clearance level for a single-surface dust sample from a floor is greater than or equal to 40 micrograms per square foot. The clearance level for a single-surface dust sample from an interior windowsill is greater than or equal to 250 micrograms per square foot. The clearance level for a single-surface dust sample from a window trough is greater than or equal to 400 micrograms per square foot.

"Clearance testing" means an activity conducted following interim controls, lead abatement, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation to determine that the hazard reduction activities are complete. Clearance testing includes a visual assessment, the collection and analysis of environmental samples, the interpretation of sampling results, and the preparation of a report.

"Common area" means a portion of the building that is generally accessible to all occupants. This includes, but is not limited to, hallways, stairways, laundry and recreational rooms, porches, exteriors, playgrounds, community centers, garages, and boundary fences.

"Common area group" means a group of common areas that are similar in design, construction, and function. Common area groups include, but are not limited to, hallways, stairwells, and laundry rooms.

"Component" or *"building component"* means specific design or structural elements or fixtures of a building, residential dwelling, or child-occupied facility that are distinguished from each other by form, function, and location. These include, but are not limited to, interior components such as ceilings, crown moldings, walls, chair rails, doors, door trim, floors, fireplaces, radiators and other heating units, shelves, shelf supports, stair treads, stair risers, stair stringers, newel posts, railing caps, balustrades, windows and trim (including sashes, window heads, jambs, sills or stools and troughs), built-in cabinets, columns, beams, bathroom vanities, countertops, and air conditioners; and exterior components such as painted roofing, chimneys, flashing, gutters and downspouts, ceilings, soffits, fascias, rake boards, cornerboards, bulkheads, doors and door trim, fences, floors, joists, latticework, railings and railing caps, siding, handrails, stair risers and treads, stair stringers, columns, balustrades, windowsills or stools and troughs, casings, sashes and wells, and air conditioners. Each side of a door is considered a component within its respective room.

"Component type" means a group of like components constructed of the same substrate in the same multifamily housing. For example, "wood door" is a component type.

"Composite sample" means the collection of more than one sample of the same medium (e.g., dust, soil, or paint) from the same type of surface (e.g., floor, interior windowsill, or window trough) such that multiple samples can be analyzed as a single sample.

"Concentration" means the relative content of a specific substance contained within a larger mass, such as the amount of lead (in micrograms per grams or parts per million of weight) in a sample of soil or dust.

"Containment" means a process to protect workers and the environment by controlling exposures to the dust-lead hazards and debris created during lead abatement.

"Course agenda" means an outline of the key topics to be covered during a training course, including the time allotted to teach each topic.

"Course test" means an evaluation of the overall effectiveness of the training which shall test the trainees' knowledge and retention of the topics covered during the course.

"Course test blueprint" means written documentation identifying the proportion of course test questions devoted to each major topic in the course curriculum.

"Department" means the Iowa department of public health.

"Deteriorated paint" means any interior or exterior paint or other coating that is cracking, flaking, chipping, peeling, or chalking, or any paint or coating located on an interior or exterior surface that is otherwise damaged or separated from the substrate of a building component.

"Discipline" means one of the specific types or categories of lead-based paint activities identified in this chapter for which individuals may receive training from approved courses and become certified by the department. For example, "lead inspector/risk assessor" is a discipline.

"Distinct painting history" means the application history, as indicated by its visual appearance or a record of application, over time, of paint or other surface coatings to a component or room.

"Documented methodologies" means methods or protocols used to sample for the presence of lead in paint, dust, and soil.

"Dripline" means the area within three feet surrounding the perimeter of a building.

"Dust-lead hazard" means surface dust in residential dwellings or child-occupied facilities that contains a mass-per-area concentration of lead greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on window troughs based on wipe samples. A dust-lead hazard is present in a residential dwelling or child-occupied facility when the weighted arithmetic mean lead loading for all single-surface or composite samples of floors and interior windowsills is greater than or equal to 40 micrograms per square foot on floors, 250 micrograms per square foot on interior windowsills, and 400 micrograms per square foot on widow troughs based on wipe samples. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled residential dwelling in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled residential unit on the property. A dust-lead hazard is present on floors, interior windowsills, or window troughs in an unsampled common area in a multifamily dwelling if a dust-lead hazard is present on floors, interior windowsills, or window troughs, respectively, in at least one sampled common area in the same common area group on the property.

"Elevated blood lead (EBL) child" means any child who has had one venous blood lead level greater than or equal to 20 micrograms per deciliter or at least two venous blood lead levels of 15 to 19 micrograms per deciliter.

"Elevated blood lead (EBL) inspection" means an inspection to determine the sources of lead exposure for an elevated blood lead (EBL) child and the provision within ten working days of a written report explaining the results of the investigation to the property owner and occupant of the residential dwelling or child-occupied facility being inspected and to the parents of the elevated blood lead (EBL) child. A certified elevated blood lead (EBL) inspector/risk assessor shall not determine that a residential dwelling is free of lead-based paint as a result of an elevated blood lead (EBL) inspection.

"Elevated blood lead (EBL) inspection agency" means an agency that employs or contracts with individuals who perform elevated blood lead (EBL) inspections. Elevated blood lead (EBL) inspection agencies may also employ or contract with individuals who perform other lead-based paint activities.

"Encapsulant" means a substance that forms a barrier between lead-based paint and the environment using a liquid-applied coating (with or without reinforcement materials) or an adhesively bonded coating material.

"Encapsulation" means the application of an encapsulant.

"Enclosure" means the use of rigid, durable construction materials that are mechanically fastened to the substrate in order to act as a barrier between lead-based paint and the environment.

"Firm" means a company, partnership, corporation, sole proprietorship, association, or other business entity that performs or offers to perform lead-based paint activities.

"Friction surface" means an interior or exterior surface that is subject to abrasion or friction including, but not limited to, certain window, floor, and stair surfaces.

"Guest instructor" means an individual designated by the training program manager or principal instructor to provide instruction specific to the lecture, hands-on work activities, or work practice components of a course.

"Hands-on skills assessment" means an evaluation which tests the trainees' ability to satisfactorily perform the work practices and procedures identified in 641—70.6(135), as well as any other skill taught in a training course.

"Hazardous lead-based paint" means lead-based paint that is present on a friction surface where there is evidence of abrasion or where the dust-lead level on the nearest horizontal surface underneath the friction surface (e.g., the windowsill or floor) is greater than or equal to the dust-lead hazard level, lead-based paint that is present on an impact surface that is damaged or otherwise deteriorated from impact, lead-based paint that is present on a chewable surface, or any other deteriorated lead-based paint in any residential building or child-occupied facility or on the exterior of any residential building or child-occupied facility.

"Hazardous waste" means any waste as defined in 40 CFR 261.3.

"Impact surface" means an interior or exterior surface that is subject to damage by repeated sudden force such as certain parts of door frames.

"Inconclusive classification" means any XRF reading falling within the inconclusive range on the performance characteristic sheet, including the boundary values defining the range.

"Interim controls" means a set of measures designed to temporarily reduce human exposure or likely exposure to lead-based paint hazards, including repairing deteriorated lead-based paint, specialized cleaning, maintenance, painting, temporary containment, ongoing monitoring of lead-based paint hazards or potential hazards, and the establishment and operation of management and resident education programs.

"Interior windowsill" means the portion of the horizontal window ledge that protrudes into the interior of the room.

"Lead abatement" means any measure or set of measures designed to permanently eliminate lead-based paint hazards in a residential dwelling or child-occupied facility. Lead abatement includes, but is not limited to, (1) the removal of lead-based paint and dust-lead hazards, the permanent enclosure or encapsulation of lead-based paint, the replacement of lead-painted surfaces or fixtures, and the removal or covering of soil-lead hazards and (2) all preparation, cleanup, disposal, repainting or refinishing, and postabatement clearance testing activities associated with such measures. Lead abatement specifically includes projects for which there is a written contract or other documentation, which provides that an individual will be conducting lead abatement in or around a residential dwelling or child-occupied facility. In addition, lead abatement includes, but is not limited to, (1) projects for which there is a written contract or other document, which provides that an individual will be conducting activities in or to a residential dwelling or child-occupied facility that shall result in or are designed to permanently eliminate lead-based paint hazards, (2) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by firms or individuals certified under 641—70.5(135), (3) projects resulting in the permanent elimination of lead-based paint hazards that are conducted by firms or individuals who, through their company name or promotional literature, represent, advertise, or hold themselves out to be in the business of performing lead-based paint abatement, and (4) projects resulting in the permanent elimination of lead-based paint that are conducted in response to a lead abatement order. However, in the case of items (1) through (4) of this definition, abatement does not include renovation, remodeling, landscaping, or other activities, when such activities are not designed to permanently eliminate lead-based paint hazards, but, instead, are designed to repair, restore, or remodel a given structure or dwelling, even though these activities may incidentally result in a reduction or elimination of lead-based paint hazards. Furthermore, lead abatement does not include interim controls, operations and maintenance activities, or other measures and activities designed to temporarily, but not permanently, reduce lead-based paint hazards.

"Lead-based paint" means paint or other surface coatings that contain lead greater than or equal to 1.0 milligram per square centimeter or greater than 0.5 percent by weight. Lead-based paint is present on any surface that is tested and found to contain lead greater than or equal to 1.0 milligram per square centimeter or greater than 0.5 percent by weight and on any surface like a surface tested in the same room equivalent that has a similar painting history and that is found to be lead-based paint.

"Lead-based paint activities" means, in the case of target housing and child-occupied facilities, lead-free inspection, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, lead abatement, visual risk assessment, clearance testing conducted after lead abatement, clearance testing conducted after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340, and lead-safe work practices.

"Lead-based paint hazard" means hazardous lead-based paint, a dust-lead hazard, or a soil-lead hazard.

"Lead-free inspection" means an inspection to determine whether a single dwelling unit or multifamily housing is free of lead-based paint and qualifies for the exemption in 24 CFR Part 35 and 40 CFR Part 745 for target housing being leased that is free of lead-based paint and the provision of a written report explaining the results of the lead-free inspection and options for reducing lead-based paint hazards to the property owner and to the person requesting the lead inspection.

"Lead hazard screen" means a limited risk assessment activity that involves limited paint and dust sampling and the provision of a written report explaining the results of the lead hazard screen to the property owner and to the person requesting the lead hazard screen.

"Lead inspection" means a surface-by-surface investigation to determine the presence of lead-based paint and a determination of the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the property owner and to the person requesting the lead inspection. A certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall not determine that a residential dwelling is free of lead-based paint as a result of a lead inspection.

"Lead professional" means a person who conducts lead abatement, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, visual risk assessments, clearance testing after lead abatement, or clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340.

"Lead-safe work practices" means methods that are used to minimize hazards when conducting interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation.

"Lead-safe work practices contractor" means a contractor who has completed a lead-safe work practices training program with a score of at least 80 percent on the course examination.

"Lead-safe work practices training program" means an 8-hour training program that provides training on how to work safely with lead-based paint.

"Living area" means any area of a residential dwelling used by at least one child under the age of six years, including, but not limited to, living rooms, kitchen areas, dens, playrooms, and children's bedrooms.

"Loading" means the quantity of a specific substance present per unit of surface area, such as the amount of lead in micrograms contained in the dust collected from a certain surface area divided by the surface area in square feet or square meters.

"Mid-yard" means an area of a residential yard approximately midway between the dripline of a residential building and the nearest property boundary or between the driplines of a residential building and another building on the same property.

"Multifamily dwelling" means a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or in part, as the home or residence of one or more persons.

"Multifamily housing" means one or more multifamily dwellings that are under the same ownership or management.

"Negative classification" means any value defined by the performance characteristics sheet as indicating that lead-based paint is not present.

"NIST 1.02 standard film" means the National Institute of Standards and Technology 1.02 milligrams of lead per square centimeter standard reference material.

"Occupant protection plan" means a plan developed by a certified lead abatement contractor prior to the commencement of lead abatement in a residential dwelling or child-occupied facility that describes the measures and management procedures that will be taken during lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

"Ongoing lead-based paint maintenance" means the maintenance of housing pursuant to 24 CFR Part 35.

"Paint-lead hazard" means the presence of hazardous lead-based paint in a residential dwelling or a child-occupied facility.

"Paint stabilization" means repairing any physical defect in the substrate of a painted surface that is causing paint deterioration, removing loose paint and other material from the surface to be treated, and applying a new protective coating or paint pursuant to 24 CFR Part 35.

Paint testing" means the process of determining, by a certified lead inspector/risk assessor or certified elevated blood lead(EBL) inspector/risk assessor, the presence or the absence of lead-based paint on deteriorated paint surfaces or painted surfaces to be disturbed or replaced pursuant to 24 CFR Part 35.

"Performance characteristics sheet (PCS)" means an information sheet developed by the U.S. Environmental Protection Agency and U.S. Department of Housing and Urban Development that defines acceptable operating specifications and procedures for a specific model of X-ray fluorescence analyzer (XRF). The PCS contains information about XRF readings taken on specific substrates, calibration check tolerances, interpretation of XRF readings, and other aspects of the model's performance.

"Permanently covered soil" means soil which has been separated from human contact by the placement of a barrier consisting of solid, relatively impermeable materials, such as pavement or concrete. Grass, mulch, and other landscaping materials are not considered permanent covering.

"Play area" means an area of frequent soil contact by children of less than six years of age as indicated by, but not limited to, factors including the following: the presence of play equipment (sandboxes, swing sets, and sliding boards), toys, or other children's possessions, observations of play patterns, or information provided by parents, residents, caregivers, or property owners.

"Positive classification" means any value defined by the performance characteristics sheet as indicating the presence of lead-based paint.

"Principal instructor" means the individual who has the primary responsibility for organizing and teaching a particular course.

"Random selection" means a method of choosing residential dwellings from multifamily housing consisting of similarly constructed and maintained residential dwellings such that each residential dwelling has an equal chance of being selected.

"Recognized laboratory" means an environmental laboratory recognized by the U.S. Environmental Protection Agency pursuant to Section 405(b) of the federal Toxic Substance Control Act as capable of performing an analysis for lead compounds in paint, soil, and dust.

"Reduction" means measures designed to reduce or eliminate human exposure to lead-based paint hazards through methods including interim controls and lead abatement.

"Refresher training course" means a course taken by a certified lead professional to maintain certification in a particular discipline.

"Registered lead-safe work practices contractor" means a lead-safe work practices contractor who has been registered by the department.

"Regulated entity" means any lead professional or firm that is regulated by the department by virtue of these rules, the Iowa Code, certification documents, approval documents, lead abatement notices, or other official regulatory promulgation.

"Rehabilitation" means the improvement of an existing structure through alterations, incidental additions, or enhancements. Rehabilitation includes repairs necessary to correct the results of deferred maintenance, the replacement of principal fixtures and components, improvements to increase the efficient use of energy, and installation of security devices.

"Residential building" means a building containing one or more residential dwellings.

"Residential dwelling" means (1) a detached single-family dwelling unit, including the surrounding yard, attached structures such as porches and stoops, and detached buildings and structures including, but not limited to, garages, farm buildings, and fences, or (2) a single-family dwelling unit in a structure that contains more than one separate residential dwelling unit, which is used or occupied, or intended to be used or occupied, in whole or part, as the home or residence of one or more persons.

"Risk assessment" means an investigation to determine the existence, nature, severity, and location of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the investigation and options for reducing lead-based paint hazards to the property owner and to the person requesting the risk assessment.

"Room" means a separate part of the inside of a building, such as a bedroom, living room, dining room, kitchen, bathroom, laundry room, or utility room. To be considered a separate room, the room must be separated from adjoining rooms by built-in walls or archways that extend at least six inches from an intersecting wall. Half walls or bookcases count as room separators if built-in. Movable or collapsible partitions or partitions consisting solely of shelves or cabinets are not considered built-in walls. A screened-in porch that is used as a living area is a room. Each exterior side of the house is considered a separate room.

"Soil-lead hazard" means bare soil on residential real property or on the property of a child-occupied facility that contains total lead greater than or equal to 400 parts per million for the dripline, mid-yard, and play areas. A soil-lead hazard is present in a dripline, mid-yard, or play area when the soil-lead concentration from a composite sample of bare soil is greater than or equal to 400 parts per million.

"Soil sample" means a sample collected in a representative location using ASTM E1727, "Standard Practice for Field Collection of Soil Samples by Atomic Spectrometry Techniques," or equivalent method.

"Standard treatments" means a series of hazard reduction measures designed to reduce all lead-based paint hazards in a residential dwelling without the benefit of a risk assessment or other evaluation pursuant to 24 CFR 35.1335. Standard treatments consist of the stabilization of all deteriorated interior and exterior paint, the provision of smooth and cleanable horizontal hard surfaces, the correction of dust-generating conditions (i.e., conditions causing rubbing, binding, or crushing of surfaces known to or presumed to be coated with lead-based paint), and the treatment of base soil to control known or presumed soil-lead hazards.

"State certification examination" means a discipline-specific examination approved by the department to test the knowledge of a person who has completed an approved training course and is applying for certification in a particular discipline. The state certification examination may not be administered by the provider of an approved course.

"Substrate" means the material underneath the paint or finish on a surface. Substrates are classified as brick, concrete, drywall, metal, plaster, or wood.

"Substrate correction" means adjustments that must be made to readings obtained from some X-ray fluorescence analyzers to correct for systematic biases due to interference from the substrate beneath the paint.

"Substrate correction value" means the value that is used to adjust readings obtained from some X-ray fluorescence analyzers to correct for systematic biases due to interference from the substrate beneath the paint.

"Targeted selection" means selecting residential dwellings from multifamily housing for risk assessments or lead hazard screens using information supplied by the property owner.

"Target housing" means housing constructed prior to 1978 with the exception of housing for the elderly or for persons with disabilities and housing which does not contain a bedroom, unless at least one child under the age of six years resides or is expected to reside in the housing for the elderly or persons with disabilities or housing which does not contain a bedroom. Target housing also includes any nonresidential building where lead-based paint activities are conducted prior to or during the conversion of the nonresidential building to target housing.

"Testing combination" means the unique combination of the room, component, substrate, and distinct painting history.

"Training hour" means at least 50 minutes of actual learning, including, but not limited to, time devoted to lecture, learning activities, small group activities, demonstrations, evaluations, or hands-on experience.

"Training manager" means the individual responsible for administering an approved course and monitoring the performance of principal instructors and guest instructors.

"Training program" means a person or organization sponsoring a lead professional training course.

"Visual inspection for clearance testing" means the visual examination of a residential dwelling or a child-occupied facility following lead abatement or following interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR 35.1340 to determine whether or not the lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation has been successfully completed.

"Visual risk assessment" means a visual assessment to determine the presence of deteriorated paint or other potential sources of lead-based paint hazards in a residential dwelling or child-occupied facility and the provision of a written report explaining the results of the assessment to the property owner and to the person requesting the visual risk assessment. For the purpose of compliance with this chapter, housing quality standards inspections conducted in housing owned by a public housing authority and housing that is receiving tenant-based rental assistance from a public housing authority are not considered visual risk assessments.

"Weighted arithmetic mean" means the arithmetic mean of sample results weighted by the number of subsamples in each sample. Its purpose is to give influence to a sample relative to the surface area it represents. A single surface dust sample is comprised of a single dust subsample. A composite dust sample may contain from two to four dust subsamples of the same area as each other and of each single surface dust sample in the composite. The weighted arithmetic mean is obtained by summing, for all dust samples, the product of the dust sample's result multiplied by the number of dust subsamples in the dust sample, and dividing the sum by the total number of dust subsamples contained in all dust samples. For example, the weighted arithmetic mean of a single surface dust sample containing 60 micrograms per square foot ($\mu g/ft^2$), a composite dust sample (three dust subsamples) containing 100 $\mu g/ft^2$, and a composite dust sample (four dust subsamples) containing 110 $\mu g/ft^2$ is 100 $\mu g/ft^2$. This result is based on the equation [60+(3×100)+(4×110)] / (1+3+4).

"Window trough" means, for a typical double-hung window, the portion of the exterior windowsill between the interior windowsill (or stool) and the frame of the storm window. If there is no storm window, the window trough is the area that receives both the upper and lower window sashes when they are both lowered. The window trough is sometimes referred to as the window well.

"Wipe sample" means a sample collected by wiping a representative surface of known area, as determined by ASTM E1728, "Standard Practice for Field Collection of Settled Dust Samples Using Wipe Sampling Methods for Lead Determination by Atomic Spectrometry Techniques," or equivalent method, with an acceptable wipe material as defined in ASTM E1792, "Standard Specification for Wipe Sampling Materials for Lead in Surface Dust." The minimum area for a floor wipe sample shall be 0.50 square feet or 72 square inches. The minimum area for a windowsill wipe sample and for a window trough wipe sample shall be 0.25 square feet or 36 square inches.

"Worst case selection" means conducting a walk-through survey of all residential dwellings in the multifamily housing to select the highest-risk residential dwellings for risk assessments or lead hazard screens.

"X-ray fluorescence analyzer (XRF)" means an instrument that determines lead concentrations in milligrams per square centimeter (mg/cm^2) using the principle of X-ray fluorescence.

"XRF reading" means the number obtained when a surface is tested with an X-ray fluorescence analyzer.

641—70.3(135) Certification. Prior to March 1, 2000, lead professionals could be certified by the department. Beginning March 1, 2000, a person or a firm shall not conduct lead abatement, clearance testing after lead abatement, lead-free inspections, lead inspections, elevated blood lead (EBL) inspections, lead hazard screens, risk assessments, and visual risk assessments unless the person or firm has been certified by the department in the appropriate discipline. However, persons who perform these activities within residential dwellings that they own are not required to be certified, unless the residential dwelling is occupied by a person other than the owner or a member of the owner's immediate family while these activities are being performed. In addition, elevated blood lead (EBL) inspections shall be conducted only by certified elevated blood lead (EBL) inspector/risk assessors employed by or under contract with a certified elevated blood lead (EBL) inspection agency. Beginning September 15, 2000, clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted only by certified sampling technicians, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspector/risk assessors. Lead professionals and firms shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department. Prior to March 1, 2000, elevated blood lead (EBL) inspection agencies could be certified by the department. Beginning March 1, 2000, elevated blood lead (EBL) inspection agencies must be certified by the department. Elevated blood lead (EBL) inspection agencies shall not state that they have been certified by the state of Iowa unless they have met the requirements of 641—70.5(135) and been issued a current certificate by the department.

641—70.4(135) Course approval and standards. Prior to March 1, 1999, lead professional training courses for initial certification and refresher training could be approved by the department. Beginning March 1, 1999, lead professional training courses for initial certification and refresher training must be approved by the department. Training programs shall not state that they have been approved by the state of Iowa unless they have met the requirements of 641—70.4(135) and been issued a letter of approval by the department.

70.4(1) Training courses shall meet the following requirements:

a. The training course shall employ a training manager who has the following qualifications:

(1) A bachelor's or graduate degree in building construction technology, engineering, industrial hygiene, safety, public health, or a related field; or two years of experience in managing a training program specializing in environmental hazards.

(2) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

b. The training manager shall designate a qualified principal instructor for each course who has the following qualifications:

(1) Demonstrated experience, education, or training in teaching workers or adults.

(2) Certification as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, or lead abatement contractor.

(3) Demonstrated experience, education, or training in lead professional activities, including lead inspection, lead abatement, painting, carpentry, renovation, remodeling, occupational safety and health, or industrial hygiene.

c. The principal instructor shall be responsible for the organization of the course and oversight of the teaching of all course material. The training manager may designate guest instructors as needed to provide instruction specific to the lecture, hands-on activities, or work practice components of a course.

d. The training program shall ensure the availability of, and provide adequate facilities for, the delivery of the lecture, course test, hands-on training, and assessment activities. This includes providing training equipment that reflects current work practices and maintaining or updating the equipment as needed.

e. The training manager shall maintain the validity and integrity of the hands-on skills assessment to ensure that it accurately evaluates the trainees' performance of the work practices and procedures associated with the course topics contained in subrules 70.4(3) to 70.4(16).

f. The training manager shall maintain the validity and integrity of the course test to ensure that it accurately evaluates the trainees' knowledge and retention of the course topics.

g. The course test shall be developed in accordance with the test blueprint submitted with the course approval application.

h. The training program shall issue unique course completion certificates to each individual who passes the course. The course completion certificate shall include:

(1) The name and address of the individual and a unique identification number.

(2) The name of the particular course that the individual completed and the course length in hours.

(3) Dates of course completion and test passage.

(4) The name, address, and telephone number of the training program.

(5) The signature of the training manager.

i. The training manager shall develop and implement a quality control program. The plan shall be used to maintain and improve the quality of the training program over time. This plan shall contain at least the following elements:

(1) Procedures for periodic revision of training materials and the course test to reflect changes in regulations and recommended practices.

(2) Procedures for the training manager to conduct an annual review of the competency of the principal instructor.

j. The training program shall offer courses that teach the work practice standards for conducting lead-based paint activities contained in 641—70.6(135) and other standards developed by the department. These standards shall be taught in the appropriate courses to provide trainees with the knowledge needed to perform the lead-based paint activities they are responsible for conducting.

k. The training manager shall ensure that each course meets the requirements in this rule for the number of training hours and hours of hands-on training. The training manager shall ensure that any student who misses more than 20 minutes of class time makes up the time before taking the course test.

l. The training manager shall ensure that the training program complies at all times with all requirements in this rule.

m. The training manager shall allow the department to audit the training program to verify the contents of the application for approval and for reapproval.

n. The training program shall maintain, and make available to the department, upon request, the following records:

(1) All documents specified in paragraph 70.4(2)*"f."*

(2) Current curriculum/course materials and documents reflecting any changes made to these materials.

(3) The course test blueprint and the course test.

(4) Information regarding how the hands-on assessment is conducted including, but not limited to, who conducts the assessment, how the skills are graded, what facilities are used, and the pass/fail rate.

(5) The quality control plan as described in paragraph 70.4(1)*"i."*

(6) A file for each student who has completed a course. Each student file shall contain the following:

1. The student's name, address, and telephone number.
2. The student's test and answer sheet.
3. A copy of the student's course completion certificate.
4. A copy of the student's hands-on skill assessment, if applicable.

(7) A file for each individual course that has been offered. Each file shall include the following:

1. The dates of the course.
2. The location of the course.
3. The instructors who taught the course.
4. A copy of the curriculum used for the course.
5. A copy of the test used for the course.
6. Documentation of the times that each student was present at the course, including documentation of how a student made up missed time.
7. The course evaluations.

(8) Any other materials that have been submitted to the department as part of the program's application for approval.

o. The training program shall retain all required records at the address specified on the training program approval application for a minimum of six years.

p. The training program shall notify the department in writing within 30 days of changing the address specified on its training program approval application or transferring the records from that address.

q. A training program shall notify the department in writing at least 30 days in advance of offering an approved course. The notification shall include the date(s), time(s), and location(s) where the approved course will be held.

r. A training program shall provide the following information to the department electronically in a format specified by the department within 30 days of the conclusion of an approved course for each student who has taken the approved course:

(1) Name, address, and social security number.
(2) Course completion certificate number.
(3) Test score.

70.4(2) If a training program desires approval of a course by the department, the training program shall apply to the department for approval of the course at least 90 days before the initial offering of the course. The application shall include:

a. Training program name, contact person, address, and telephone number.

b. Course dates and times.

c. Course location, including a description of the facilities and equipment to be used for lecture and hands-on training.

d. Course agenda, including approximate times allotted to each training segment.

e. A copy of each reference material, text, student and instructor manuals, and audio-visual material used in the course.

f. The name(s) and qualifications of the training manager, principal instructor(s), and guest instructor(s). The following documents shall be submitted as evidence that training managers and principal instructors have the education, work experience, training requirements, or demonstrated experience required by subrule 70.4(1):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

(3) Certificates from lead-specific training courses, as evidence of meeting the training requirements.

g. A copy of the course test blueprint.

h. A description of the activities and procedures that will be used for conducting the assessment of hands-on skills for each course.

i. Maximum class size.

j. A copy of the quality control plan for the course.

k. A nonrefundable fee of $200.

70.4(3) To be approved for the training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors prior to March 1, 1999, a course was required to be at least 24 training hours with a minimum of 8 hours devoted to hands-on training activities. Beginning March 1, 1999, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on training activities. Lead inspector/risk assessor and elevated blood lead (EBL) inspector/risk assessor training courses shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of an inspector/risk assessor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1995, U.S. Department of Housing and Urban Development), and methods to determine if lead-based paint hazards are present in a property.*

e. Paint, dust, and soil sampling methodologies.*

f. Clearance standards and testing, including random sampling.*

g. Collection of background information to perform a risk assessment.

h. Sources of environmental lead contamination such as paint, surface dust and soil, and water.

i. Visual inspection to identify lead-based paint hazards.*

j. Lead hazard screen protocol.

k. Visual risk assessment protocol.

l. Sampling for other sources of lead exposure.*

m. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.*

n. Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.

o. Approved methods for conducting lead-based paint abatement and interim controls.

p. Prohibited methods for conducting lead-based paint abatement and interim controls.

q. Interior dust abatement and cleanup.

r. Soil and exterior dust abatement and cleanup.

s. Preparation of the final inspection report.

t. Record keeping.

u. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

v. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination.

70.4(4) To be approved for the training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors who have already completed an approved sampling technician course, a course must be at least 20 training hours with a minimum of 8 hours devoted to hands-on training activities. The training course shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead inspector/risk assessor and elevated blood lead (EBL) inspector/risk assessor.

b. Lead-based paint inspection methods, including selection of rooms and components for sampling or testing to determine if a property is free of lead-based paint as specified in the work practice standards in 641—70.6(135), and methods to determine if lead-based paint hazards are present in a property.*

c. Collection of background information to perform a risk assessment.

d. Lead hazard screen protocol.

e. Visual risk assessment protocol.

f. Sampling for other sources of lead exposure.*

g. Interpretation of lead-based paint and other lead sampling results, including all applicable federal, state, and local guidance or regulations pertaining to lead-based paint hazards.*

h. Development of hazard control options, the role of interim controls, and operations and maintenance activities to reduce lead-based paint hazards.*

i. Preparation of the final inspection report.

j. Record keeping.

k. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

l. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination.

70.4(5) Rescinded IAB 3/31/04, effective 5/5/04.

70.4(6) Rescinded IAB 3/31/04, effective 5/5/04.

70.4(7) Rescinded IAB 3/31/04, effective 5/5/04.

70.4(8) To be approved for the training of lead abatement contractors, a course must be at least 40 training hours with a minimum of 12 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement contractor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Liability and insurance issues relating to lead abatement.

e. Identification of lead-based paint and lead-based paint hazards.*

f. Interpretation of lead inspection reports.*

g. Development and implementation of an occupant protection plan and lead abatement report.

h. Respiratory protection and protective clothing.*

i. Employee information and training.

j. Approved methods for conducting lead abatement and interim controls.*

k. Prohibited methods for conducting lead abatement and interim controls.

l. Interior dust abatement and cleanup.*

m. Soil and exterior dust abatement and cleanup.*

n. Clearance standards and testing, including random sampling.

o. Cleanup and waste disposal.

p. Record keeping.

q. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

r. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination.

70.4(9) To be approved for the training of lead abatement contractors who have already completed an approved lead abatement worker course, a course must be at least 16 training hours with a minimum of 4 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement contractor.

b. Liability and insurance issues relating to lead abatement.

c. Interpretation of lead inspection reports.*

d. Development and implementation of an occupant protection plan and abatement report.

e. Employee information and training.

f. Clearance standards and testing, including random sampling.

g. Record keeping.

h. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

i. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and with information provided by the department regarding the state certification examination.

70.4(10) To be approved for the training of lead abatement workers, a course must be at least 24 training hours with a minimum of 8 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement worker.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Identification of lead-based paint and lead-based paint hazards.*

e. Approved methods for conducting lead-based paint abatement and interim controls.*

f. Prohibited methods for conducting lead-based paint abatement and interim controls.

g. Interior dust abatement and cleanup.*

h. Soil and exterior dust abatement and cleanup.*

i. Cleanup and waste disposal.

j. Respiratory protection and protective clothing.*

k. Personal hygiene.

l. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

m. The instructor shall provide each student with instructions and forms needed to apply to the department for certification.

70.4(11) To be approved for the training of sampling technicians prior to September 15, 2000, a course was required to be at least 16 training hours with a minimum of 4 hours devoted to hands-on activities. Beginning September 15, 2000, a course must be at least 20 training hours with a minimum of 4 hours devoted to hands-on training activities. The training course shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a sampling technician.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Methods of conducting visual risk assessments.*

e. Paint, dust, and soil sampling methodologies.*

f. Clearance standards and testing, including random sampling.*

g. Identification of lead-based paint hazards.*

h. Sources of environmental lead contamination such as paint, surface dust and soil, and water.

i. Visual inspection to identify lead-based paint hazards.*

j. Approved methods for conducting lead abatement and interim controls.

k. Prohibited methods for conducting lead abatement and interim controls.

l. Methods of interim controls and lead abatement for interior dust and cleanup.

m. Methods of interim controls and lead abatement for exterior dust and soil and cleanup.

n. Preparation of the final assessment report.

o. Preparation of clearance testing reports for interim controls.

p. Record keeping.

q. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

r. The instructor shall provide each student with instructions and forms needed to apply to the department for certification.

70.4(12) To be approved for the training of project designers, a course must be at least 48 instructional training hours with a minimum of 12 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement contractor.

b. Background information on lead and its adverse health effects, how children and adults are exposed to lead, and how to prevent lead exposure in children and adults.

c. Background information on federal, state, and local regulations and guidance that pertain to lead-based paint and lead-based paint activities.

d. Liability and insurance issues relating to lead abatement.

e. Identification of lead-based paint and lead hazards.*

f. Interpretation of lead inspection reports.*

g. Development and implementation of an occupant protection plan and lead abatement report.

h. Respiratory protection and protective clothing.*

i. Employee information and training.

j. Approved methods for conducting lead-based paint abatement and interim controls.*

k. Prohibited methods for conducting lead-based paint abatement and interim controls.

l. Interior dust abatement and cleanup.*

m. Soil and exterior dust abatement and cleanup.*

n. Clearance standards and testing, including random sampling.

o. Cleanup and waste disposal.

p. Record keeping.

q. Role and responsibilities of a project designer.

r. Development and implementation of an occupant protection plan for large-scale lead abatement projects.

s. Lead abatement and lead hazard reduction methods, including restricted practices for large-scale lead abatement projects.

t. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale lead abatement projects.

u. Clearance standards and testing for large-scale lead abatement projects.

v. Integration of lead abatement methods with modernization and rehabilitation projects for large-scale lead abatement projects.

w. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

x. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and with information provided by the department regarding the state certification examination.

70.4(13) To be approved for the training of project designers who have already completed an approved lead abatement contractor course, a course must be at least 8 instructional training hours and shall cover at least the following subjects:

a. Role and responsibilities of a project designer.

b. Development and implementation of an occupant protection plan for large-scale abatement projects.

c. Lead abatement and lead hazard reduction methods, including restricted practices for large-scale lead abatement projects.

d. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale lead abatement projects.

e. Clearance standards and testing for large-scale lead abatement projects.

f. Integration of lead abatement methods with modernization and rehabilitation projects for large-scale lead abatement projects.

g. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

h. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regarding the state certification examination.

70.4(14) To be approved for the training of project designers who have already completed an approved lead abatement worker course, a course must be at least 24 instructional training hours with a minimum of 4 hours devoted to hands-on activities and shall cover at least the following subjects (requirements ending in an asterisk (*) indicate areas that require hands-on activities as an integral component of the course):

a. Role and responsibilities of a lead abatement contractor.

b. Liability and insurance issues relating to lead abatement.

c. Interpretation of lead inspection reports.*

d. Development and implementation of an occupant protection plan and lead abatement report.

e. Employee information and training.

f. Clearance standards and testing, including random sampling.

g. Record keeping.

h. Role and responsibilities of a project designer.

i. Development and implementation of an occupant protection plan for large-scale lead abatement projects.

j. Lead abatement and lead hazard reduction methods, including restricted practices for large-scale lead abatement projects.

k. Interior dust abatement/cleanup or lead hazard control and reduction methods for large-scale lead abatement projects.

l. Clearance standards and testing for large-scale lead abatement projects.

m. Integration of lead abatement methods with modernization and rehabilitation projects for large-scale lead abatement projects.

n. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

o. The instructor shall provide each student with instructions and forms needed to apply to the department for certification and information provided by the department regrading the state certification examination.

70.4(15) To be approved for refresher training of sampling technicians, lead abatement contractors, lead abatement workers, and project designers, a course must be at least 8 training hours. To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors who completed an approved 24-hour training course, a course must be at least 8 training hours to meet the recertification requirements of subrule 70.5(3). To be approved for refresher training of lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors to meet the recertification requirements of subrule 70.5(6), a course must be at least 16 training hours. All refresher courses shall cover at least the following topics:

a. A review of the curriculum topics of the initial certification course for the appropriate discipline as listed in subrules 70.4(3) to 70.4(14).

b. An overview of current safety practices relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

c. Current laws and regulations relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

d. Current technologies relating to lead-based paint activities in general, as well as specific information pertaining to the appropriate discipline.

e. The course shall conclude with a course test and, if applicable, a hands-on skills assessment. The student must achieve a score of at least 80 percent on the examination and successfully complete the hands-on skills assessment to successfully complete the course.

70.4(16) Approvals of training courses shall expire three years after the date of issuance. The training manager shall submit the following at least 90 days prior to the expiration date for a course to be reapproved:

a. Sponsoring organization name, contact person, address, and telephone number.

b. A list of the courses for which reapproval is sought.

c. A description of any changes to the training staff, facility, equipment, or course materials since the approval of the training program.

d. A statement signed by the training manager stating that the training program complies at all times with 641—70.4(135).

e. A nonrefundable fee of $200.

70.4(17) The department shall consider a request for approval of a training course that has been approved by a state or tribe authorized by the U.S. Environmental Protection Agency.

a. The course shall be approved if it meets the requirements of 641—70.4(135).

b. If the course does not meet all of the requirements of 641—70.4(135), the department shall inform the training provider of additional topics and training hours that are needed to meet the requirements of 641—70.4(135).

641—70.5(135) Certification, interim certification, and recertification.

70.5(1) A person wishing to become a certified lead professional shall apply on forms supplied by the department. The applicant must submit:

a. A completed application form.

b. A certificate of completion of an approved course for the discipline in which the applicant wishes to become certified.

c. If wishing to become a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor, documentation of successful completion of the manufacturer's training course or equivalent for the X-ray fluorescence (XRF) analyzer that the inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor will use to conduct lead inspections.

d. If wishing to become a certified elevated blood lead (EBL) inspector/risk assessor, documentation of successful completion of 8 hours of training from the department's childhood lead poisoning prevention program. This training shall cover the roles and responsibilities of an elevated blood lead (EBL) inspector/risk assessor and the environmental and medical case management of elevated blood lead (EBL) children. The training shall conclude with a written examination. The applicant must achieve a score of at least 80 percent on the examination to successfully complete the training.

e. Documentation that the applicant meets the additional experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

f. Beginning March 1, 2000, to become certified as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, or project designer, a certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

g. A $50 nonrefundable fee.

h. A person may receive interim certification from the department as a lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, or project designer by submitting the items required by paragraphs 70.5(1)*"a"* to *"e"* and *"g"* to the department. If the applicant completed an approved course prior to September 1, 1999, the interim certification expired on March 1, 2000. If the applicant completed an approved course on or after September 1, 1999, the interim certification shall expire six months from the date of completion of an approved course. An applicant shall upgrade an interim certification to a certification by submitting a certificate to the department showing that the applicant has passed the state certification examination as required by paragraph 70.5(1)*"f."* Interim certification is equivalent to certification.

70.5(2) Beginning September 1, 1999, to become certified by the department as a lead professional, an applicant must meet the education and experience requirements for the appropriate discipline:

a. Lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors must meet one of the following requirements:

(1) Bachelor's degree and one year of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(2) Associate's degree and two years of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(3) High school diploma and three years of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(4) Certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, registered environmental health specialist, or registered nurse.

b. Lead abatement contractors must meet one of the following requirements:

(1) One year of experience as a certified lead abatement worker.

(2) Two years of related experience or education (e.g., lead, housing inspection, building trades, property management and maintenance).

c. No additional education or experience is required for lead abatement workers.

d. Sampling technicians must meet one of the following requirements:

(1) Associate's degree.

(2) High school diploma and one year of related experience (e.g., lead, environmental health, public health, housing inspection, building trades).

(3) Certification as an industrial hygienist, professional engineer, registered architect, registered sanitarian, registered environmental health specialist, or registered nurse.

e. Project designers must meet one of the following requirements:

(1) Bachelor's degree in engineering, architecture, or a related profession, and one year of experience in building construction and design or a related field.

(2) Four years of experience in building construction and design or a related field.

70.5(3) Certifications issued prior to September 1, 1999, expired on February 29, 2000. By March 1, 2000, lead professionals certified prior to September 1, 1999, were required to be recertified by submitting the following:

a. A completed application form.

b. For lead inspector/risk assessors and elevated blood lead (EBL) inspector/risk assessors, a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(3) and the completion of an 8-hour refresher course.

c. Reserved.

d. Documentation that the applicant meets the experience and education requirements in subrule 70.5(2) for the discipline in which the applicant wishes to become certified. The following documents shall be submitted as evidence that the applicant has the education and work experience required by subrule 70.5(2):

(1) Official transcripts or diplomas as evidence of meeting the education requirements.

(2) Résumés, letters of reference, or documentation of work experience, as evidence of meeting the work experience requirements.

e. For lead abatement contractors, lead abatement workers, project designers, and sampling technicians, if the date on which the applicant completed an approved training course is three years or more before the date of recertification, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline.

f. A certificate showing that the applicant has passed the state certification examination in the discipline in which the applicant wishes to become certified.

g. A $50 nonrefundable fee.

70.5(4) By September 15, 2000, sampling technicians certified prior to July 1, 2000, were required to be recertified by submitting a certificate showing the completion of additional training hours in an approved course to meet the total training hours required by subrule 70.4(11) and the completion of an 8-hour refresher course.

70.5(5) All agencies that perform or offer to perform elevated blood lead (EBL) inspections after September 15, 2000, must be certified by the department. An agency wishing to become a certified elevated blood lead (EBL) inspection agency shall apply on forms supplied by the department. The agency must submit:

a. A completed application form.

b. Documentation that the agency has the authority to require the repair of lead hazards identified through an elevated blood lead (EBL) inspection.

c. Documentation that the agency employs or has contracted with a certified elevated blood lead (EBL) inspector/risk assessor to provide environmental case management of all elevated blood lead (EBL) children in the agency's service area, including follow-up to ensure that lead-based paint hazards identified as a result of elevated blood lead (EBL) inspections are corrected, and that lead-based paint activities will be conducted only by appropriately certified lead professionals. In addition, the agency must document that the agency and its employees or contractors will follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

d. A statement that the certified elevated blood lead (EBL) inspection agency will maintain all records required by subrule 70.6(10).

70.5(6) Beginning March 1, 2000, individuals certified as lead professionals must be recertified each year. To be recertified, lead professionals must submit the following:

a. A completed application form.

b. A $50 nonrefundable fee.

c. Every three years, a certificate showing that the applicant has successfully completed an approved refresher training course for the appropriate discipline. The initial refresher training course must be completed no more than three years after the date on which the applicant completed an approved training program.

70.5(7) The department shall approve the state certification examinations for the disciplines of lead inspector/risk assessor, elevated blood lead (EBL) inspector/risk assessor, lead abatement contractor, and project designer. The state certification examination shall be administered by selected community college testing centers in Iowa through an agreement with the consortium of Iowa community colleges. A community college testing center shall set the fee for administering the state certification examination to each applicant and shall collect the fee from each applicant.

a. An individual may take the state certification examination no more than three times within six months of receiving a certificate of completion from an approved course.

b. If an individual does not pass the state certification examination within six months of receiving a certificate of completion from an approved course, the individual must retake the appropriate approved course before reapplying for certification.

70.5(8) Reciprocity. Each applicant for certification who is certified in any of the disciplines specified in this rule in another state may request reciprocal certification. The department shall evaluate the requirements for certification to determine that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa. If the department determines that the requirements for certification in such other state are as protective of health and the environment as the requirements for certification in Iowa, the applicant may be certified after passing a proctored test covering Iowa-specific lead information with a score of at least 80 percent. Each applicant for certification pursuant to this subrule shall submit the appropriate application accompanied by the fee for each discipline as specified in 641—70.5(135).

641—70.6(135) Work practice standards for conducting lead-based paint activities in target housing and child-occupied facilities. Prior to March 1, 2000, when performing any lead-based paint activity described as a lead-free inspection, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement, a certified individual was required to perform that activity in compliance with the appropriate requirements below. Beginning March 1, 2000, any lead-based paint activity described as a lead-free inspection, lead inspection, elevated blood lead (EBL) inspection, lead hazard screen, risk assessment, visual risk assessment, or lead abatement shall be performed according to the work practice standards in 641—70.6(135), and a certified individual must perform that activity in compliance with the appropriate requirements below.

70.6(1) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct a lead-free inspection according to the following standards. Beginning March 1, 2000, a lead-free inspection shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall notify the department in writing no later than 30 days after conducting a lead-free inspection in a residential dwelling or child-occupied facility. The notification shall include the following information:

(1) The address where the lead-free inspection was conducted.

(2) The dates when the lead-free inspection was conducted.

(3) The name, address, telephone number, Iowa certification number, and signature of the contact for the certified firm that conducted the lead-free inspection.

(4) The name, address, telephone number, Iowa certification number, and signature of each certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor who conducted the lead-free inspection.

b. When conducting a lead-free inspection in a residential dwelling, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test paint in each room, including each exterior side.

(2) Except for components known to have been replaced after December 31, 1977, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test each testing combination in each room. On windows, the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination. Except for walls, one sample shall be taken for each testing combination in a room. Each wall in a room shall be tested. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall require one of the following two types of evidence to determine that components were replaced after 1977:

1. Detailed specifications showing which components were to be replaced, restored, enclosed, or encapsulated and evidence that the work was actually completed such as receipts for building materials, city building records showing a date of remodeling, or a final inspection by the city or another inspector showing that the work was actually completed.

2. A certification under penalty of perjury per Iowa Code section 622.1 from the contractor who did the work or from the person(s) who owned the property at the time outlining all of the components that were removed and replaced.

If one of these two types of evidence is not available, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test the component.

(3) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall note any components where lead-based paint has been enclosed or encapsulated. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not make a determination that the residential dwelling is lead-free where components that are painted with lead-based paint have been enclosed or encapsulated.

(4) Paint shall be tested using adequate quality control by X-ray fluorescence (XRF) or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

1. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use an X-ray fluorescence analyzer that has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

2. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use standards provided by the manufacturer and the NIST 1.02 standard film for calibration of the X-ray fluorescence analyzer.

3. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings at the beginning of the inspection, every four hours, and at the end of the inspection.

4. Prior to taking the final set of calibration readings and if required by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation $(1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6$ and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16.

5. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading that did not require substrate correction and each corrected XRF reading for XRF readings that required substrate correction as positive, negative, or inconclusive, according to the performance characteristics sheet for the XRF. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not discard XRF readings unless instructed to do so by the performance characteristics sheet or the operating instructions from the manufacturer. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor believes that a reading classified as positive is in error, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect a paint sample for laboratory analysis. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall change the positive classification to negative only if the results of the laboratory analysis indicate that the surface is not painted with lead-based paint.

6. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall resolve inconclusive readings as defined by the performance characteristics sheet for the XRF by collecting paint samples for laboratory analysis. If instructed by the property owner or the person requesting the report, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume that inconclusive readings are positive, but shall not assume that inconclusive readings are negative.

7. As described by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct retesting of 10 surfaces, calculate the retest tolerance limit, and determine whether the inspection meets the retest tolerance limit. If the retest tolerance limit is not met, then this procedure shall be repeated with 10 additional surfaces. If the retest tolerance limit is not met with the 20 retested surfaces, then all results of the inspection shall be considered invalid.

(5) If each testing combination in the residential dwelling is found to be free of lead-based paint, then the residential dwelling is free of lead-based paint. If any surface in the residential dwelling is found to be painted with lead-based paint, then the residential dwelling is not free of lead-based paint.

(6) If lead-based paint is identified through a lead-free inspection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated.

(7) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a lead-free inspection is completed. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the lead-free inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The report shall include, at least:

1. A statement that the inspection was conducted to determine whether the residential dwelling is free of lead-based paint;
2. Date of inspection;
3. Address of building;
4. Date of construction;
5. Apartment numbers (if applicable);
6. The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
7. Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;
8. Name, address, and telephone number of each laboratory conducting an analysis of collected samples;
9. Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) device;
10. XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated at each required calibration;
11. Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

12. The results of retesting of 10 surfaces, calculations to determine the retest tolerance limit, and the determination of whether the inspection meets the retest tolerance limit;

13. If the inspector determines that the residential dwelling is free of lead-based paint, the report shall contain the following statement:

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm^2 in paint was found on any building components, using the inspection protocol in Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997). Therefore, this residential dwelling qualifies for the exemption in 24 CFR Part 35 and 40 CFR Part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm^2, which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the owner and all future owners for the life of the residential dwelling. Per the disclosure requirements of 24 CFR Part 35 and 40 CFR Part 745, prospective buyers are entitled to all available inspection reports should the property be resold.";

14. If any lead-based paint is identified, a description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

15. A description of interim controls and abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

16. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

17. Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

c. When conducting a lead-free inspection in multifamily housing, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) A certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may randomly select residential dwellings for testing when conducting a lead-free inspection in multifamily housing. If built before 1960 or if the date of construction is unknown, the multifamily housing shall contain at least 20 similarly constructed and maintained residential dwellings in order to use random selection. If built from 1960 to 1977, the multifamily housing shall contain at least 10 similarly constructed and maintained residential dwellings in order to use random selection. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not randomly select the residential dwellings for testing or if there are not enough residential dwellings to randomly select them for sampling, all residential dwellings shall be tested. If random selection is used, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor conducting the lead-free inspection shall randomly select the residential dwellings to be tested. The property owner, manager, or another interested party shall not specify which residential dwellings are to be tested. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 1 to determine the number of residential dwellings to randomly select for testing.

Table 1
Minimum Number of Residential Dwellings to be Randomly Selected in Multifamily Housing for Lead-Free Inspection, Risk Assessment, Lead Hazard Screen, or Clearance Testing

Number of Similar Residential Dwellings, Similar Common Areas, or Similar Exteriors in Multifamily Housing	Lead-Free Inspection, Risk Assessment, or Lead Hazard Screen		Clearance Testing
	Number of Pre-1960 Residential Dwellings or Residential Dwellings of Unknown Date of Construction to Randomly Select for Testing	Number of 1960-1977 Residential Dwellings to Randomly Select for Testing	Number of Residential Dwellings to Randomly Select for Clearance Testing
1-9	All	All	All
10-13	All	10	All
14	All	11	All
15	All	12	All
16-17	All	13	All
18	All	14	All
19	All	15	All
20	All	16	All
21-26	20	16	20
27	21	17	21
28	22	18	22
29	23	18	23
30	23	19	23
31	24	19	24
32	25	19	25
33-34	26	19	26
35	27	19	27
36	28	19	28
37	29	19	29
38-39	30	20	30
40-48	31	21	31
49-50	31	22	31
51	32	22	32
52-53	33	22	33
54	34	22	34
55-56	35	22	35
57-58	36	22	36
59	37	23	37
60-69	38	23	38
70-73	38	24	38
74-75	39	24	39
76-77	40	24	40
78-79	41	24	41
80-88	42	24	42

Number of Similar Residential Dwellings, Similar Common Areas, or Similar Exteriors in Multifamily Housing	Lead-Free Inspection, Risk Assessment, or Lead Hazard Screen		Clearance Testing
	Number of Pre-1960 Residential Dwellings or Residential Dwellings of Unknown Date of Construction to Randomly Select for Testing	Number of 1960-1977 Residential Dwellings to Randomly Select for Testing	Number of Residential Dwellings to Randomly Select for Clearance Testing
89-95	42	25	42
96-97	43	25	43
98-99	44	25	44
100-109	45	25	45
110-117	45	26	45
118-119	46	26	46
120-138	47	26	47
139-157	48	26	48
158-159	49	26	49
160-177	49	27	49
178-197	50	27	50
198-218	51	27	51
219-258	52	27	52
259-279	53	27	53
280-299	53	28	53
300-379	54	28	54
380-499	55	28	55
500-776	56	28	56
777-939	57	28	57
940-1004	57	29	57
1005-1022	58	29	58
1023-1032	59	29	59
1033-1039	59	30	59
1040+	5.8%, rounded to the next highest whole number	2.9%, rounded to the next highest whole number	5.8%, rounded to the next highest whole number

(2) A certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may randomly select each type of common area in the multifamily housing, including but not limited to hallways, exterior sides of a building, and laundry rooms, for testing. Each type of common area shall be counted separately. If built before 1960, the multifamily housing shall contain at least 20 of a type of common area in order to use random selection. If built from 1960 to 1977, the multifamily housing shall contain at least 10 of a type of common area in order to use random selection. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not randomly select the common areas for testing or if there are not enough common areas to randomly select them for testing, all common areas shall be tested. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 1 to determine the number of each type of common area to randomly select for testing.

(3) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test paint in each room of each residential dwelling selected for testing and in each common area selected for testing.

(4) Except for components known to have been replaced after December 31, 1977, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test each testing combination in each room of a residential dwelling chosen for testing and in each common area chosen for testing. On windows, the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination. Each wall in a room or a common area shall be tested. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall require one of the following two types of evidence to determine that components were replaced after 1977:

1. Detailed specifications showing which components were to be replaced, restored, enclosed, or encapsulated and evidence that the work was actually completed such as receipts for building materials, city building records showing a date of remodeling, or evidence of a final inspection by the city or another inspector showing that the work was actually completed.

2. A certification under penalty of perjury per Iowa Code section 622.1 from the contractor who did the work or from the person(s) who owned the property at the time outlining all of the components that were removed and replaced.

If one of these two types of evidence is not available, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test the component.

(5) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall note any components where lead-based paint has been enclosed or encapsulated. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not make a determination that a component or the multifamily housing is lead-free where components that are painted with lead-based paint have been enclosed or encapsulated.

(6) Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

1. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor must use an X-ray fluorescence analyzer which has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

2. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not use an X-ray fluorescence analyzer using a software version or a mode of operation that could result in inconclusive readings or would require substrate correction.

3. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use standards provided by the manufacturer and the NIST 1.02 standard film for calibration of the X-ray fluorescence analyzer.

4. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings at the beginning of the inspection, every four hours, and at the end of the inspection.

5. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading as positive or negative according to the performance characteristics sheet for the XRF. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not discard XRF readings unless instructed to do so by the performance characteristics sheet or the operating instructions from the manufacturer. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor believes that a reading classified as positive is in error, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect a paint sample for laboratory analysis. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall change the positive classification to negative only if the results of the laboratory analysis indicate that the surface is not painted with lead-based paint.

6. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall count the number of XRF readings taken for each component type. If fewer than 40 of any component type were tested, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall randomly choose additional testing combinations for the component type to reach a total of 40 XRF readings. If fewer than 40 testing combinations are available for testing, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test each testing combination.

(7) For each component type where at least 40 testing combinations have been tested, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall determine the number and percentage of each component type that is classified as positive or negative. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each component type as follows:

1. Lead-based paint is not present on a component type if all readings are classified as negative.

2. Lead-based paint is present on a component type if at least 15 percent of the readings are classified as positive.

3. Lead-based paint is present on a component type if greater than or equal to 5 percent but less than 15 percent of the XRF readings are classified as positive, unless the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor collects paint samples and obtains laboratory analyses for all positive XRF readings. If the laboratory analyses show that lead-based paint is not present on any components, then the component type is negative. If the laboratory analyses show that lead-based paint is present on any component, then the component type is positive.

4. Lead-based paint is present on a component type if greater than 0 but less than 5 percent of the XRF readings are classified as positive, unless the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor collects paint samples and obtains laboratory analyses for all positive XRF readings or randomly selects a second set of residential dwellings for testing. If the laboratory analyses show that lead-based paint is not present on any components, then the component type is negative. If the laboratory analyses show that lead-based paint is present on any component, then the component type is positive. If a second set of randomly selected residential dwellings is sampled and greater than 0 but less than 2.5 percent of the combined set of results is positive, the component type may be considered as not having lead-based paint developmentwide but rather, having lead-based paint in isolated locations, with a reasonable degree of confidence. Individual components that are classified as positive should be considered lead-based painted and managed or abated appropriately.

5. If a particular component type in the sampled residential dwellings is classified as positive, that same component type in the unsampled residential dwellings is also classified as positive.

(8) If fewer than 40 of a component type are available for testing, each testing combination must be classified individually as positive or negative.

(9) If any component type or individual component is classified as positive, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not state that the multifamily housing is free of lead-based paint.

(10) As specified by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct retesting of 10 surfaces selected from two residential dwellings, calculate the retest tolerance limit, and determine whether the inspection meets the retest tolerance limit. If the retest tolerance limit is not met, then this procedure shall be repeated with 10 additional surfaces selected from the two residential dwellings. If the retest tolerance limit is not met with the 20 retested surfaces, then all results of the inspection shall be considered invalid.

(11) If lead-based paint is identified on any component or component type, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated.

(12) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility inspected. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The inspection report shall include, at least:

1. Date of each inspection;
2. Address of each building in the multifamily housing;
3. Date of construction for each building in the multifamily housing;
4. A list of the apartments and common areas in each building in the multifamily housing;
5. The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;
6. A statement that the inspection was conducted to determine that lead-based paint is not present;
7. The name of the Iowa-certified inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor who randomly selected the residential dwellings and common areas for testing;
8. The number of residential dwellings and common areas that were selected for testing, how these numbers were determined, and a list of the residential dwellings and common areas that were selected for testing;
9. Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;
10. Name, address, and telephone number of each laboratory conducting an analysis of collected samples;
11. Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;
12. XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated at each required calibration;
13. Specific locations by room of each painted component tested for the presence of lead-based paint and by residential dwelling or common area and the results for each component expressed in terms appropriate to the sampling method used;
14. Component aggregations and the determination of whether lead-based paint is present by component type;

15. The results of retesting of 10 surfaces, calculations to determine the retest tolerance limit, and the determination of whether the inspection meets the retest tolerance limit;

16. If the inspector determines that the multifamily housing is free of lead-based paint, the report shall contain the following statement:

"The results of this inspection indicate that no lead in amounts greater than or equal to 1.0 mg/cm^2 in paint was found on any building components, using the inspection protocol in Chapter 7 of the HUD Guidelines for the Evaluation and Control of Lead-Based Paint Hazards in Housing (1997). Therefore, this multifamily housing qualifies for the exemption in 24 CFR Part 35 and 40 CFR Part 745 for target housing being leased that is free of lead-based paint, as defined in the rule. However, some painted surfaces may contain levels of lead below 1.0 mg/cm^2, which could create lead dust or lead-contaminated soil hazards if the paint is turned into dust by abrasion, scraping, or sanding. This report should be kept by the owner and all future owners for the life of the multifamily housing. Per the disclosure requirements of 24 CFR Part 35 and 40 CFR Part 745, prospective buyers are entitled to all available inspection reports should the property be resold.";

17. If any lead-based paint is identified, a description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

18. A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

19. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

20. Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

70.6(2) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct lead inspections according to the following standards. Beginning March 1, 2000, lead inspections shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting a lead inspection in a residential dwelling or child-occupied facility, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test paint in each room, including each exterior side.

(2) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test each testing combination in each room. On windows, the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination. One sample shall be taken for each testing combination in a room. If a testing combination is not tested, it shall be assumed to be painted with lead-based paint.

b. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use an X-ray fluorescence analyzer that has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

(2) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the NIST 1.02 standard film or standards provided by the manufacturer for calibration of the X-ray fluorescence analyzer. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not state that any surface is free of lead-based paint unless the NIST 1.02 standard film is used for calibration.

(3) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings at the beginning of the inspection.

(4) If required by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation (1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6 and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where required by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

(5) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading that did not require substrate correction and each corrected XRF reading for XRF readings that required substrate correction as positive, negative, or inconclusive, according to the performance characteristics sheet for the XRF. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not discard XRF readings unless instructed to do so by the performance characteristics sheet or the operating instructions from the manufacturer. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor believes that a reading classified as positive is in error, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect a paint sample for laboratory analysis. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall change the positive classification to negative only if the results of the laboratory analysis indicate that the surface is not painted with lead-based paint. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume that all inconclusive readings are positive and classify them as such.

(6) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall resolve inconclusive readings as defined by the performance characteristics sheet for the XRF by collecting paint samples for laboratory analysis. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not resolve inconclusive readings by laboratory analysis, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the inconclusive readings are positive.

c. If lead-based paint is identified through an inspection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated.

d. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility inspected. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The inspection report shall include, at least:

(1) A statement that the inspection was conducted to identify lead-based paint and lead-based paint hazards in the residential dwelling;

(2) Date of each inspection;

(3) Address of building;

(4) Date of construction;

(5) Apartment numbers (if applicable);

(6) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(7) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;

(8) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(9) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

(10) XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

(11) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

(12) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;

(13) A description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

(14) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

(15) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CRF Part 35 and Subpart I of 40 CFR Part 745; and

(16) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

70.6(3) A certified elevated blood lead (EBL) inspector/risk assessor must conduct elevated blood lead (EBL) inspections according to the following standards. Beginning March 1, 2000, elevated blood lead (EBL) inspections shall be conducted only by a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting an elevated blood lead (EBL) inspection, the certified elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) The certified elevated blood lead (EBL) inspector/risk assessor shall test paint in each room, including each exterior side.

(2) The certified elevated blood lead (EBL) inspector/risk assessor shall test each testing combination in each room. One sample shall be taken for each testing combination in a room. On windows, the window frame, interior windowsill, window sash, and window trough shall each be considered a separate testing combination. If a testing combination is not tested, it shall be assumed to be painted with lead-based paint.

b. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) The certified elevated blood lead (EBL) inspector/risk assessor shall use an X-ray fluorescence analyzer that has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

(2) The certified elevated blood lead (EBL) inspector/risk assessor shall use the NIST 1.02 standard film or standards provided by the manufacturer for calibration of the X-ray fluorescence analyzer. The certified elevated blood lead (EBL) inspector/risk assessor shall not state that any surface is free of lead-based paint unless the NIST 1.02 standard film is used for calibration.

(3) The certified elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings at the beginning of the inspection.

(4) If required by the performance characteristics sheet, the certified elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation (1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6 and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where required by the performance characteristics sheet, then the certified elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

(5) The certified elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading that did not require substrate correction and each corrected XRF reading for XRF readings that required substrate correction as positive, negative, or inconclusive, according to the performance characteristics sheet for the XRF. The certified elevated blood lead (EBL) inspector/risk assessor may assume that all inconclusive readings are positive and classify them as such.

(6) The certified elevated blood lead (EBL) inspector/risk assessor shall resolve inconclusive readings as defined by the performance characteristics sheet for the XRF by collecting paint samples for laboratory analysis. If the certified elevated blood lead (EBL) inspector/risk assessor does not resolve inconclusive readings, then the certified elevated blood lead (EBL) inspector/risk assessor shall assume that the inconclusive readings are positive.

c. If lead-based paint is identified through an elevated blood lead (EBL) inspection, the certified elevated blood lead (EBL) inspector/risk assessor must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards, including bare soil in the play area or in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated.

d. No later than two weeks after the receipt of laboratory results, a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted and shall provide a copy of this report to the property owner and the occupant of the dwelling. The report shall include, at least:

(1) A statement that the elevated blood lead (EBL) inspection was conducted to identify lead-based paint and lead-based paint hazards in the residential dwelling;

(2) Date of each elevated blood lead (EBL) inspection;

(3) Address of building;

(4) Date of construction;

(5) Apartment numbers (if applicable);

(6) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(7) Name, signature, and certification number of each certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;

(8) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(9) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

(10) XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

(11) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

(12) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;

(13) A description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the play area or in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

(14) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

(15) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

(16) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

e. A certified elevated blood lead (EBL) inspector/risk assessor shall maintain a written record for each residential dwelling or child-occupied facility where an elevated blood lead (EBL) inspection has been conducted for no fewer than ten years. The record shall include, at least:

(1) A copy of the written report required by paragraph 70.6(3)*"d."*

(2) Blood lead test results for the elevated blood lead (EBL) child.

(3) A record of conversations held with the owners and occupants of each residential dwelling or child-occupied facility prior to, during, and after the EBL inspection.

(4) Records of follow-up visits made to each residential dwelling or child-occupied facility where lead-based paint hazards are identified to ensure that lead-based paint hazards are safely repaired.

70.6(4) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct lead hazard screens according to the following standards. Beginning March 1, 2000, lead hazard screens shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection of the residential dwelling or child-occupied facility shall be conducted to determine if any deteriorated paint is present and to locate at least two dust sampling locations.

c. If deteriorated paint is present, each surface with deteriorated paint which is determined to have a distinct painting history must be tested for the presence of lead. In addition, friction surfaces where there is evidence of abrasion and impact surfaces that are damaged or otherwise deteriorated from impact and that have a distinct painting history shall be tested for the presence of lead.

d. In residential dwellings, a minimum of two composite or single-surface dust samples shall be collected. One sample shall be collected from the floors and the other from the interior windowsills in rooms, hallways, or stairwells where at least one child under the age of six years is most likely to come in contact with dust.

e. In multifamily dwellings and child-occupied facilities, single-surface or composite dust samples shall also be collected from common areas where at least one child under the age of six years is likely to come in contact with dust.

f. Dust samples shall be collected by wipe samples using the documented methodologies specified in guidance documents issued by the department. The minimum area for a floor wipe sample shall be 0.50 square feet or 72 square inches. The minimum area for a windowsill wipe sample and for a window trough wipe sample shall be 0.25 square feet or 36 square inches. Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

g. Soil samples shall be collected and analyzed for lead content in exterior play areas and dripline areas where bare soil is present. In addition, soil samples shall be collected and analyzed for lead content from any other areas of the yard where bare soil is present. Soil and paint samples shall be collected using the documented methodologies specified in guidance documents issued by the department and shall be analyzed by a recognized laboratory to determine the level of lead.

h. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use an X-ray fluorescence analyzer that has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

(2) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the National Institute of Standards and Technology 1.02 milligrams of lead per square centimeter standard reference material or standards provided by the manufacturer for calibration of the X-ray fluorescence analyzer.

(3) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings at the beginning of the inspection.

(4) If required by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation (1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6 and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where required by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all the readings are positive and shall not state that a surface is free of lead-based paint.

(5) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading that did not require substrate correction and each corrected XRF reading for XRF readings that required substrate correction as positive, negative, or inconclusive, according to the performance characteristics sheet for the XRF. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not discard XRF readings unless instructed to do so by the performance characteristics sheet or the operating instructions from the manufacturer. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor believes that a reading classified as positive is in error, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect a paint sample for laboratory analysis. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall change the positive classification to negative only if the results of the laboratory analysis indicate that the surface is not painted with lead-based paint. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume that all inconclusive readings are positive and classify them as such.

(6) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall resolve inconclusive readings as defined by the performance characteristics sheet for the XRF by collecting paint samples for laboratory analysis. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not resolve inconclusive readings by laboratory analysis, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the inconclusive readings are positive.

i. The following standards shall be used to determine whether a residential dwelling or child-occupied facility fails a lead hazard screen:

(1) A residential dwelling or child-occupied facility shall fail a lead hazard screen if any deteriorated paint or paint on friction or impact surfaces is found to be lead-based paint.

(2) A residential dwelling shall fail a lead hazard screen if any floor dust lead level in a single-surface or composite-surface dust sample is greater than or equal to 25 micrograms per square foot.

(3) A residential dwelling shall fail a lead hazard screen if any interior windowsill dust level in a single-surface or composite-surface dust sample is greater than or equal to 125 micrograms per square foot.

(4) A residential dwelling or child-occupied facility shall fail a lead hazard screen if any bare soil is found to be a soil-lead hazard.

j. When conducting a lead hazard screen in multifamily housing, a certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor may sample each residential dwelling or choose residential dwellings for sampling by random selection, targeted selection, or worst case selection.

(1) If built before 1960 or if the date of construction is unknown, the multifamily housing shall contain at least 20 similarly constructed and maintained residential dwellings in order to use random selection. If built from 1960 to 1977, the multifamily housing shall contain at least 10 similarly constructed and maintained residential dwellings in order to use random selection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 1 to determine the number of residential dwellings to randomly select for testing.

(2) If the multifamily housing contains five or more similar residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may use targeted selection. If using targeted selection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 2 to determine the number of residential dwellings to test. If the multifamily housing has fewer than five similar dwellings, all residential dwellings shall be tested. Residential dwellings chosen by targeted selection shall meet as many of the following criteria as possible:

1. The residential dwelling has been cited with a housing or building code violation within the past year.
2. The property owner believes that the residential dwelling is in poor condition.
3. The residential dwelling contains two or more children between the ages of six months and six years. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall give preference to residential dwellings that house the largest number of children.
4. The residential dwelling serves as a day care facility.

5. The residential dwelling has been prepared for reoccupancy within the past three months.

If additional residential dwellings are needed to meet the minimum number specified in Table 2, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall select them randomly. If too many residential dwellings meet the criteria, residential dwellings shall be eliminated randomly.

Table 2
Minimum Number of Residential Dwellings in Multifamily Housing for Risk Assessment or Lead Hazard Screen Through Targeted Selection

Number of Similar Residential Dwellings	Number of Residential Dwellings to Sample*
1-4	All
5-20	4 residential dwellings or 50% (whichever is greater)**
21-75	10 residential dwellings or 20% (whichever is greater)**
76-125	17
126-175	19
176-225	20
226-300	21
301-400	22
401-500	23
501+	24 + 1 residential dwelling for each additional increment of 100 residential dwellings or less

*Does not include residential dwellings housing children with elevated blood lead levels.
**For percentages, round up to determine number of residential dwellings to be sampled.

k. If the multifamily housing contains five or more similar residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may use worst case selection. If using worst case selection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 2 to determine the number of residential dwellings to test. If the multifamily housing has fewer than five similar dwellings, all residential dwellings shall be tested.

l. The following standards shall be used to determine whether multifamily housing fails a lead hazard screen:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean of the dust lead levels for carpeted floors, uncarpeted floors, and interior windowsills. If the arithmetic mean for carpeted floors or uncarpeted floors is greater than or equal to 25 micrograms per square foot, the multifamily housing shall fail the lead hazard screen. If the arithmetic mean for interior windowsills is greater than or equal to 125 micrograms per square foot, the multifamily housing shall fail the lead hazard screen. If the arithmetic mean for carpeted floors or uncarpeted floors is less than 25 micrograms per square foot, but some of the samples have dust lead levels that are greater than or equal to 25 micrograms per square foot, then the residential dwellings where these samples were taken and all other similar residential dwellings in the multifamily housing shall fail the lead hazard screen. If the arithmetic mean for interior windowsills is less than 125 micrograms per square foot, but some of the samples have dust lead levels that are greater than or equal to 125 micrograms per square foot, then the residential dwellings where these samples were taken and all other similar residential dwellings in the multifamily housing shall fail the lead hazard screen.

(2) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall evaluate the results of paint sampling by component and location. If all components at a given location are determined to be painted with lead-based paint or are determined to not be painted with lead-based paint, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume this condition is true for all similar residential dwellings. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not assume that the multifamily housing is free of lead-based paint. If a component at a given location is found to be painted with lead-based paint in some residential dwellings and not painted with lead-based paint in other residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the component is a lead-based paint hazard in all similar residential dwellings. If a component in a residential dwelling is determined or assumed to be lead-based paint, then the entire group of similar residential dwellings in the multifamily housing shall fail the lead hazard screen.

(3) Multifamily housing shall fail a lead hazard screen if any bare soil is found to be a soil-lead hazard.

m. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a lead hazard screen is conducted. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the lead hazard screen, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The report shall include, at least:

(1) Date of each lead hazard screen.

(2) Address of building.

(3) Date of construction.

(4) Apartment numbers (if applicable).

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility.

(6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation.

(7) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(8) Results of the visual inspection.

(9) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer.

(10) If used, XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated.

(11) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component tested expressed in terms appropriate to the sampling method used.

(12) All results of laboratory analysis of collected paint, dust, and soil samples. The results of dust sampling shall be reported in micrograms of lead per square foot, and the results of soil sampling shall be reported in parts per million of lead. Results shall not be reported as "not detectable."

(13) Any other sampling results;

(14) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint.

(15) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years.

(16) Whether the residential dwelling or child-occupied facility passed or failed the lead hazard screen and recommendations, if warranted, for a follow-up lead inspection or risk assessment, and, as appropriate, any further actions.

(17) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745.

(18) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

70.6(5) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor must conduct risk assessments according to the following standards. Beginning March 1, 2000, risk assessments shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead hazards and to assess the extent and causes of the paint deterioration.

c. If deteriorated paint is present, each surface with deteriorated paint which is determined to have a distinct painting history must be tested for the presence of lead.

d. Friction surfaces where there is evidence of abrasion and impact surfaces that are damaged or otherwise deteriorated from impact and that have a distinct painting history shall be tested for the presence of lead.

e. In residential dwellings, dust samples shall be collected from the interior windowsill, window trough, and floor in all living areas where at least one child is most likely to come in contact with dust. Dust samples shall be analyzed for lead concentration and may be either composite or single-surface samples.

f. In multifamily dwellings, dust samples shall also be collected from interior windowsills, window troughs, and floors in common areas adjacent to the sampled residential dwellings or child-occupied facility and in other common areas where the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that at least one child under the age of six years is likely to come in contact with dust. Dust samples shall be analyzed for lead concentration and may be either composite or single-surface samples.

g. In child-occupied facilities, dust samples shall be collected from the interior windowsill, window trough, and floor in each room, hallway, or stairwell utilized by one or more children under the age of six years and in other common areas where the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor determines that at least one child under the age of six years is likely to come in contact with dust. Dust samples shall be analyzed for lead concentration and may be either composite or single-surface samples.

h. Soil samples shall be collected and analyzed for lead content in exterior play areas and dripline areas where bare soil is present. In addition, soil samples shall be collected and analyzed for lead content from any other areas of the yard where bare soil is present.

i. Dust samples shall be collected by wipe samples using the documented methodologies specified in guidance documents issued by the department. The minimum area for a floor wipe sample shall be 0.50 square feet. The minimum area for a windowsill wipe sample and for a window trough wipe sample shall be 0.25 square feet. Soil and paint samples shall be collected using the documented methodologies specified in guidance documents issued by the department. Dust and soil samples shall be analyzed by a recognized laboratory to determine the level of lead. The results of dust sampling shall be reported in micrograms of lead per square foot, and the results of soil sampling shall be reported in parts per million of lead. The results shall not be reported as "not detectable."

j. Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use an X-ray fluorescence analyzer that has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

(2) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the NIST 1.02 standard film material or standards provided by the manufacturer for calibration of the X-ray fluorescence analyzer. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not state that any surface is free of lead-based paint unless the NIST 1.02 standard film is used for calibration.

(3) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings at the beginning of the inspection.

(4) If required by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation (1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6 and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where required by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

(5) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading that did not require substrate correction and each corrected XRF reading for XRF readings that required substrate correction as positive, negative, or inconclusive, according to the performance characteristics sheet for the XRF. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not discard XRF readings unless instructed to do so by the performance characteristics sheet or the operating instructions from the manufacturer. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor believes that a reading classified as positive is in error, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect a paint sample for laboratory analysis. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall change the positive classification to negative only if the results of the laboratory analysis indicate that the surface is not painted with lead-based paint. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume that all inconclusive readings are positive and classify them as such.

(6) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall resolve inconclusive readings as defined by the performance characteristics sheet for the XRF by collecting paint samples for laboratory analysis. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not resolve inconclusive readings by laboratory analysis, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the inconclusive readings are positive.

k. When conducting a risk assessment in multifamily housing, a certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor may sample each residential dwelling or choose residential dwellings for sampling by random selection, targeted selection, or worst case selection.

(1) If built before 1960 or if the date of construction is unknown, the multifamily housing shall contain at least 20 similarly constructed and maintained residential dwellings in order to use random selection. If built from 1960 to 1977, the multifamily housing shall contain at least 10 similarly constructed and maintained residential dwellings in order to use random selection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 1 to determine the number of residential dwellings to randomly select for testing.

(2) If the multifamily housing contains five or more similar residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may use targeted selection. If using targeted selection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 2 to determine the number of residential dwellings to test. If the multifamily housing has fewer than five similar dwellings, all residential dwellings shall be tested. Residential dwellings chosen by targeted selection shall meet as many of the following criteria as possible. If additional residential dwellings are needed to meet the minimum number specified in Table 2, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall select them randomly. If too many residential dwellings meet the criteria, residential dwellings shall be eliminated randomly. Targeted selection criteria are as follows:

1. The residential dwelling has been cited with a housing or building code violation within the past year.
2. The property owner believes that the residential dwelling is in poor condition.
3. The residential dwelling contains two or more children between the ages of six months and six years. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall give preference to residential dwellings that house the largest number of children.
4. The residential dwelling serves as a day care facility.
5. The residential dwelling has been prepared for reoccupancy within the past three months.

(3) If the multifamily housing contains five or more similar residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may use worst case selection. If using worst case selection, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use Table 2 to determine the number of residential dwellings to test. If the multifamily housing has fewer than five similar dwellings, all residential dwellings shall be tested.

(4) The following standards shall be used to determine the extent of lead-based paint hazards throughout multifamily housing that is sampled by random selection, targeted selection, or worst case selection:

1. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean of the dust lead levels for carpeted floors, uncarpeted floors, interior windowsills, and window troughs. If the arithmetic mean is greater than or equal to the level defined as a dust lead hazard for the component, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall determine that a dust lead hazard has been identified on the component throughout the multifamily housing. If the arithmetic mean is less than the level defined as a dust lead hazard for the component, but some of the individual components have dust lead levels that are greater than or equal to the level defined as a dust lead hazard, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall determine that a dust lead hazard has been identified on the individual components and on all other similar components throughout the multifamily housing.

2. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall evaluate the results of paint sampling by component and location. If all components at a given location are determined to be painted with lead-based paint or are determined to not be painted with lead-based paint, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume this condition is true for all similar residential dwellings. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not assume that the multifamily housing is free of lead-based paint. If a component at a given location is found to be painted with lead-based paint in some residential dwellings and not painted with lead-based paint in other residential dwellings, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the component is a lead-based paint hazard in all similar residential dwellings.

l. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where a risk assessment is conducted. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the risk assessment, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of the report for no less than three years. The report shall include, at least:

(1) Date of each risk assessment;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the investigation;

(7) Name, address, and telephone number of each recognized laboratory conducting an analysis of collected samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b));

(8) Results of the visual inspection;

(9) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

(10) If used, XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

(11) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component tested expressed in terms appropriate to the sampling method used;

(12) All results of laboratory analysis of collected paint, dust, and soil samples;

(13) Any other sampling results;

(14) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;

(15) Background information collected regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years;

(16) To the extent that they are used as part of the lead-based paint hazard determination, the results of any previous inspections or analyses for the presence of lead-based paint, or other assessments of lead-based paint hazards;

(17) A description of the location, type, and severity of identified lead-based paint hazards, and any other potential lead hazards, including bare soil in the play area or in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

(18) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

(19) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

(20) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

70.6(6) A certified lead abatement contractor or certified lead abatement worker must conduct lead abatement according to the following standards. Beginning March 1, 2000, lead abatement shall be conducted only by a certified lead abatement contractor or a certified lead abatement worker.

a. A certified lead abatement contractor must be on site during all work site preparation and during the postabatement cleanup of work areas. At all other times when lead abatement is being conducted, the certified lead abatement contractor shall be on site or available by telephone, pager, or answering service, and be able to be present at the work site in no more than two hours.

b. A certified lead abatement contractor shall ensure that lead abatement is conducted according to all federal, state, and local requirements.

c. A certified lead abatement contractor shall notify the department in writing at least seven days prior to the commencement of lead abatement in a residential dwelling or child-occupied facility. The notification shall include the following information:

(1) The address, including apartment numbers, where lead abatement will be conducted.

(2) The dates when lead abatement will be conducted.

(3) The name, address, telephone number, Iowa certification number, and signature of the contact for the certified firm that will conduct the work.

(4) The name, address, telephone number, Iowa certification number, and signature of the certified lead abatement contractor who will serve as the contact person for the project.

(5) The name, address, and telephone number of the property owner.

(6) Whether the dwelling is owner-occupied or a rental dwelling.

(7) If the dwelling is an occupied rental, the names of the occupants.

(8) The approximate year that the dwelling was built.

(9) A brief description of the lead abatement work to be done.

d. A certified lead abatement contractor shall submit a revised notification to the department if any information in the original notification changes.

e. A certified lead abatement contractor or a certified project designer shall develop an occupant protection plan for all lead abatement projects prior to starting lead abatement and shall implement the occupant protection plan during the lead abatement project. The occupant protection plan shall be unique to each residential dwelling or child-occupied facility. The occupant protection plan shall describe the measures and management procedures that will be taken during the lead abatement to protect the building occupants from exposure to any lead-based paint hazards.

f. Approved methods must be used to conduct lead abatement and prohibited work practices must not be used to conduct lead abatement. The following are prohibited work practices:

(1) Open-flame burning or torching of lead-based paint.

(2) Machine sanding or grinding or abrasive blasting or sandblasting of lead-based paint unless used with High Efficiency Particulate Air (HEPA) exhaust control that removes particles of 0.3 microns or larger from the air at 99.97 percent or greater efficiency.

(3) Uncontained water blasting of lead-based paint.

(4) Dry scraping or dry sanding of lead-based paint except in conjunction with the use of a heat gun or around electrical outlets.

(5) Operating a heat gun at a temperature at or above 1100 degrees Fahrenheit.

g. Soil abatement shall be conducted using one of the following methods:

(1) If soil is removed, soil that is a soil-lead hazard shall be replaced by soil with a lead concentration as close to the local background as practicable, but less than 400 parts per million. The soil that is removed shall not be used as topsoil at another residential property or child-occupied facility.

(2) If soil is not removed, the soil that is a soil-lead hazard shall be remediated to meet the definition of "permanently covered soil."

h. If lead-based paint is removed from a surface, the surface shall be repainted or refinished prior to postabatement clearance dust sampling. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall visually verify that lead-based paint was removed from a surface prior to repainting or refinishing.

i. If components painted with lead-based paint are removed, the replacement components shall be installed prior to postabatement clearance testing.

j. Postabatement clearance procedures shall be conducted by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor. Postabatement clearance testing shall be performed by persons or entities independent of those performing lead abatement, unless the designated party uses qualified in-house employees to conduct postabatement clearance testing. An in-house employee shall not conduct both lead abatement and the postabatement clearance testing for this work. Postabatement clearance testing shall be conducted using the following procedures:

(1) Following a lead abatement, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall review the report of the lead inspection, risk assessment, or visual assessment done prior to the lead abatement project and the lead abatement specifications to determine the lead-based paint hazards that were to be abated by the lead abatement project. The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall perform a visual inspection to determine if all lead-based paint hazards that were to be abated have been abated and to determine if deteriorated paint surfaces or visible amounts of dust, debris, or residue are still present in the rooms where lead abatement was conducted. If lead-based paint hazards that were to be abated by the project or deteriorated paint surfaces or visible amounts of dust, debris, or residue are present in the rooms where lead abatement was conducted, these conditions must be eliminated prior to the continuation of the clearance procedures. However, elimination of deteriorated paint is not required if it has been determined through paint testing or a lead-based paint inspection that the deteriorated paint is not lead-based paint. Following an exterior lead abatement, a visual inspection shall be conducted to determine if all lead-based paint hazards that were to be abated have been abated and to determine if any visible dust or debris remains on any horizontal surfaces in the outdoor living areas close to the abated surface. In addition, a visual inspection shall be conducted to determine the presence of paint chips on the dripline or next to the foundation below any exterior surface that was abated. If lead-based paint hazards that were to be abated by the project are still present, these conditions must be eliminated prior to the continuation of the clearance procedures. If visible dust, debris, or paint chips are present, they must be removed from the site and properly disposed of according to all applicable federal, state, and local standards.

(2) Following the visual inspection and any required postabatement cleanup, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall conduct clearance sampling for lead in dust. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling.

(3) Dust samples shall be collected a minimum of one hour after the completion of final postabatement cleanup activities.

(4) Dust samples shall be collected by wipe samples using the documented methodologies specified in guidance documents issued by the department. The minimum area for a floor wipe sample shall be 0.50 square feet or 72 square inches. The minimum area for a windowsill wipe sample and for a window trough wipe sample shall be 0.25 square feet or 36 square inches. Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

(5) The following postabatement clearance activities shall be conducted as appropriate based upon the extent or manner of lead abatement activities conducted in the residential dwelling or child-occupied facility:

1. After conducting a lead abatement with containment between abated and unabated areas, three dust samples shall be taken from each of no fewer than four rooms, hallways, or stairwells within the containment area. Dust samples shall be taken from one interior windowsill and from one window trough (if available), and one dust sample shall be taken from the floor of each of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside of each individual containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

2. After conducting a lead abatement with no containment between abated and unabated areas, three dust samples shall be taken from each of no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. Dust samples shall be taken from one interior windowsill and from one window trough (if available), and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility, then all rooms, hallways, and stairwells shall be sampled.

3. The certified lead abatement contractors and certified lead abatement workers who abate or clean the dwellings shall not have any knowledge of which rooms or surfaces will be selected for the dust samples.

(6) Reserved.

(7) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall compare the residual lead level as determined by the laboratory analysis from each single-surface dust sample with applicable single-surface clearance levels for lead in dust on floors, interior windowsills, and window troughs. If the residual lead level in a single-surface dust sample is greater than or equal to the applicable clearance level for a floor, interior windowsill, or window trough, then the failed component in each room with a failed single-surface dust sample and that type of component in each room that was not tested shall be recleaned. Additional clearance samples shall be taken from the failed component in each room where it failed and from enough additional rooms that were not previously tested so that four rooms are sampled. If four rooms are not available, then each available room shall be retested. The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall evaluate the results of this testing to determine if the recleaned components meet the clearance level. The components must be recleaned and retested until the clearance level is met.

(8) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall compare the residual lead level as determined by the laboratory analysis from each composite dust sample with applicable single-surface clearance levels for lead in dust on floors, interior windowsills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a composite dust sample is greater than or equal to the applicable clearance level divided by half the number of subsamples in the composite sample, then all the components represented by the failed composite dust sample shall be recleaned and retested until clearance levels are met.

k. In multifamily housing consisting of at least 20 similarly constructed and maintained residential dwellings, random selection for the purpose of clearance testing may be conducted if the following conditions are met:

(1) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall randomly select the residential dwellings that will be sampled. The certified lead abatement contractors and certified lead abatement workers who abate or clean the dwellings do not know which residential dwellings will be selected for the random selection or which rooms or surfaces will be selected for the dust samples.

(2) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall use Table 1 to determine the minimum number of residential dwellings selected for dust sampling. This shall provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population are greater than or equal to the appropriate clearance levels.

(3) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall sample the randomly selected residential dwellings and evaluate them for clearance according to the procedures found in paragraphs 70.6(6)*"h"* through *"j."*

l. No later than three weeks after the property passes clearance, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a report to the lead abatement contractor that contains the items required by subparagraphs 70.6(6)*"m"*(7) through (9).

m. The certified lead abatement contractor or a certified project designer shall prepare a lead abatement report containing the following information:

(1) A copy of the original and any revised lead abatement notifications.

(2) Starting and completion dates of the lead abatement project.

(3) The name, address, and telephone number of the property owner(s).

(4) The name, address, and signature of the certified lead abatement contractor and certified lead abatement worker and of the certified firm contact for the firm conducting the lead abatement.

(5) Whether or not containment was used and, if containment was used, the locations of the containment.

(6) The occupant protection plan required by paragraph 70.6(6)*"e."*

(7) The name, address, and signature of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting clearance sampling, the date on which the clearance testing was conducted, the results of the visual inspection for the presence of lead hazards that were not abated as specified, deteriorated paint and visible dust, debris, residue, or paint chips in the interior rooms and exterior areas where lead abatement was conducted, and the results of all post-abatement clearance testing and all soil analyses, if applicable. The results of dust sampling shall be reported in micrograms of lead per square foot by location of sample, and the results of soil sampling shall be reported in parts per million of lead. The results shall not be reported as "not detectable." If random selection was used to select the residential dwellings that were sampled, the report shall state that random selection was used, the number of residential dwellings that were sampled, and how this number was determined.

(8) A statement that the lead abatement was or was not done as specified and that the rooms and exterior areas where lead abatement was conducted did or did not pass the visual clearance and the clearance dust testing. If the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the clearance testing cannot verify that all lead-based paint hazards have been abated, the report shall contain the following statement:

"The purpose of this clearance report is to verify that the lead abatement project was done according to the project specifications. This residential dwelling may still contain hazardous lead-based paint, soil-lead hazards, or dust-lead hazards in the rooms or exterior areas that were not included in the lead abatement project."

(9) The name, address, and telephone number of each recognized laboratory conducting an analysis of clearance samples and soil samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(10) A detailed written description of the lead abatement project, including lead abatement methods used, locations of rooms and components where lead abatement occurred, reasons for selecting particular lead abatement methods, and any suggested monitoring of encapsulants or enclosures.

(11) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745.

(12) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

(13) If applicable, a copy of the written consent or waiver required by subrule 70.6(11).

n. The lead abatement report shall be completed no later than 30 days after the lead abatement project passes clearance testing.

o. The certified lead abatement contractor shall maintain all reports and plans required in this subrule for a minimum of three years.

p. The certified lead abatement contractor shall provide a copy of all reports required by this subrule to the building owner and to the person who contracted for the lead abatement, if different.

70.6(7) A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician must conduct visual risk assessments according to the following standards. Beginning March 1, 2000, visual risk assessments shall be conducted only by a certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician.

a. Background information regarding the physical characteristics of the residential dwelling or child-occupied facility and occupant use patterns that may cause lead-based paint exposure to at least one child under the age of six years shall be collected.

b. A visual inspection for risk assessment shall be undertaken to locate the existence of deteriorated paint and other potential lead-based paint hazards and to assess the extent and causes of the paint deterioration. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall assess each component in each room, including each exterior side. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall identify the following conditions as potential lead-based paint hazards:

(1) All interior and exterior surfaces with deteriorated paint.

(2) Horizontal hard surfaces, including but not limited to floors and windowsills, that are not smooth or cleanable.

(3) Dust-generating conditions, including but not limited to conditions causing rubbing, binding, or crushing of surfaces known or presumed to be coated with lead-based paint.

(4) Bare soil in the play area and dripline of the home.

c. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall prepare a written report for each residential dwelling or child-occupied facility where a visual risk assessment is conducted. No later than three weeks after completing the visual risk assessment, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall send a copy of the report to the property owner and to the person requesting the visual risk assessment, if different. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall maintain a copy of the report for no less than three years. The report shall include, at least:

(1) Date of each visual risk assessment;

(2) Address of building;

(3) Date of construction;

(4) Apartment numbers (if applicable);

(5) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(6) Name, signature, and certification number of each certified sampling technician, certified lead inspector/risk assessor, or certified elevated blood lead (EBL) inspector/risk assessor conducting the visual risk assessment;

(7) A statement that all painted or finished components must be assumed to contain lead-based paint;

(8) Specific locations of painted or finished components identified as likely to contain lead-based paint and likely to be lead-based paint hazards;

(9) Specific locations of bare soil in the play area and the dripline of a home;

(10) Information for the owner and occupants on how to reduce lead hazards in the residential dwelling or child-occupied facility;

(11) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

(12) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

70.6(8) A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician must conduct clearance testing according to the following standards. Beginning March 1, 2000, clearance testing following lead abatement shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor. Beginning September 15, 2000, clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted only by certified sampling technicians, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspector/risk assessors.

a. Clearance testing following lead abatement shall be conducted according to paragraphs 70.6(6)*"h"* through *"l."*

b. Clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be conducted according to the following standards:

(1) A certified sampling technician shall perform clearance testing only for a single-family property or for individual residential dwellings and associated common areas in multifamily housing. A certified sampling technician shall not perform clearance testing using random selection of residential dwellings or common areas in multifamily housing.

(2) A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall review the report of the lead inspection, risk assessment, or visual assessment done prior to interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35 and the project specifications to determine the lead-based paint hazards that were to be controlled by the project. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall perform a visual inspection to determine if all lead-based paint hazards that were to be controlled by the project have been controlled and to determine if deteriorated paint surfaces or visible amounts of dust, debris, or residue are still present in the rooms where interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation were conducted pursuant to 24 CFR Part 35. If lead-based paint hazards that were to be controlled by the project, deteriorated paint surfaces or visible amounts of dust, debris, or residue are present in these rooms, these conditions must be eliminated prior to the continuation of the clearance testing. However, elimination of deteriorated paint is not required if it has been determined through a lead-based paint inspection that the deteriorated paint is not lead-based paint. If exterior painted surfaces have been disturbed by the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35, the visual inspection shall include an assessment to determine if all exterior lead-based paint hazards that were to be controlled by the project have been controlled and to determine if any visible dust or debris remains on any horizontal surfaces in the outdoor living areas close to the affected exterior painted surfaces. In addition, a visual inspection shall be conducted to determine if paint chips are present on the dripline or next to the foundation below any exterior painted surface that was treated. If lead-based paint hazards that were to be controlled by the project are still present, these conditions must be eliminated prior to the continuation of the clearance procedures. If visible dust, debris, or paint chips are present, they must be removed from the site and properly disposed of according to all applicable federal, state, and local standards.

(3) Following the visual inspection and any required cleanup, clearance sampling for lead in dust shall be conducted. Clearance sampling may be conducted by employing single-surface sampling or composite dust sampling.

(4) Dust samples shall be collected a minimum of one hour after the completion of final cleanup activities.

(5) Dust samples shall be collected by wipe samples using the documented methodologies specified in guidance documents issued by the department. The minimum area for a floor wipe sample shall be 0.50 square feet or 72 square inches. The minimum area for a windowsill wipe sample and for a window trough wipe sample shall be 0.25 square feet or 36 square inches. Dust samples shall be analyzed by a recognized laboratory to determine the level of lead.

(6) The following clearance activities shall be conducted as appropriate based upon the extent or manner of interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35 in the residential dwelling or child-occupied facility:

1. After conducting interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35, with containment between treated and untreated areas, three dust samples shall be taken from each of no fewer than four rooms, hallways, or stairwells within the containment area. Dust samples shall be taken from one interior windowsill and from one window trough (if available), and one dust sample shall be taken from the floor of each of no fewer than four rooms, hallways, or stairwells within the containment area. In addition, one dust sample shall be taken from the floor outside of each individual containment area. If there are fewer than four rooms, hallways, or stairwells within the containment area, then all rooms, hallways, and stairwells shall be sampled.

2. After conducting interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35, with no containment between treated and untreated areas, three dust samples shall be taken from each of no fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility. Dust samples shall be taken from one interior windowsill and window trough (if available), and one dust sample shall be taken from the floor of each room, hallway, or stairwell selected. If there are fewer than four rooms, hallways, or stairwells in the residential dwelling or child-occupied facility, then all rooms, hallways, and stairwells shall be sampled.

(7) The contractors conducting the work or cleaning the dwellings shall not know which rooms or surfaces will be selected for the dust samples.

(8) The certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall compare the residual lead level as determined by the laboratory analysis from each single-surface dust sample with applicable single-surface clearance levels for lead in dust on floors, interior windowsills, and window troughs. If the residual lead level in a single-surface dust sample is greater than or equal to the applicable clearance level for a floor, interior windowsill, or window trough, then the failed component in each room with a failed single-surface dust sample and that type of component in each room that was not tested shall be recleaned. Additional clearance samples shall be taken from the failed component in each room where it failed and from enough additional rooms that were not previously tested so that four rooms are sampled. If four rooms are not available, then each available room shall be retested. The certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall evaluate the results of this testing to determine if the recleaned components meet the clearance level. The components must be recleaned and retested until the clearance level is met.

(9) The certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall compare the residual lead level as determined by the laboratory analysis from each composite dust sample with applicable single-surface clearance levels for lead in dust on floors, interior windowsills, and window troughs divided by half the number of subsamples in the composite sample. If the residual lead level in a composite dust sample is greater than or equal to the applicable clearance level divided by half the number of subsamples in the composite sample, then all the components represented by the failed composite dust sample shall be recleaned and retested until clearance levels are met.

c. In multifamily housing consisting of at least 20 similarly constructed and maintained residential dwellings, random selection for the purpose of clearance testing may be conducted if the following conditions are met:

(1) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall randomly select the dwellings that will be sampled. The contractors and the workers who conducted the lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation do not know which residential dwellings will be selected for the random selection.

(2) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall use Table 1 to determine the minimum number of dwellings selected for dust sampling. This shall provide a 95 percent level of confidence that no more than 5 percent or 50 of the residential dwellings (whichever is smaller) in the randomly sampled population are greater than or equal to the appropriate clearance levels.

(3) The certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall sample the randomly selected residential dwellings and evaluate them for clearance according to the procedures found in paragraphs 70.6(6)*"h"* through *"j."*

(4) The clearance testing is conducted by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

d. A clearance report must be prepared that provides documentation of the lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35 as well as the clearance testing. When lead abatement is performed, the report shall be a lead abatement report in accordance with paragraph 70.7(6)*"m."* When interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation pursuant to 24 CFR Part 35 are performed, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall prepare a written report for each residential dwelling or child-occupied facility where clearance testing is conducted. No later than 30 days after the property passes clearance, the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician shall send a copy of the report to the property owner and to the person requesting the clearance testing, if different. The clearance report shall include the following information:

(1) The address of the residential property and, if only part of a multifamily property is affected, the specific dwelling units and common areas affected.

(2) The following information regarding the clearance testing:

1. The date(s) of the clearance testing.

2. The name, address, and signature of each certified lead professional performing the clearance examination, including the certification number.

3. Whether or not containment was used and, if containment was used, the locations of the containment.

4. If random selection was used to select the residential dwellings that were sampled, the report shall state that random selection was used, the number of residential dwellings that were sampled, and how this number was determined.

5. The results of the visual inspection for the presence of deteriorated paint and visible dust, debris, residue, or paint chips in the rooms where interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation were conducted pursuant to 24 CFR Part 35.

6. The results of the analysis of dust samples, in micrograms per square foot, by location of sample. The results shall not be reported as "not detectable."

7. A statement that the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation conducted pursuant to 24 CFR Part 35 were or were not done as specified and that the rooms and exterior areas where these activities were conducted did or did not pass the visual clearance and the clearance dust testing. If the certified lead inspector/risk assessor, certified elevated blood lead (EBL) inspector/risk assessor, or certified sampling technician conducting the clearance testing cannot verify that all lead-based paint hazards have been controlled, the report shall contain the following statement:

"The purpose of this clearance report is to verify that this lead hazard control project was done according to the project specifications. This residential dwelling may still contain hazardous lead-based paint, soil-lead hazards, or dust-lead hazards in the rooms or exterior areas that were not included in the lead hazard control project."

8. The name, address, and telephone number of each recognized laboratory conducting an analysis of the dust samples, including the identification number for each such laboratory recognized by EPA under Section 405(b) of the Toxic Substances Control Act (15 U.S.C. 2685(b)).

(3) The following information on the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation for which clearance testing was performed:

1. The start and completion dates of the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation.

2. The name and address of each firm or organization conducting the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation and the name of each supervisor assigned.

3. A detailed written description of the interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, including the methods used, locations of exterior surfaces, interior rooms, common areas, and components where the hazard reduction activity occurred.

4. If interim control of soil hazards was conducted, a detailed description of the location(s) of the interim controls and the method(s) used.

5. Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745.

6. Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

e. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor or a certified sampling technician shall maintain a copy of the clearance testing information included in the lead abatement report specified in paragraph 70.6(6)*"m"* for no fewer than three years. A certified lead inspector/risk assessor, a certified elevated blood lead (EBL) inspector/risk assessor, or a certified sampling technician shall maintain a copy of the clearance testing report specified in paragraph 70.6(8)*"d"* for no fewer than three years.

f. Clearance testing shall be performed by persons or entities independent of those performing lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation, unless the designated party uses qualified in-house employees to conduct clearance testing. An in-house employee shall not conduct both lead abatement, interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, or rehabilitation and the clearance examination for this work.

70.6(9) A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall conduct paint testing pursuant to 24 CFR Part 35 according to the following standards. Beginning March 1, 2000, paint testing pursuant to 24 CFR Part 35 shall be conducted only by a certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor.

a. When conducting paint testing in a residential dwelling or child-occupied facility, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following procedures:

(1) The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall test paint on each deteriorated paint surface and on each painted surface that will be disturbed or replaced. On windows, the window frame, interior windowsill, window sash, and window trough shall each be tested.

(2) Paint shall be tested using adequate quality control by X-ray fluorescence or by laboratory analysis using a recognized laboratory to determine the presence of lead-based paint on a surface. If testing by laboratory analysis, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect paint samples using the documented methodologies specified in guidance documents issued by the department. If testing by X-ray fluorescence, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the following methodologies:

1. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use an X-ray fluorescence analyzer that has a performance characteristics sheet and shall use the X-ray fluorescence analyzer according to the performance characteristics sheet.

2. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall use the NIST 1.02 standard film or standards provided by the manufacturer for calibration of the X-ray fluorescence analyzer. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not state that any surface is free of lead-based paint unless the NIST 1.02 standard film is used for calibration.

3. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall take calibration readings consisting of an average of three readings at the beginning of the inspection.

4. If required by the performance characteristics sheet, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall conduct substrate correction for all XRF readings less than 4.0 milligrams of lead per square centimeter. For each substrate that requires substrate correction, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall completely remove all paint from an area of two different testing combinations for that substrate. If possible, the areas chosen for substrate correction should have initial XRF readings of less than 2.5 milligrams of lead per square centimeter. For each testing combination, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall remove paint from an area that is at least as large as the XRF probe faceplate. On each of the two areas, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall place the NIST 1.02 standard film over the surface, and take three XRF readings with the XRF used to conduct the inspection. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall calculate the arithmetic mean for these six readings and shall subtract 1.02 from this arithmetic mean to obtain the substrate correction value. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall then subtract the substrate correction value from each XRF reading for the substrate requiring substrate correction to obtain the corrected XRF reading. For example, if the six readings taken on the NIST 1.02 standard film were 1.1, 1.3, 1.4, 1.0, 1.2, and 1.1, the arithmetic mean is calculated by the equation (1.1 + 1.3 + 1.4 + 1.0 + 1.2 + 1.1)/6 and is equal to 1.18. The substrate correction value is equal to 1.18 minus 1.02, or 0.16. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not conduct substrate correction where required by the performance characteristics sheet, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that all of the readings are positive and shall not state that a surface is free of lead-based paint.

5. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall classify each XRF reading that did not require substrate correction and each corrected XRF reading for XRF readings that required substrate correction as positive, negative, or inconclusive, according to the performance characteristics sheet for the XRF. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall not discard XRF readings unless instructed to do so by the performance characteristics sheet or the operating instructions from the manufacturer. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor believes that a reading classified as positive is in error, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall collect a paint sample for laboratory analysis. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall change the positive classification to negative only if the results of the laboratory analysis indicate that the surface is not painted with lead-based paint. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor may assume that all inconclusive readings are positive and classify them as such.

6. The certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall resolve inconclusive readings as defined by the performance characteristics sheet for the XRF by collecting paint samples for laboratory analysis. If the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor does not resolve inconclusive readings by laboratory analysis, then the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor shall assume that the inconclusive readings are positive.

b. If lead-based paint is identified through paint testing, the certified lead inspector/risk assessor or elevated blood lead (EBL) inspector/risk assessor must conduct a visual inspection to determine the presence of lead-based paint hazards and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated.

c. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall prepare a written report for each residential dwelling or child-occupied facility where paint testing is conducted. No later than three weeks after the receipt of laboratory results, the certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor shall send a copy of the report to the property owner and to the person requesting the inspection, if different. A certified lead inspector/risk assessor or a certified elevated blood lead (EBL) inspector/risk assessor shall maintain a copy of each written report for no less than three years. The report shall include, at least:

(1) A statement that the inspection was conducted to determine whether lead-based paint is present on deteriorated paint surfaces and on painted surfaces that will be disturbed or replaced;

(2) Date of the testing;

(3) Address of building;

(4) Date of construction;

(5) Apartment numbers (if applicable);

(6) The name, address, and telephone number of the owner or owners of each residential dwelling or child-occupied facility;

(7) Name, signature, and certification number of each certified lead inspector/risk assessor or certified elevated blood lead (EBL) inspector/risk assessor conducting the paint testing;

(8) Name, address, and telephone number of each laboratory conducting an analysis of collected samples;

(9) Each testing method and sampling procedure employed for paint analysis, including quality control data and, if used, the manufacturer, serial number, software, and operating mode of any X-ray fluorescence (XRF) analyzer;

(10) XRF readings taken for calibration and calculations to demonstrate that the XRF is properly calibrated;

(11) Specific locations by room of each painted component tested for the presence of lead-based paint and the results for each component expressed in terms appropriate to the sampling method used;

(12) A statement that all painted or finished components that were not tested must be assumed to contain lead-based paint;

(13) A description of the location, type, and severity of identified lead-based paint hazards, including the classification of each tested surface as to whether it is a lead-based paint hazard, and any other potential lead hazards, including bare soil in the dripline of a home where lead-based paint is identified on exterior components or lead-based paint previously existed on exterior components, but has been removed, enclosed, or encapsulated;

(14) A description of interim controls and lead abatement options for each identified lead-based paint hazard and a suggested prioritization for addressing each hazard. If the use of an encapsulant or enclosure is recommended, the report shall recommend a maintenance and monitoring schedule for the encapsulant or enclosure;

(15) Information regarding the owner's obligations to disclose known lead-based paint and lead-based paint hazards upon sale or lease of residential property as required by Subpart H of 24 CFR Part 35 and Subpart I of 40 CFR Part 745; and

(16) Information about the notification regarding lead-based paint prior to renovation, remodeling, or repainting as required by 641—Chapter 69.

70.6(10) A certified elevated blood lead (EBL) inspection agency shall maintain for a period of at least 10 years the written records for all elevated blood lead (EBL) inspections conducted by persons that the agency employs or contracts with to provide elevated blood lead (EBL) inspections in the agency's service area.

70.6(11) A person may be certified as a lead inspector/risk assessor, sampling technician, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement worker. Except as specified by paragraph 70.6(6)*"j"* and paragraph 70.6(8)*"f,"* a person who is certified both as a lead inspector/risk assessor, sampling technician, or elevated blood lead (EBL) inspector/risk assessor and as a lead abatement contractor or lead abatement worker shall not provide both lead inspection or visual risk assessment and lead abatement services at the same site unless a written consent or waiver, following full disclosure by the person, is obtained from the owner or manager of the site.

70.6(12) Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in subrules 70.6(1) to 70.6(6) and 70.6(9) shall be collected by persons certified as a lead inspector/risk assessor or an elevated blood lead (EBL) inspector/risk assessor. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in subrule 70.6(8) for clearance testing following lead abatement shall be collected by persons certified as a lead inspector/risk assessor or an elevated blood lead (EBL) inspector/risk assessor. Any dust or soil samples collected pursuant to the work practice standards contained in subrule 70.6(8) for clearance testing after interim controls, paint stabilization, standard treatments, ongoing lead-based paint maintenance, and rehabilitation pursuant to 24 CFR 35.1340 shall be collected only by certified sampling technicians, certified lead inspector/risk assessors, or certified elevated blood lead (EBL) inspector/risk assessors. Any paint chip, dust, or soil samples collected pursuant to the work practice standards contained in 641—70.6(135) shall be analyzed by a recognized laboratory.

70.6(13) Composite dust sampling shall be conducted only in the situations specified in subrules 70.6(4) to 70.6(6) and 70.6(8). If composite sampling is conducted, it shall meet the following requirements:

a. Composite dust samples shall consist of at least two subsamples.

b. Every component that is being tested shall be included in the sampling.

c. Composite dust samples shall not consist of subsamples from more than one type of component.

d. The results of composite dust samples shall be evaluated by comparing the residual lead level as determined by the laboratory analysis from each composite dust sample with applicable single-surface dust-lead hazard or clearance levels for lead in dust on floors, interior windowsills, and window troughs divided by half the number of subsamples in the composite sample.

641—70.7(135) Firms. All firms that perform or offer to perform lead-based paint activities after September 15, 2000, must be certified by the department. Firms shall employ only appropriately certified employees to conduct lead-based paint activities, and the firm and its employees shall follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

70.7(1) A firm wishing to be certified shall apply on forms supplied by the department. The firm must submit:

a. A completed application form.

b. Documentation that the firm will employ only appropriately certified lead professionals to perform lead-based paint activities. In addition, the firm must document that the agency and its employees or contractors will follow the work practice standards in 641—70.6(135) for conducting lead-based paint activities.

c. The certified firm must maintain all records required by 641—70.6(135), with the exception of elevated blood lead (EBL) inspection reports, for three years. Certified firms that are also certified as elevated blood lead (EBL) inspection agencies must maintain elevated blood lead (EBL) inspection reports for at least 10 years.

70.7(2) Reserved.

641—70.8(135) Lead-safe work practices training program approval and lead-safe work practices contractor registration.

70.8(1) Training program approval. Beginning July 1, 2004, any lead-safe work practices training program offered in the state of Iowa shall be approved by the department. A lead-safe work practices training program shall not state that it has been approved by the state of Iowa unless it has met the requirements of 641—70.8(135) and has been issued a letter of approval by the department.

a. Lead-safe work practices training courses shall meet the following requirements:

(1) The instructor shall have successfully completed a 20-hour sampling technician course, a 40-hour lead inspector/risk assessor course, or a 40-hour lead abatement contractor course.

(2) The instructor shall have demonstrated experience in training.

(3) The course shall be 8 hours in length. Each training hour shall include at least 50 minutes of instruction. Instructors shall follow the curriculum provided by the department, including the hands-on exercises and course test. Instructors may also add additional pertinent material.

(4) The instructor shall provide a copy of the student training manual to each person taking the course.

(5) The instructor shall ensure that each course is 8 hours in length. The instructor shall ensure that any student who misses more than 15 minutes of class time makes up the time before taking the course test. In order to receive credit for the course, attendees must be in attendance for the entire course.

(6) The instructor shall administer the course test that is included in the training materials provided by the department. A person shall receive a score of at least 80 percent on the course test to successfully complete the course.

(7) The instructor shall issue a signed course certificate to each successful participant.

(8) The instructor shall evaluate the course each time that it is offered using the form provided by the department. The instructor shall ensure that each participant completes a course evaluation.

(9) The instructor shall keep all records of the course for at least six years or until a state of Iowa/EPA requirement for the certification of lead-safe work practices contractors is implemented, whichever is longer.

(10) At a minimum, the instructor shall keep the following records for each course:

1. A copy of the student training manual given to the students.
2. The dates and place that the course was held.
3. The actual sign-in sheets for the course.
4. The test and answer sheet for the course.
5. The evaluation forms for the course.

(11) The instructor shall keep the following records in a separate file for each participant:

1. The participant's name, address, and telephone number.
2. The participant's answer sheet.
3. A copy of the course certificate issued to the participant.

(12) The instructor shall notify the department in writing at least seven days in advance of planned training courses and shall allow the department to sit in on the course and to audit the records that the training program is required by this rule to maintain.

(13) The instructor shall report to the department the number of people who successfully complete the course each quarter. Reports shall be due on January 15, April 15, July 15, and October 15 of each year.

b. The instructor shall ensure that the training program complies at all times with all requirements in this rule.

70.8(2) If a training program desires approval of a course by the department, the training program shall apply to the department on forms supplied by the department at least 30 days before the initial offering of the course. Programs that were voluntarily approved by the department prior to July 1, 2004, shall remain approved.

70.8(3) Voluntary contractor registration.

a. Beginning July 1, 2004, a person who has successfully completed an approved lead-safe work practices training course may register with the department after the date of course completion. The applicant must submit:

(1) A completed application form;

(2) Documentation of successful completion of an approved lead-safe work practices training course;

(3) A nonrefundable fee of $10.

b. Registered lead-safe work practices contractors must complete renewal registration each year. To receive renewal registration, a registered lead-safe work practices contractor shall submit:

(1) A completed application form;

(2) A nonrefundable fee of $10.

c. A person shall not claim to be a registered lead-safe work practices contractor in the state of Iowa when the person is not.

641—70.9(135) Compliance inspections.

70.9(1) The department may enter premises or facilities where violations of the provisions regarding lead-based paint activities may occur for the purpose of conducting compliance inspections.

70.9(2) The department may enter premises or facilities where training programs conduct business.

70.9(3) The department may take samples and review records as part of the lead-based paint activities compliance inspection process.

641—70.10(135) Denial, suspension, or revocation of certification; denial, suspension, revocation, or modification of course approval; and imposition of penalties.

70.10(1) Violators are subject to civil penalties pursuant to Iowa Code section 135.105A and 641—70.10(135) or to criminal penalties pursuant to Iowa Code section 135.38. The following are considered to be in violation of this chapter:

a. Failure or refusal to comply with any requirements of this chapter.

b. Failure or refusal to establish, maintain, provide, copy, or permit access to records or reports as required by rules 70.3(135) to 70.7(135).

c. Failure or refusal to permit entry or inspection as described in subrules 70.9(1) to 70.9(3).

d. Obtaining certification through fraudulent representation.

e. Failure to obtain certification from the department and performing work requiring certification.

f. Fraudulently obtaining certification and engaging in any lead-based paint activities requiring certification.

70.10(2) The department may deny an application for certification, may suspend or revoke a certification, may impose a civil penalty, or may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that the applicant, certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm has committed any of the following acts:

a. Obtained documentation of training through fraudulent means.

b. Gained admission to an accredited training program through misrepresentation of admission requirements.

c. Obtained certification through misrepresentation of certification requirements or related documents pertaining to education, training, professional registration, or experience.

d. Performed work requiring certification at a job site without having proof of current certification.

e. Permitted the duplication or use of the individual's or firm's own certificate by another.

f. Performed work for which certification is required, but for which appropriate certification had not been received.

g. Failed to follow the standards of conduct required by 641—70.6(135).

h. Failed to comply with federal, state, or local lead-based paint statutes and regulations, including the requirements of this chapter.

i. For certified elevated blood lead (EBL) inspection agencies and certified firms, performed work for which certification is required with employees or persons under the control of the certified elevated blood lead (EBL) inspection agency or certified firm who were not appropriately certified.

j. Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of lead professional activities or engaged in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

k. Used untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by a lead professional making information or intention known to the public that is false, deceptive, misleading, or promoted through fraud or misrepresentation.

l. Falsified reports and records required by this chapter.

m. Accepted any fee by fraud or misrepresentation.

n. Negligence by the firm or individual in the practice of the lead professional activities. This includes a failure to exercise due care, including negligent delegation of duties or supervision of employees or other individuals, whether or not injury results; or any conduct, practice, or conditions that impair the ability of the firm or individual to safely and skillfully practice the profession.

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

p. Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.

q. Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed.

r. Failed to respond within 30 days of receipt of communication from the department that was sent by registered or certified mail.

s. Engaged in any conduct that subverts or attempts to subvert a department investigation.

t. Failed to comply with a subpoena issued by the department or failure to cooperate with a department investigation.

u. Failed to pay costs assessed in any disciplinary action.

v. Been convicted of a felony related to lead professional activities or the conviction of any felony that would affect the ability of the firm or individual to perform lead professional activities. A copy of the record of conviction or plea of guilty shall be conclusive evidence.

w. Unethical conduct. This includes, but is not limited to, the following:

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

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

(3) Engaging in a professional conflict of interest.

(4) Mental or physical inability reasonably related to and adversely affecting the ability of the firm or individual to practice in a safe and competent manner.

(5) Being adjudged mentally incompetent by a court of competent jurisdiction.

70.10(3) The department may deny, suspend, revoke, or modify the approval for a course, or may impose a civil penalty or may refer the case to the office of the county attorney for possible criminal penalties pursuant to Iowa Code section 135.38 when it finds that the training program, training manager, or other person with supervisory authority over the course has committed any of the following acts:

a. Misrepresented the contents of a training course to the department or to the student population.

b. Failed to submit required information or notifications in a timely manner.

c. Failed to maintain required records.

d. Falsified approval records, instructor qualifications, or other information or documentation related to course approval.

e. Failed to comply with the training standards and requirements in 641—70.4(135).

f. Made false or misleading statements to the department in its application for approval or reapproval which the department relied upon in approving the application.

g. Failed to comply with federal, state, or local lead-based paint statutes and regulations, including the requirements of this chapter.

h. Knowingly made misleading, deceptive, untrue, or fraudulent representations in the practice of conducting a training program or engaged in unethical conduct or practice harmful or detrimental to the public. Proof of actual injury need not be established.

i. Used untruthful or improbable statements in advertisements. This includes, but is not limited to, an action by a training program making information or intention known to the public that is false, deceptive, misleading, or promoted through fraud or misrepresentation.

j. Falsified reports and records required by this chapter.

k. Accepted any fee by fraud or misrepresentation.

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

m. Failed to comply with the terms of a department order or the terms of a settlement agreement or consent order.

n. Representation by a firm or individual that the firm or individual is certified when the certification has been suspended or revoked or has not been renewed.

o. Failed to respond within 30 days of receipt of communication from the department that was sent by registered or certified mail.

p. Engaged in any conduct that subverts or attempts to subvert a department investigation.

q. Failed to comply with a subpoena issued by the department or failure to cooperate with a department investigation.

r. Failed to pay costs assessed in any disciplinary action.

70.10(4) Complaints and other requests for action under this rule. Complaints regarding a certified lead professional, a certified elevated blood lead (EBL) inspection agency, a certified firm, or an approved course shall be submitted in writing to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. The complainant shall provide:

a. The name of the certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm and the specific details of the action(s) by the certified lead professional, certified elevated blood lead (EBL) inspection agency, or certified firm that did not comply with the rules; or

b. The name of the lead professional or firm that conducted lead professional activities without the appropriate certification or approval as required by the rules; or

c. The name of the sponsoring person or organization of an approved course and the specific way(s) that an approved course did not comply with the rules; or

d. The name of the sponsoring person or organization that provided a course without the approval required by these rules.

70.10(5) Civil penalties.

a. Before instituting any proceeding to impose a civil penalty under Iowa Code section 135.105A, the department shall serve a written notice of violation upon the person charged. The notice of violation shall specify the date or dates, facts, and the nature of the alleged act or omission with which the person is charged and shall identify specifically the particular provision or provisions of the law, rule, regulation, certification, approval, or cease and desist order involved in the alleged violation and must state the amount of each proposed penalty. The notice of violation shall also advise the person charged that the civil penalty may be paid in the amount specified therein, or the proposed imposition of the civil penalty may be protested in its entirety or in part, by a written answer, either denying the violation or showing extenuating circumstances. The notice of violation shall advise the person charged that upon failure to pay a civil penalty subsequently determined by the department, if any, unless compromised, remitted, or mitigated, the fee shall be collected by civil action, pursuant to Iowa Code section 135.105A.

b. Within 20 days of the date of a notice of violation or other time specified in the notice, the person charged may either pay the penalty in the amount proposed or answer the notice of violation. The answer to the notice of violation shall state any facts, explanations, and arguments denying the charges of violation, or demonstrating any extenuating circumstances, error in the notice of violation, or other reason why the penalty should not be imposed and may request remission or mitigation of the penalty.

c. If the person charged with violation fails to answer within the time specified in paragraph 70.10(5)*"b,"* an order may be issued imposing the civil penalty in the amount set forth in the notice of violation described in paragraph 70.10(5)*"a."*

d. If the person charged with violation files an answer to the notice of violation, the department, upon consideration of the answer, will issue an order dismissing the proceeding or imposing, mitigating, or remitting the civil penalty. The person charged may, within 20 days of the date of the order or other time specified in the order, request a hearing.

e. If the person charged with violation requests a hearing, the department will issue an order designating the time and place of hearing. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

f. If a hearing is held, an order will be issued after the hearing by the presiding officer or the department dismissing the proceeding or imposing, mitigating, or remitting the civil penalty.

g. The department may compromise any civil penalty. If the civil penalty is not compromised, or is not remitted by the presiding officer or the department, and if payment is not made within ten days following either the service of the order described in paragraph 70.10(5)*"c"* or *"f,"* or the expiration of the time for requesting a hearing described in paragraph 70.10(5)*"d,"* the department may refer the matter to the attorney general for collection.

h. Except when payment is made after compromise or mitigation by the department of justice or as ordered by a court of the state, following reference of the matter to the attorney general for collection, payment of civil penalties imposed under Iowa Code section 135.105A shall be made by check, draft, or money order payable to the Iowa Department of Public Health.

70.10(6) Appeals.

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

b. An appeal of a denial, suspension or revocation shall be submitted by certified mail, return receipt requested, within 30 days of the receipt of the department's notice to the Iowa Department of Public Health, Lead Poisoning Prevention Program, 321 East 12th Street, Des Moines, Iowa 50319-0075. If such a request is made within the 30-day time period, the notice of denial, suspension or revocation shall be deemed to be suspended. Prior to or at the hearing, the department may rescind the notice upon satisfaction that the reason for the denial, suspension or revocation has been or will be removed. After the hearing, or upon default of the applicant or alleged violator, the administrative law judge shall affirm, modify or set aside the denial, suspension or revocation. If no appeal is submitted within 30 days, the denial, suspension or revocation shall become the department's final agency action.

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

d. The hearing shall be conducted according to the procedural rules of the department of inspections and appeals found in 481—Chapter 10, Iowa Administrative Code.

e. When the administrative law judge makes a proposed decision and order, it shall be served by restricted certified mail, return receipt requested, or delivered by personal service. The proposed decision and order then becomes the department's final agency action without further proceedings ten days after it is received by the aggrieved party unless an appeal to the director is taken as provided in paragraph 70.10(6)*"f."*

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

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

(1) All pleadings, motions, and rulings.

(2) All evidence received or considered and all other submissions by recording or transcript.

(3) A statement of all matters officially noticed.

(4) All questions and offers of proof, objection, and rulings thereon.

(5) All proposed findings and exceptions.

(6) The proposed findings and order of the administrative law judge.

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

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

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

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

70.10(7) Public notification.

a. The public shall be notified of the suspension, revocation, modification, or reinstatement of course approval through appropriate mechanisms.

b. The department shall maintain a list of courses for which the approval has been suspended, revoked, modified, or reinstated.

641—70.11(135) Waivers. Rules in this chapter are not subject to waiver or variance pursuant to 641—Chapter 178 or any other provision of law.

These rules are intended to implement Iowa Code section 135.105A.

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◊Two ARCs

CHAPTER 21
PHYSICIAN SUPERVISION OF A PHYSICIAN ASSISTANT

653—21.1(148,272C) Ineligibility determinants. A physician with an active permanent, special, or temporary Iowa license who is actively engaged in the practice of medicine in Iowa may supervise a physician assistant. A physician is ineligible to supervise a physician assistant for any of the following reasons:

21.1(1) The physician does not hold an active, permanent, special or temporary Iowa medical license.

21.1(2) The physician is subject to a disciplinary order of the board that restricts or rescinds the physician's authority to supervise a physician assistant. The physician may supervise a physician assistant to the extent that the order allows.

653—21.2(148,272C) Exemptions from this chapter. This chapter shall not apply to the following:

21.2(1) A physician working in a federal facility or under federal authority when the provisions of this chapter conflict with federal regulations.

21.2(2) A physician who supervises a physician assistant providing medical care created by an emergency or a state or local disaster pursuant to Iowa Code section 148C.4 as amended by 2003 Iowa Acts, chapter 93, section 10.

653—21.3(148) Board notification. A physician who supervises a physician assistant shall notify the board of the supervisory relationship at the time of the physician's license renewal.

653—21.4(148,272C) Grounds for discipline. A physician may be subject to disciplinary action for supervising a physician assistant in violation of these rules or the rules found in 653—Chapter 12 or 645—Chapters 326 and 327, which relate to duties and responsibilities for physician supervision of physician assistants. Grounds for discipline also include:

21.4(1) The physician supervises a physician assistant when the physician does not have sufficient training or experience to supervise a physician assistant in the area of medical practice in which a physician assistant is to be utilized.

21.4(2) A physician supervises more than two physician assistants at the same time.

21.4(3) The physician fails to ensure that the physician assistant is adequately supervised, including being available in person or by telecommunication to respond to the physician assistant.

653—21.5(148,272C) Disciplinary sanction. The board may restrict or rescind a physician's authority to supervise a physician assistant as part of a disciplinary sanction following a contested case proceeding, if the reason for the disciplinary action impacts the ability of the physician to supervise a physician assistant. The board shall notify the board of physician assistant examiners when it takes a disciplinary action against a physician's license that affects the physician's authority to supervise a physician assistant.

653—21.6(148,272C) Communication with physician assistant supervisees. The physician shall notify all physician assistant supervisees within one workday upon receiving disciplinary action from the board or any other change in status that affects the physician's eligibility to supervise a physician assistant.

653—21.7(17A,147,148,272C) Waiver or variance requests. Waiver or variance requests shall be submitted in conformance with 653—Chapter 3.

These rules are intended to implement Iowa Code sections 148.13 and 272C.3.

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†Effective date of 3/1/89 delayed until adjournment of the 1990 Session of the General Assembly at its May 9, 1989, meeting.
**Delay until adjournment of the 1990 G.A. lifted by the Administrative Rules Review Committee at its August 3, 1989, meeting which allowed the rules to become effective August 4, 1989.
***Effective date of 4/17/96 delayed 70 days by the Administrative Rules Review Committee at its meeting held April 16, 1996. Effective date delayed until adjournment of the 1997 General Assembly by the Administrative Rules Review Committee at its meeting held June 11, 1996.
‡Effective date of 1/28/04 delayed 70 days by the Administrative Rules Review Committee at its January 6, 2004, meeting; at its meeting held March 8, 2004, the Committee lifted the delay, effective March 9, 2004.

657—3.13(155A) Notifications to the board. A pharmacy technician shall report to the board within ten days a change of the technician's name, address, or pharmacy employment status.

657—3.14 to **3.16** Reserved.

657—3.17(155A) Training and utilization of pharmacy technicians. All Iowa-licensed pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians appropriate to the practice of pharmacy. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

657—3.18(147,155A) Identification of pharmacy technician.

3.18(1) *Identification badge.* A pharmacy technician shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacy technician and includes at least the technician's first name.

3.18(2) *Misrepresentation prohibited.* A pharmacy technician shall not represent himself or herself in any manner as a pharmacist.

657—3.19 Reserved.

657—3.20(155A) Responsibility of supervising pharmacist. The ultimate responsibility for the actions of a pharmacy technician shall remain with the supervising pharmacist.

657—3.21(155A) Delegation of technical functions. A pharmacist may delegate technical dispensing functions to a pharmacy technician, but only if the pharmacist is on site when delegated functions are performed, except as provided in 657—subrule 6.7(2). The pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

657—3.22(155A) Technical functions. At the discretion of the supervising pharmacist, technical functions which may be delegated to a pharmacy technician include, but are not limited to, the following:

1. Performing packaging, manipulative, or repetitive tasks relating to the processing of a prescription or medication order in a licensed pharmacy.
2. Accepting prescription refill authorizations communicated to a pharmacy by a prescriber or by the prescriber's office.
3. Contacting prescribers to obtain prescription refill authorizations.
4. Collecting pertinent patient information.
5. Inspecting drug supplies provided and controlled by an Iowa-licensed pharmacy, including but not limited to drug supplies maintained in an ambulance or other emergency medical service vehicle, a long-term care facility, a hospital nursing unit, or a hospice facility.

657—3.23(155A) Tasks a pharmacy technician shall not perform. A pharmacy technician shall not:

1. Provide the final verification for the accuracy, validity, completeness, or appropriateness of a filled prescription or medication order;
2. Conduct prospective drug use review or evaluate a patient's medication record for purposes identified in rule 657—8.21(155A);
3. Provide patient counseling, consultation, or patient-specific drug information;
4. Make decisions that require a pharmacist's professional judgment such as interpreting or applying information.

657—3.24(155A) New prescription drug orders or medication orders. At the discretion of the supervising pharmacist, a pharmacy technician may be allowed to accept new prescription drug orders or medication orders communicated to the pharmacy by a prescriber or by the prescriber's agent if the pharmacy technician has received appropriate training pursuant to the pharmacy's policies and procedures. The supervising pharmacist shall remain responsible for ensuring the accuracy, validity, and completeness of the information received by the pharmacy technician.

657—3.25 to **3.27** Reserved.

657—3.28(147,155A) Unethical conduct or practice. Violation by a pharmacy technician of any of the provisions of this rule shall constitute unethical conduct or practice and may be grounds for disciplinary action as provided in rule 3.30(155A).

3.28(1) *Misrepresentative deeds.* A pharmacy technician shall not make any statement tending to deceive, misrepresent, or mislead anyone, or be a party to or an accessory to any fraudulent or deceitful practice or transaction in pharmacy or in the operation or conduct of a pharmacy.

3.28(2) *Confidentiality.* In the absence of express written authorization from the patient or written order or direction of a court, except where the best interests of the patient require, a pharmacy technician shall not divulge or reveal to any person other than the patient or the patient's authorized representative, the prescriber or other licensed practitioner then caring for the patient, a licensed pharmacist, a person duly authorized by law to receive such information, or as otherwise provided in rule 657—8.16(124,155A), any of the following:

a. The contents of any prescription drug order or medication order or the therapeutic effect thereof or the nature of professional pharmaceutical services rendered to a patient;

b. Any patient's name, address, social security number, or any information that could be used to identify the patient;

c. The nature, extent, or degree of illness suffered by any patient; or

d. Any medical information furnished by the prescriber.

3.28(3) *Discrimination.* It is unethical to unlawfully discriminate between patients or groups of patients for reasons of religion, race, creed, color, gender, gender identity, sexual orientation, marital status, age, national origin, physical or mental disability, or disease state when providing pharmaceutical services.

3.28(4) *Unethical conduct or behavior.* A pharmacy technician shall not exhibit unethical behavior in connection with the technician's pharmacy employment. Unethical behavior shall include, but is not limited to, the following acts: verbal or physical abuse, coercion, intimidation, harassment, sexual advances, threats, degradation of character, indecent or obscene conduct, and theft.

657—3.29(155A) Denial of registration. The board may deny an application for registration as a pharmacy technician for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

657—3.30(155A) Discipline of pharmacy technicians.

3.30(1) *Violations.* The board may impose discipline for any violation of the laws of this state, another state, or the United States relating to prescription drugs, controlled substances, or nonprescription drugs, or for any violation of Iowa Code chapter 124, 124A, 124B, 126, 147, 155A, or 205 or any rule of the board.

3.30(2) *Sanctions.* The board may impose the following disciplinary sanctions:

a. Revocation of a pharmacy technician registration.

b. Suspension of a pharmacy technician registration until further order of the board or for a specified period.

c. Nonrenewal of a pharmacy technician registration.

d. Prohibit permanently, until further order of the board, or for a specified period, the engaging in specified procedures, methods or acts.

e. Probation.

f. Order a physical or mental examination.

g. Impose civil penalties not to exceed $25,000.

h. Issue citation and warning.

i. Such other sanctions allowed by law as may be appropriate.

These rules are intended to implement Iowa Code sections 147.72, 155A.6, 155A.23, 155A.33, and 155A.39.

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CHAPTER 8
UNIVERSAL PRACTICE STANDARDS
[Prior to 2/10/88, see Pharmacy Examiners[620] Ch 6]

657—8.1(155A) Purpose and scope. The requirements of these rules apply to all Iowa-licensed pharmacists and to all pharmacies providing the services addressed in this chapter to patients in Iowa and are in addition to rules of the board relating to specific types of pharmacy licenses issued by the board.

657—8.2(155A) Pharmaceutical care. Pharmaceutical care is a comprehensive, patient-centered, outcomes-oriented pharmacy practice in which the pharmacist accepts responsibility for assisting the prescriber and the patient in optimizing the patient's drug therapy plan and works to promote health, to prevent disease, and to optimize drug therapy. Pharmaceutical care does not include the prescribing of drugs without the consent of the prescribing practitioner.

8.2(1) *Drug therapy problems.* In providing pharmaceutical care, the pharmacist shall strive to identify, resolve, and prevent drug therapy problems.

8.2(2) *Drug therapy plan.* In providing pharmaceutical care, the pharmacist shall access and evaluate patient-specific information, identify drug therapy problems, and utilize that information in a documented plan of therapy that assists the patient or the patient's caregiver in achieving optimal drug therapy. In concert with the patient, the patient's prescribing practitioner, and the patient's other health care providers, the pharmacist shall assess, monitor, and suggest modifications of the plan as appropriate.

8.2(3) *Eligibility.* Any Iowa-licensed pharmacist may practice pharmaceutical care.

657—8.3(155A) Responsibility.

8.3(1) *Pharmacy operations.* The pharmacy and the pharmacist in charge share responsibility for ensuring that all operations of the pharmacy are in compliance with federal and state laws, rules, and regulations relating to pharmacy operations and the practice of pharmacy.

8.3(2) *Practice functions.* The pharmacist is responsible for all functions performed in the practice of pharmacy. The pharmacist maintains responsibility for any and all delegated functions including functions delegated to pharmacist-interns, pharmacy technicians, and other supportive personnel.

8.3(3) *Pharmacist-documented verification.* The pharmacist shall provide and document the final verification for the accuracy, validity, completeness, and appropriateness of the patient's prescription or medication order prior to the delivery of the medication to the patient or the patient's representative.

657—8.4(155A) Pharmacist identification.

8.4(1) *Display of pharmacist license.* During any period the pharmacist is working in a pharmacy, each pharmacist shall display, in a position visible to the public, an original license to practice pharmacy. A current license renewal certificate, which may be a photocopy of an original renewal certificate, shall be displayed with the original license.

8.4(2) *Identification codes.* A permanent log of the initials or codes identifying by name each dispensing pharmacist, pharmacist-intern, and pharmacy technician shall be maintained for a minimum of two years and shall be available for inspection and copying by the board or its representative. The initials or identification code shall be unique to the individual to ensure that each pharmacist, pharmacist-intern, and pharmacy technician can be identified.

8.4(3) *Temporary or intermittent pharmacy staff.* The pharmacy shall maintain a log of all pharmacists, pharmacist-interns, and pharmacy technicians who have worked at that pharmacy and who are not regularly staffed at that pharmacy. Such log shall include the dates and shifts worked by each pharmacist, pharmacist-intern, and pharmacy technician and shall be available for inspection and copying by the board or its representative for a minimum of two years following the date of the entry.

8.4(4) *Identification badge.* A pharmacist shall wear a visible identification badge while on duty that clearly identifies the person as a pharmacist and includes at least the pharmacist's first name.

657—8.5(155A) Environment and equipment requirements. There shall be adequate space, equipment, and supplies for the professional and administrative functions of the pharmacy. Space and equipment in an amount and type to provide secure, environmentally controlled storage of drugs shall be available.

8.5(1) *Refrigeration.* The pharmacy shall maintain one or more refrigeration units. The temperature of the refrigerator shall be maintained within a range compatible with the proper storage of drugs requiring refrigeration, and a thermometer shall be maintained in the refrigerator to verify the temperature.

8.5(2) *Sink.* The pharmacy shall have a sink with hot and cold running water located within the pharmacy department and available to all pharmacy personnel; the sink shall be maintained in a sanitary condition.

8.5(3) *Orderly and clean.* The pharmacy shall be arranged in an orderly fashion and kept clean. All required equipment shall be in good operating condition and maintained in a sanitary manner.

8.5(4) *Light and ventilation.* The pharmacy shall be properly lighted and ventilated.

8.5(5) *Temperature and humidity.* The temperature and humidity of the pharmacy shall be maintained within a range compatible with the proper storage of drugs.

8.5(6) *Other equipment.* The pharmacist in charge shall ensure the availability of any other equipment necessary for the particular practice of pharmacy and to meet the needs of the patients served by the pharmacy.

657—8.6(155A) Health of personnel. Only personnel authorized by the responsible pharmacist shall be in the immediate vicinity of the drug dispensing, preparation, compounding, or storage areas. Any person shown, either by medical examination or pharmacist determination, to have an apparent illness or open lesions that may adversely affect the quality or safety of a drug product or another individual shall be excluded from direct contact with components, bulk drug substances, drug product containers, closures, in-process materials, drug products, and patients until the condition is corrected or determined by competent medical personnel not to jeopardize the quality or safety of drug products or patients. All personnel who normally assist the pharmacist shall be instructed to report to the pharmacist any health conditions that may have an adverse effect on drug products or may pose a health or safety risk to others.

657—8.7(155A) Procurement, storage, and recall of drugs and devices.

8.7(1) *Source.* Procurement of prescription drugs and devices shall be from a drug wholesaler licensed by the board to distribute to Iowa pharmacies or, on a limited basis, from another licensed pharmacy or licensed practitioner located in the United States.

8.7(2) *Sufficient stock.* A pharmacy shall maintain sufficient stock of drugs and devices to fulfill the foreseeable needs of the patients served by the pharmacy.

8.7(3) *Manner of storage.* Drugs and devices shall be stored in a manner to protect their identity and integrity.

8.7(4) *Storage temperatures.* All drugs and devices shall be stored at the proper temperature, as defined by the following terms:

a. "*Controlled room temperature*" means temperature maintained thermostatically between 15 degrees and 30 degrees Celsius (59 degrees and 86 degrees Fahrenheit);

b. "*Cool*" means temperature between 8 degrees and 15 degrees Celsius (46 degrees and 59 degrees Fahrenheit). Drugs and devices may be stored in a refrigerator unless otherwise specified on the labeling;

657—8.13(135C,155A) Personnel histories. Pursuant to the requirements of Iowa Code section 135C.33, the provisions of this rule shall apply to any pharmacy employing any person to provide patient care services in a patient's home. For the purposes of this rule, "employed by the pharmacy" shall include any individual who is paid to provide treatment or services to any patient in the patient's home, whether the individual is paid by the pharmacy or by any other entity such as a corporation, a temporary staffing agency, or an independent contractor. Specifically excluded from the requirements of this rule are individuals such as delivery persons or couriers who do not enter the patient's home for the purpose of instructing the patient or the patient's caregiver in the use or maintenance of the equipment, device, or drug being delivered, or who do not enter the patient's home for the purpose of setting up or servicing the equipment, device, or drug used to treat the patient in the patient's home.

8.13(1) *Applicant acknowledgment.* The pharmacy shall ask the following question of each person seeking employment in a position that will provide in-home services: "Do you have a record of founded child or dependent adult abuse or have you ever been convicted of a crime, in this state or any other state?" The applicant shall also be informed that a criminal history and dependent adult abuse record check will be conducted. The applicant shall indicate, by signed acknowledgment, that the applicant has been informed that such record checks will be conducted.

8.13(2) *Criminal history check.* Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of public safety a form specified by the department of public safety and receive the results of a criminal history check.

8.13(3) *Abuse history checks.* Prior to the employment of any person to provide in-home services as described by this rule, the pharmacy shall submit to the department of human services a form specified by the department of human services and receive the results of a dependent adult abuse record check. The pharmacy may submit to the department of human services a form specified by the department of human services to request a child abuse history check.

a. A person who has a criminal record, founded dependent adult abuse report, or founded child abuse report shall not be employed by a pharmacy to provide in-home services unless the department of human services has evaluated the crime or founded abuse report, has concluded that the crime or founded abuse does not merit prohibition from such employment, and has notified the pharmacy that the person may be employed to provide in-home services.

b. The pharmacy shall keep copies of all record checks and evaluations for a minimum of two years following receipt of the record or for a minimum of two years after the individual is no longer employed by the pharmacy, whichever is greater.

657—8.14(155A) Training and utilization of pharmacy technicians. All Iowa-licensed pharmacies utilizing pharmacy technicians shall develop, implement, and periodically review written policies and procedures for the training and utilization of pharmacy technicians appropriate to the practice of pharmacy at that licensed location. Pharmacy policies shall specify the frequency of review. Technician training shall be documented and maintained by the pharmacy for the duration of employment. Policies and procedures and documentation of technician training shall be available for inspection by the board or an agent of the board.

657—8.15(155A) Delivery of prescription drugs and devices. Prescription drug orders, prescription devices, and completed prescription drug containers may be delivered, in compliance with all laws, rules, and regulations relating to the practice of pharmacy, to patients at any place of business licensed as a pharmacy.

8.15(1) *Alternative methods.* A licensed pharmacy may, by means of its employee or by use of a common carrier, pick up or deliver prescriptions to the patient or the patient's caregiver as follows:

a. At the office or home of the prescriber;

b. At the residence of the patient or caregiver;

c. At the hospital or medical care facility in which a patient is confined; or

d. At the patient's or caregiver's place of employment only pursuant to the following requirements:

(1) The pharmacy shall obtain and maintain the written authorization of the patient or patient's caregiver for receipt or delivery at the place of employment;

(2) The prescription shall be delivered directly to or received directly from the patient, the caregiver, or an authorized agent identified in the written authorization; and

(3) The pharmacy shall ensure the security of confidential information as defined in subrule 8.16(1).

8.15(2) *Policies and procedures required.* Every pharmacy shipping or otherwise delivering prescription drugs or devices to Iowa patients shall develop and implement policies and procedures to ensure accountability, safe delivery, and compliance with temperature requirements as defined by subrule 8.7(4).

657—8.16(124,155A) Confidential information.

8.16(1) *Definition.* "Confidential information" means information accessed or maintained by the pharmacy in the patient's records which contains personally identifiable information that could be used to identify the patient. This includes but is not limited to patient name, address, telephone number, and social security number; prescriber name and address; and prescription and drug or device information such as therapeutic effect, diagnosis, allergies, disease state, pharmaceutical services rendered, medical information, and drug interactions, regardless of whether such information is communicated to or from the patient, is in the form of paper, is preserved on microfilm, or is stored on electronic media.

8.16(2) *Release of confidential information.* Confidential information in the patient record may be released only as follows:

a. Pursuant to the express written authorization of the patient or the order or direction of a court.

b. To the patient or the patient's authorized representative.

c. To the prescriber or other licensed practitioner then caring for the patient.

d. To another licensed pharmacist when the best interests of the patient require such release.

e. To the board or its representative or to such other persons or governmental agencies duly authorized by law to receive such information.

A pharmacist shall utilize the resources available to determine, in the professional judgment of the pharmacist, that any persons requesting confidential patient information pursuant to this rule are entitled to receive that information.

8.16(3) *Exceptions.* Nothing in this rule shall prohibit pharmacists from releasing confidential patient information as follows:

a. Transferring a prescription to another pharmacy upon the request of the patient or the patient's authorized representative.

b. Providing a copy of a nonrefillable prescription to the person for whom the prescription was issued which is clearly marked as a copy and not to be filled.

c. Providing drug therapy information to physicians or other authorized prescribers for their patients.

d. Disclosing information necessary for the processing of claims for payment of health care operations or services.

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20.10(3) *Record.* A production record shall be prepared and kept for each drug product compounded for an individual patient. The record shall include the following information:

a. Production date;

b. List of ingredients and quantity of each ingredient used;

c. Initials of each person involved in each of the compounding steps;

d. Initials of each pharmacist verifying each of the compounding steps;

e. Internal control or prescription number and, if the prescription is filled using a product compounded in bulk pursuant to rule 20.11(126), the internal control number assigned to the batch and recorded in the batch production record.

20.10(4) *Product testing and examination.* To ensure the reasonable uniformity and integrity of compounded drug products, written procedures shall be established, implemented, and followed that describe the tests or examinations to be conducted on the product being compounded to monitor the output and to validate the performance of compounding processes that may be responsible for causing variability in the final drug product. Control procedures shall include, but are not limited to, the following as appropriate:

a. Capsule weight variation;

b. Adequacy of mixing to ensure uniformity and homogeneity;

c. Clarity, completeness, or pH of solutions.

20.10(5) *Sterilization.* Appropriate written procedures designed to prevent microbiological contamination of compounded drug products purported to be sterile, including validation of any sterilization process, shall be established and followed.

20.10(6) *Label information required.* The label affixed to or on the dispensing container of any compounded drug product dispensed by a pharmacy pursuant to a prescription drug order, excluding a sterile product compounded pursuant to 657—8.30(126,155A), shall bear the following:

a. Serial number (a unique identification number of the prescription);

b. The name, telephone number, and address of the pharmacy;

c. The name of the patient or, if such drug is prescribed and compounded for an animal, the species of the animal and the name of its owner;

d. The name of the prescribing practitioner;

e. The date the compounded drug product is dispensed;

f. The directions or instructions for use, including precautions to be observed;

g. The name and quantity or percentage of each bulk drug substance (active ingredient) contained in the compounded drug product. The use of auxiliary labels to accommodate this information is acceptable;

h. The initials or other unique identification of the dispensing pharmacist.

20.10(7) *Labeling—expiration date.* When applicable, the compounded product shall be labeled with an expiration date based on published data. When such data is unavailable, expiration dating shall be based on professional judgment or appropriate testing.

20.10(8) *Labeling and control of excess products.* When a quantity of a compounded drug product is prepared in excess of that to be initially dispensed, the excess product shall be labeled, stored, and accounted for pursuant to rule 20.11(126).

657—20.11(126) Bulk compounding.

20.11(1) *Master formula record.* Pursuant to the provisions of subrule 20.3(3), pharmacies may compound drugs in bulk quantities for subsequent prescription labeling and dispensing. For each drug product compounded in bulk quantity, a master formula record containing the following information shall be prepared:

a. Name of the product;
b. Specimen or copy of label;
c. List of ingredients and quantities;
d. Description of container used;
e. Compounding instructions, procedures and specifications.

20.11(2) *Production record.* For each batch of drug product compounded, a production record containing the following information shall be prepared and maintained:

a. The information from the master formula record;
b. Records of each step in the compounding process including:
(1) Preparation date;
(2) Identification of ingredients (including lot numbers);
(3) Quantities of ingredients used;
(4) Initials of person completing each step;
(5) Initials of pharmacist verifying each step;
c. Expiration/beyond-use date;
d. Internal control number;
e. Total yield.

20.11(3) *Label information.* For each batch of drug product compounded, labels containing the following information shall be prepared and affixed to each container:

a. Drug product name or formula;
b. Dosage form;
c. Strength;
d. Quantity per container;
e. Internal control number;
f. Expiration/beyond-use date.

657—20.12(124,126,155A) Records. All records required by this chapter shall be retained as the original records and shall be readily available at the pharmacy for inspection and photocopying by agents of the board or other authorized authorities for at least two years following the date of the record.

These rules are intended to implement Iowa Code sections 124.302, 124.303, 124.306, 124.308, 124.501, 126.9, 126.10, 126.18, 155A.2, 155A.28, 155A.33, and 155A.35.

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RAILROADS

PUBLIC TRANSIT

CHAPTERS 900 to 909
Reserved

CHAPTER 910
COORDINATION OF PUBLIC TRANSIT SERVICES

CHAPTER 911
SCHOOL TRANSPORTATION SERVICES PROVIDED BY REGIONAL TRANSIT SYSTEMS

CHAPTERS 912 to 919
Reserved

CHAPTER 920
STATE TRANSIT ASSISTANCE

CHAPTER 921
ADVANCED ALLOCATIONS OF STATE TRANSIT ASSISTANCE FUNDING

CHAPTER 922
FEDERAL TRANSIT ASSISTANCE

CHAPTER 923
CAPITAL MATCH REVOLVING LOAN FUND

CHAPTERS 924 to 999
Reserved

CHAPTER 520
REGULATIONS APPLICABLE TO CARRIERS

[Prior to 6/3/87, Transportation Department[820]—(07,F) Ch 8]

761—520.1(321) Safety and hazardous materials regulations.

520.1(1) *Regulations.*

a. Motor carrier safety regulations. The Iowa department of transportation adopts the Federal Motor Carrier Safety Regulations, 49 CFR Parts 385 and 390-399 (October 1, 2003).

b. Hazardous materials regulations. The Iowa department of transportation adopts the Federal Hazardous Materials Regulations, 49 CFR Parts 107, 171-173, 177, 178, and 180 (October 1, 2003).

c. Copies of regulations. Copies of the federal regulations may be reviewed at the state law library or through the Internet at http://www.fmcsa.dot.gov.

520.1(2) *Carriers subject to regulations.*

a. Operators of commercial vehicles, as defined in Iowa Code section 321.1, are subject to the Federal Motor Carrier Safety Regulations adopted in this rule unless exempted under Iowa Code section 321.449.

b. Operators of vehicles transporting hazardous materials in commerce are subject to the Federal Hazardous Materials Regulations adopted in this rule unless exempted under Iowa Code section 321.450.

c. Operators of vehicles for hire, designed to transport 7 or more persons, but fewer than 16, including the driver, must comply with 49 CFR Part 395 of the Federal Motor Carrier Safety Regulations. However, the provisions of 49 CFR Part 395 shall not apply to vehicles offered to the public for hire that are used principally in intracity operation and are regulated by local authorities.

520.1(3) *Declaration of knowledge of regulations.* Operators of commercial vehicles who are subject to the regulations adopted in this rule shall at the time of application for authority to operate in Iowa or upon receipt of their Iowa registration declare knowledge of the Federal Motor Carrier Safety Regulations and Federal Hazardous Materials Regulations adopted in this rule.

This rule is intended to implement Iowa Code sections 321.1, 321.449 and 321.450.

761—520.2(321) Definitions. The following definitions apply to the regulations adopted in rule 761—520.1(321):

"Any requirements which impose any restrictions upon a person" as used in Iowa Code section 321.449(6) means the requirements in 49 CFR Parts 391 and 395.

"Driver age qualifications" as used in Iowa Code section 321.449(3) means the age qualifications in 49 CFR 391.11(b)(1).

"Driver qualifications" as used in Iowa Code section 321.449(2) means the driver qualifications in 49 CFR Part 391.

"Farm customer" as used in Iowa Code section 321.450, unnumbered paragraph 3, means a retail consumer residing on a farm or in a rural area or city with a population of 3000 or less.

"Gasoline" as used in Iowa Code section 321.450, first unnumbered paragraph, means leaded gasolines, no-lead gasolines, ethanol and ethanol-blended gasolines, aviation gasolines, number 1 and number 2 fuel oils, diesel fuels, aviation jet fuels and kerosene.

"Hours of service" as used in Iowa Code section 321.449(2) means the hours of service requirements in 49 CFR Part 395.

"Record-keeping requirements" as used in Iowa Code section 321.449(2) means the record-keeping requirements in 49 CFR Part 395.

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

"Rules adopted under this section for a driver of a commercial vehicle" as used in Iowa Code section 321.449(4) means the regulations in 49 CFR Parts 391 and 395.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

761—520.3(321) Motor carrier safety regulations exemptions.

520.3(1) The following intrastate vehicle operations are exempt from the motor carrier safety regulations concerning inspection in 49 CFR Part 396.17 as adopted in rule 761—520.1(321):

a. Implements of husbandry including nurse tanks as defined in Iowa Code section 321.1.

b. Special mobile equipment (SME) as defined in Iowa Code section 321.1.

c. Unregistered farm trailers as defined in 761—subrule 400.1(3), pursuant to Iowa Code section 321.123.

d. Motor vehicles registered for a gross weight of five tons or less when used by retail dealers or their employees to deliver hazardous materials, fertilizers, petroleum products and pesticides to farm customers.

520.3(2) Reserved.

This rule is intended to implement Iowa Code sections 321.1, 321.123, 321.449 and 321.450.

761—520.4(321) Hazardous materials exemptions. These exemptions apply to the regulations adopted in rule 761—520.1(321):

520.4(1) Pursuant to Iowa Code section 321.450, unnumbered paragraph 3, "retail dealers of fertilizers, petroleum products, and pesticides and their employees while delivering fertilizers, petroleum products and pesticides to farm customers within a 100-air-mile radius of their retail place of business" are exempt from 49 CFR 177.804; and, pursuant to Iowa Code section 321.449(4), they are exempt from 49 CFR Parts 391 and 395. However, pursuant to Iowa Code section 321.449, the retail dealers and their employees under the specified conditions are subject to the regulations in 49 CFR Parts 390, 392, 393, 396 and 397.

520.4(2) Rescinded IAB 3/10/99, effective 4/14/99.

This rule is intended to implement Iowa Code section 321.450.

761—520.5(321) New motor carrier safety audits. Peace officers in the office of motor vehicle enforcement of the Iowa department of transportation shall perform safety audits of new motor carriers and shall have the authority to enter a motor carrier's place of business for the purpose of performing these audits. These audits shall be performed in compliance with 49 CFR Part 385 and shall be completed within 18 months from the day the motor carrier commences business.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

761—520.6(321) Out-of-service order. A person shall not operate a commercial vehicle or transport hazardous material in violation of an out-of-service order issued by an Iowa peace officer. An out-of-service order for noncompliance shall be issued when either the vehicle operator is not qualified to operate the vehicle or the vehicle is unsafe to be operated until required repairs are made. The out-of-service order shall be consistent with the North American Uniform Out-of-Service Criteria.

This rule is intended to implement Iowa Code sections 321.3, 321.208A, 321.449, and 321.450.

761—520.7(321) Driver's statement. A "driver" as used in Iowa Code section 321.449(5) and Iowa Code section 321.450, unnumbered paragraph 2, shall carry at all times a notarized statement of employment. The statement shall include the following:

1. The driver's name, address and social security number;
2. The name, address and telephone number of the driver's pre-July 29, 1996, employer;
3. A statement, signed by the pre-July 29, 1996, employer or the employer's authorized representative, that the driver was employed to operate a commercial vehicle only in Iowa; and
4. A statement showing the driver's physical or medical condition existed prior to July 29, 1996.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

761—520.8(321) Agricultural operations. The provisions of 49 CFR Part 395.3 shall not apply to drivers transporting agricultural commodities or farm supplies for agricultural purposes in Iowa if such transportation:

1. Is limited to an area within a 100-air-mile radius from the source of the commodities or the distribution point from the farm supplies, and
2. Is conducted only during the time frames of March 15 through June 30 and October 4 through December 14.

This rule is intended to implement Iowa Code sections 321.449 and 321.450.

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CHAPTERS 521 and 522
Reserved

DRIVER LICENSES

CHAPTER 600
GENERAL INFORMATION

[Prior to 6/3/87, Transportation Department[820]—(07,C)Ch 13]

761—600.1(321) Definitions. The definitions in Iowa Code section 321.1 and the following definitions apply to the rules in 761—Chapters 600 to 699.

"Director of the office of driver services" includes the office director's designee.

"License" means "driver's license" as defined in Iowa Code subsection 321.1(20A) unless the context otherwise requires.

"Medical report" means a report from a physician attesting to a person's physical or mental capability to operate a motor vehicle safely. The report should be submitted on Form 430031, "Medical Report." In lieu of Form 430031, a report signed by a physician on the physician's letterhead may be accepted if it contains all the information specified on Form 430031.

"Physician" means a person licensed to practice medicine and surgery or osteopathic medicine and surgery.

This rule is intended to implement Iowa Code section 321.1.

761—600.2(17A) Information and location. Applications, forms and information concerning driver's licensing are available at any driver's license examination station. Assistance is also available by mail from: Office of Driver Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204, or in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines, Iowa 50313; telephone 1-800-532-1121.

This rule is intended to implement Iowa Code section 17A.3.

761—600.3(321) Persons exempt.

600.3(1) Persons listed in Iowa Code section 321.176 are exempt from driver's licensing requirements.

600.3(2) "Nearby" in Iowa Code subsection 321.176(2) shall mean a distance of not more than two miles.

This rule is intended to implement Iowa Code section 321.176.

761—600.4(321) Persons not to be licensed.

600.4(1) The department shall not knowingly issue a license to any person who is ineligible for licensing.

600.4(2) The department shall not knowingly license any person who is unable to operate a motor vehicle safely because of physical or mental disability until that person has submitted a medical report stating that the person is physically and mentally capable of operating a vehicle safely.

600.4(3) The department shall not knowingly license any person who has been specifically adjudged incompetent, pursuant to Iowa Code chapter 229, on or after January 1, 1976, including anyone admitted to a mental health facility prior to that date and not released until after, until it receives specific adjudication that the person is competent. A medical report stating that the person is physically qualified to operate a motor vehicle safely shall also be required.

600.4(4) The department shall not knowingly license any person who suffers from syncope of any cause, any type of periodic or episodic loss of consciousness, or any paroxysmal disturbances of consciousness, including but not limited to epilepsy, until that person has remained free of episodes of loss of consciousness or loss of voluntary control for six months, and then only upon receipt of a medical report favorable toward licensing.

a. If a medical report indicates a pattern of only syncope, the department may license without a six-month episode-free period after favorable recommendation by the medical advisory board.

b. If a medical report indicates a pattern of such episodes only when the person is asleep or is sequestered for sleep, the department may license without a six-month episode-free period.

c. If episodes occur when medications are withdrawn by a physician, but the person is episode-free when placed back on medications, the department may license without a six-month episode-free period with a favorable recommendation from a neurologist.

600.4(5) The department shall not license any person who must wear bioptic telescopic lenses to meet the visual acuity standard required for a license.

600.4(6) When a medical report is required, a license shall be issued only if the report indicates that the person is qualified to operate a motor vehicle safely. The department may submit the report to the medical advisory board for an additional opinion.

600.4(7) When the department receives evidence that an Iowa licensed driver has been adjudged incompetent or is not physically or mentally qualified to operate a motor vehicle safely, the department shall suspend the license for incapability, as explained in rule 761—615.14(321), or shall deny further licensing, as explained in rule 761—615.4(321).

600.4(8) The department shall not knowingly issue a license to a person who is the named individual on a certificate of noncompliance that has been received from the child support recovery unit, until the department receives a withdrawal of the certificate of noncompliance or unless an application has been filed pursuant to Iowa Code section 252J.9.

600.4(9) The department shall not knowingly issue a license to a person who is the named individual on a certificate of noncompliance that has been received from the college student aid commission, until the department receives a withdrawal of the certificate of noncompliance or unless an application has been filed pursuant to Iowa Code section 261.127.

This rule is intended to implement Iowa Code sections 252J.8, 252J.9, 261.126, 261.127, 321.13, 321.177, 321.210, and 321.212.

761—600.5 to **600.11** Reserved.

761—600.12(321) Private and commercial driver education schools. Rescinded IAB 3/31/04, effective 5/5/04.

761—600.13(321) Behind-the-wheel instructor's certification. Rescinded IAB 3/31/04, effective 5/5/04.

761—600.14(321) Payment of fees. Rescinded IAB 3/31/04, effective 5/5/04.

761—600.15 Reserved.

761—600.16(321) Seat belt exemptions.

600.16(1) A person who is unable to wear a safety belt or safety harness for physical or medical reasons may obtain a form to be signed by the person's health care provider licensed under Iowa Code chapter 148, 150, 150A or 151. Form No. 432017, "Iowa Medical Safety Belt Exemption," is available from the office of driver services at the address in rule 600.2(17A).

600.16(2) Iowa Code section 321.445, subsections 1 and 2, shall not apply to the front seats and front seat passengers of motor vehicles owned, leased, rented or primarily used by a person with a physical disability who uses a collapsible wheelchair.

This rule is intended to implement Iowa Code section 321.445.

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◊Two ARCs
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CHAPTER 630
NONOPERATOR'S IDENTIFICATION
[Prior to 6/3/87, see Transportation Department[820]—(07,C)Ch 12]

761—630.1(321) General information.

630.1(1) The department shall issue a nonoperator's identification card only to an Iowa resident who does not have a driver's license. However, a card may be issued to a person holding a temporary permit under Iowa Code section 321.181.

630.1(2) Information concerning the nonoperator's identification card is available at any driver's license examination station, or at the address in 761—600.2(17A).

761—630.2(321) Application and issuance.

630.2(1) An applicant for a nonoperator's identification card shall complete and sign an application form at a driver's license examination station. The signature shall be without qualification and shall contain only the applicant's usual signature without any other titles, characters or symbols.

630.2(2) The applicant shall present proof of age, identity and social security number as required by rule 761—601.5(321). Submission of parental consent is also required in accordance with rule 761—601.6(321).

630.2(3) The nonoperator's identification card shall be coded for identification only, as explained on the reverse side of the card. The county number shall indicate the county of residence. The card shall expire four years from the date of issue.

630.2(4) Upon the request of the cardholder, the department shall indicate on the nonoperator's identification card the presence of a medical condition, that the cardholder is a donor under the uniform anatomical gift law, or that the cardholder has in effect a medical advance directive.

630.2(5) The issuance fee is $5. However, no issuance fee shall be charged for a person whose license has been suspended for incapability pursuant to rule 761—615.14(321) or who has been denied further licensing in lieu of a suspension for incapability pursuant to rule 761—615.4(321).

630.2(6) This subrule establishes the pilot project authorized by 2000 Iowa Acts, House File 2538, section 5.

a. The department may waive payment of or refund the fee for a renewal or duplicate of a nonoperator's identification card if:

(1) An error occurs during the issuance process and is discovered by the applicant at the time of issuance. However, the fee shall not be waived or refunded if the error is discovered by department staff and is corrected within the 30-minute time period specified in subparagraph (3).

(2) An error occurs during the issuance process and is discovered during the edit process of updating the identification record, and the error requires the applicant to return to the driver's license station to have the error corrected.

(3) The applicant is required to wait more than 30 minutes to renew a nonoperator's identification card or obtain a duplicate card. This 30-minute time period is determined by using an automated customer numbering system that monitors waiting time.

b. The department shall not waive payment of or refund a fee if the applicant does not have in the applicant's possession at the time of application the previously issued nonoperator's identification card.

c. The department shall not waive payment of or refund fees for new applications.

d. This pilot project is limited to issuance activity at the driver's license stations in Burlington, Iowa, and Davenport, Iowa.

761—630.3(321) Duplicate card.

630.3(1) *Lost or destroyed card.* To replace a nonoperator's identification card that is lost or destroyed, the cardholder shall submit Form 430052 and proof of age, identity and social security number. The replacement fee is $3.

630.3(2) *Voluntary replacement.* To voluntarily replace a nonoperator's identification card, the cardholder shall surrender to the department the card to be replaced. The reasons a card may be voluntarily replaced and any additional supporting documentation required are the same as those listed in subrule 761—605.11(2), paragraphs *"a"* to *"f."* The fee for voluntary replacement is $1.

761—630.4(321) Cancellation. The department shall cancel a nonoperator's identification card upon receipt of evidence that the person was not entitled or is no longer entitled to a card, failed to give correct information, committed fraud in applying or used the card unlawfully.

These rules are intended to implement Iowa Code sections 321.189, 321.190, 321.195, 321.216, 321.216A, 321.216B and 321.216C.

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CHAPTERS 631 to 633
Reserved

CHAPTER 634
DRIVER EDUCATION

761—634.1(321) Information and forms. Information and forms regarding this chapter may be obtained by mail from the Office of Driver Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204, or in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines; telephone (515)237-3153.

761—634.2(321) Definition.

"Laboratory instruction" includes instruction received by a student while the student is in the driver education vehicle or adjacent to it as referred to in paragraphs 634.4(2)*"c"* and 634.4(2)*"d"* and may also include range or simulation as referred to in paragraphs 634.4(2)*"h"* and 634.4(2)*"i."*

761—634.3 Reserved.

761—634.4(321) Driver education course standards and requirements.

634.4(1) *Course approval.* Any school district, area education agency, merged area school, other agency or individual planning to offer a driver education course must receive course approval from the department prior to the beginning of the first class that is offered and annually thereafter. The agency or institution or individual shall complete a form provided by the department to apply for course approval. Course approval will be issued for a calendar year or remainder of a calendar year. The approval expires on December 31 and must be renewed annually.

634.4(2) *Course requirements.* Driver education courses must comply with the following:

a. Schools shall provide for each student a minimum of 1800 minutes in classroom instruction, plus 360 minutes in supervised laboratory instruction, exclusive of observation time, in a dual-control motor vehicle.

b. Each student shall be scheduled to receive classroom and laboratory instruction each week of the course but in no case shall laboratory instruction conclude later than 30 days after classroom instruction is completed.

c. Behind-the-wheel instruction shall be limited to a maximum of 30 minutes per student per session and a maximum of 60 minutes in a single day.

d. Two or more students shall be scheduled for all behind-the-wheel instruction to ensure that appropriate observation time is experienced.

e. Routine maintenance of motor vehicles to maximize energy efficiency and safety shall be included in classroom instruction.

f. Operation of motor vehicles to maximize energy efficiency and safety shall be included in classroom instruction.

g. Each school district shall provide students who are absent from instruction an opportunity to make up a reasonable amount of time and coursework.

h. When driving simulators are used for part of the behind-the-wheel driving experience, four hours of simulator experience shall be considered equal to one hour of behind-the-wheel driving in the car. However, in addition to simulator time, a minimum of three hours of on-street, behind-the-wheel driving must be completed.

i. When driving ranges are used in driver education courses, two hours of range experience shall be considered equal to one hour of on-street, behind-the-wheel driving. However, in addition to range time, a minimum of three hours of on-street, behind-the-wheel driving must be completed.

j. Motor vehicles which are designed primarily for carrying nine or fewer occupants, excluding motorcycles and mopeds, are the only motor vehicles approved for use in driver education courses, and each shall be equipped with a dual control. In addition, all driver education vehicles shall have an inside rearview mirror and an outside rearview mirror mounted on each side of the vehicle.

k. The driver education teacher shall verify at the beginning of each course that each student possesses a valid instruction permit or driver's license. Each student shall be responsible for possessing an instruction permit or driver's license throughout all laboratory instruction and report any suspension, revocation or cancellation of the instruction permit or driver's license to the driver education teacher prior to attending laboratory instruction.

634.4(3) *Experimental program.* Approval of an experimental program may be granted by the department if based on student or school district need for improved instruction. The maximum duration of an experimental program shall be three years. Annual documentation of the effectiveness of instruction is required and must be submitted to the department subsequent to program completion.

761—634.5 Reserved.

761—634.6(321) Teacher qualifications. To qualify to be a driver education teacher, the teacher must:

634.6(1) Hold a valid Iowa driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

634.6(2) Have a clear driving record for the previous two years. A clear driving record means the individual has:

a. Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

b. No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

c. Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

d. No record of an accident for which the individual was convicted of a moving traffic violation.

761—634.7(321) Behind-the-wheel instructor's certification. The following applies to departmental certification of a person who is qualified to provide the street or highway driving component of an approved driver education course.

634.7(1) *Qualifications.* To qualify for the behind-the-wheel driving instructor certification, the applicant must:

a. Be at least 25 years of age.

b. Hold a valid Iowa driver's license that permits unaccompanied driving, other than a motorized bicycle license or a temporary restricted license.

c. Have a clear driving record for the previous two years. A clear driving record means the individual has:

(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

(3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

(4) No record of an accident for which the individual was convicted of a moving traffic violation.

d. Have successfully completed the instructor preparation requirements of this rule, as evidenced by written attestations on a form provided by the department from both the classroom instructor and behind-the-wheel observer.

634.7(2) *Disqualifications.* An individual shall be disqualified for the behind-the-wheel driving instructor certification for any of the following reasons:

a. The individual has been convicted of child abuse or sexual abuse of a child.

b. The individual has been convicted of a felony.

c. The individual's application is fraudulent.

d. The individual's teaching license or behind-the-wheel instructor's certification from another state is suspended or revoked.

634.7(3) *Investigation.* The department may investigate an applicant for a behind-the-wheel instructor's certification to determine if the applicant meets the requirements for certification. The investigation may include but is not limited to an inquiry into the applicant's criminal history from the department of public safety.

634.7(4) *Certification.*

a. To obtain a behind-the-wheel instructor's certification, an individual meeting the qualifications shall apply to the department on a form provided by the department. The certification shall be issued for a calendar year or remainder of a calendar year. The certification expires on December 31 but remains valid for an additional 30 days after the expiration date. The certification shall be renewed within 30 days of the expiration date.

b. To renew a behind-the-wheel instructor's certification, a person meeting the qualifications must:

(1) Provide behind-the-wheel instruction for a minimum of 12 clock hours during the previous calendar year.

(2) Participate in at least one state-sponsored or state-approved behind-the-wheel instructor refresher course.

634.7(5) *Instructor preparation requirements.* The department shall develop the curriculum in consultation with the Iowa driver education teacher preparation programs approved by the board of educational examiners and in consultation with the American Driver and Traffic Safety Education Association. Instructor preparation shall meet the following requirements:

a. Instructor preparation shall consist of 24 clock hours of classroom instruction and 12 clock hours of observed behind-the-wheel instruction.

b. At a minimum, classroom instruction shall focus on topics such as the psychology of the young driver, behind-the-wheel teaching techniques, and route selection. Classroom instruction shall be delivered by staff from a driver education teacher preparation program approved by the board of educational examiners. The duration of a classroom session shall not exceed four hours. Video conferencing may be used for course delivery.

c. Observation of behind-the-wheel instruction shall be provided by a person licensed to teach driver education who is specially trained by a driver education teacher preparation program approved by the board of educational examiners to observe, coach, and evaluate behind-the-wheel instructor candidates. The duration of a behind-the-wheel session shall not exceed four hours. A dual-control motor vehicle must be used.

d. The individual seeking a behind-the-wheel certification must apply to the department within 12 months of the completion of the course.

634.7(6) *Cancellation.* The department shall cancel the behind-the-wheel instructor's certification of an individual who no longer qualifies under paragraph 634.7(1)*"c"* or who no longer meets the qualifications for a behind-the-wheel instructor's certification.

634.7(7) *Approved driver education course.* To provide the street or highway driving component of an approved driver education course, an individual holding a behind-the-wheel instructor's certification must be employed by a public or licensed commercial or private provider of the approved driver education course and work under the supervision of a person licensed to teach driver education.

761—634.8(321) Private and commercial driver education schools. The department licenses private and commercial driver education schools as follows:

634.8(1) *Instructor and course approval.* Prior to licensing a driver education school, the department shall approve the school's course, classroom instructors and laboratory instructors. Street or highway driving instruction must be provided by a person qualified as a classroom driver education instructor or a person certified by the department and authorized by the board of educational examiners. Written evidence of these approvals and certifications must be submitted to the department upon application for a license, upon renewal of a license, and upon reinstatement of a license following cancellation.

634.8(2) *Application and fees.* Application for license issuance or renewal shall be made to the department on forms provided by the department. The fee for a license or the renewal of a license is $25. The fee must be paid by cash, money order or check. A money order or check must be for the exact amount and should be made payable to the Treasurer, State of Iowa, or the Department of Transportation.

634.8(3) *Issuance and renewal.* A license to teach driver education shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 but remains valid for an additional 30 days after the expiration date. The license shall be renewed within 30 days of the expiration date.

634.8(4) *Cancellation.* A license to teach driver education shall be canceled if the course or instructor is no longer approved or the person providing only behind-the-wheel instruction for driver education is no longer certified by the department and authorized by the board of educational examiners.

These rules are intended to implement Iowa Code sections 321.178, 321.180B and 321.194.

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CHAPTER 635
MOTORCYCLE RIDER EDUCATION (MRE)

761—635.1(321) Definitions.

"Approved course" means the motorcycle rider education course approved by the department.

"MRE" means motorcycle rider education.

"Sponsor" means an entity that delivers the approved course.

761—635.2(321) Approved course in motorcycle rider education.

635.2(1) Any entity providing motorcycle rider education to persons under the age of 18 for purposes of early licensing or seeking reimbursement under Iowa Code subsection 321.180B(6) for providing motorcycle rider education to persons aged 18 and older must teach the motorcycle rider education course approved by the department.

635.2(2) A sponsor must receive approval from the department prior to the beginning of the first class offered and annually thereafter. Private or commercial sponsors must also be licensed by the department prior to the beginning of the first class that is offered and annually thereafter. Application for license issuance or renewal shall be made to the department on forms provided by the department. The fee for a license or the renewal of a license is $25 for a private or a commercial sponsor. The fee must be paid by cash, money order or check. A money order or check must be for the exact amount and should be made payable to the Treasurer, State of Iowa, or the Department of Transportation.

635.2(3) The approved course uses a nationally recognized, research-based curriculum. Only persons successfully completing all elements of the approved course shall be issued an Iowa certificate of completion for motorcycle rider education. Issuance of an Iowa certificate of completion to persons who do not successfully complete the approved course is cause for revocation of the instructor's license and denial of reimbursement to the sponsor for each student involved.

635.2(4) Prior to the beginning of on-cycle instruction, a student enrolled in the approved course must be at least 14 years of age, possess a valid driver's license as defined in Iowa Code section 321.1, be able to touch the ground with the balls of both feet while sitting astride the training motorcycle, and complete the motorcycle safety course waiver form, including the signature of a parent or legal guardian if the student is under the age of 18.

635.2(5) The scheduled time for instruction—classroom, on-cycle, or a combination of both—shall not exceed eight hours in any one calendar day. During on-cycle instruction, a student shall wear a U.S. DOT-approved helmet, an eye-protective device, and protective clothing, including gloves, a long-sleeved shirt or jacket, long pants, and shoes or boots that cover the feet and ankles.

635.2(6) The student-instructor ratio for classroom instruction shall not exceed 36 to 1. No more than 12 students may receive on-cycle instruction at one time on a single full-size range. The student-instructor ratio for on-cycle instruction shall not exceed 6 to 1.

635.2(7) A driving range used for on-cycle instruction must be paved, free of hazards to motorcycle travel, and have an unobstructed, paved runoff of at least 20 feet in all directions.

a. and *b.* Rescinded IAB 9/4/02, effective 10/9/02.

635.2(8) The sponsor shall provide for each student engaged in on-cycle instruction one fully operational motorcycle manufactured for highway use. Each motorcycle must meet two of the following three criteria:

a. Have an engine displacement that does not exceed 500 cubic centimeters.

b. Have an unladen weight that does not exceed 400 pounds.

c. Have a seat height that does not exceed 30 inches.

635.2(9) The driving test for a Class M driver's license may be waived under 761—subrule 604.31(2) provided the applicant has successfully completed the approved course.

761—635.3(321) Instructors.

635.3(1) *License.* An instructor of the approved course must be licensed by the department. However, an individual who meets the qualifications for a license except for paragraph 635.3(2)*"d"* or who is suspended under paragraph 635.3(3)*"c"* may teach the approved course as provided in those paragraphs.

a. and *b.* Rescinded IAB 9/4/02, effective 10/9/02.

635.3(2) *Licensing provisions.* To obtain and retain an MRE instructor's license, an individual must:

a. Possess a valid Class M or equivalent driver's license which is valid for a two-wheel motorcycle.

b. Successfully complete a nationally recognized, research-based instructor preparation course approved by the department.

c. Possess a current instructor certification from a nationally recognized motorcycle safety organization approved by the department.

d. Before a license is granted, teach one class of the approved course under the guidance of an experienced, licensed instructor approved by the department.

e. After the year in which a license is granted, teach at least one class in Iowa each calendar year.

f. After the year in which a license is granted, complete at least one state-sponsored or state-approved instructor refresher or update each calendar year. The refresher or update must be completed in Iowa every other year.

g. Possess a high school diploma or equivalent. This is not required for a licensed instructor who trained as an MRE instructor before July 1, 1998, and who has taught for an Iowa sponsor after January 1, 1996.

635.3(3) *License suspension.*

a. The department shall suspend the MRE license of an MRE instructor whose driving privilege is suspended, revoked, canceled, denied or barred. The suspension shall remain in effect until the individual's driving privilege is restored.

b. The department shall suspend the MRE license of an MRE instructor who fails to maintain a current instructor certification from a nationally recognized motorcycle safety organization approved by the department. The suspension shall remain in effect until the certification is current.

c. Each January, the department shall review each MRE instructor's teaching activity and update/refresher completion. The department shall suspend the MRE license of an MRE instructor who fails to meet these licensing provisions. The suspension shall remain in effect until the individual has done one of the following:

(1) Taught two classes of the approved course under the guidance of an experienced, licensed instructor approved by the department.

(2) Attended the first instruction component of an instructor preparation weekend.

(3) Completed an Iowa technical assistance review with an instructor trainer.

761—635.4(321) Responsibilities of sponsors.

635.4(1) Sponsors shall:

a. Comply with all teaching and instructor provisions of the approved course.

b. Use only instructors licensed by the department to teach the approved course. However, an individual who meets the qualifications for a license except for paragraph 635.3(2)*"d"* or who is suspended under paragraph 635.3(3)*"c"* may teach the approved course as provided in those paragraphs.

c. Eligible expenses are limited to:

(1) Instructor and coordinator salaries and travel.

(2) Consumable instructional materials and supplies including helmets, eye-protective devices and gloves.

(3) Range maintenance, which is limited to paint, crack filler, and minor surface repairs.

(4) Motorcycle operation, maintenance and storage costs.

(5) Documented program liability insurance expenditures.

(6) Program promotion costs.

d. Claims for reimbursement shall include an audited statement, including supporting documentation, of eligible expenses incurred and tuition received, a summary of courses taught with site, date, and instructor information, and a report for each class taught providing name, age, social security number and gender of each student. Claims for reimbursement shall be made on forms provided by the department.

e. Failure to provide complete cost, course, instructor and student information, failure to meet instructor certification and licensure requirements, or failure to meet prescribed instructor-student ratios shall result in the forfeiture of reimbursement for those courses and students involved.

761—635.6(321) Information and forms. Information and forms regarding this chapter may be obtained by mail from the Office of Driver Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204, or in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines; telephone (515)237-3153.

761—635.7(321) License issuance. To be licensed to teach MRE, the sponsor's course and instructors must be approved by the department in accordance with this chapter.

635.7(1) *Issuance and renewal.* A license to teach MRE shall be issued for a calendar year or remainder of a calendar year. The license expires on December 31 and must be renewed annually.

635.7(2) *Cancellation.* A license to teach MRE shall be canceled if the course or instructors are no longer approved. Also, a license to teach MRE shall be canceled if the sponsor does not comply with this chapter.

These rules are intended to implement Iowa Code subsections 321.180B(5) and 321.180B(6).

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CHAPTER 636
MOTORIZED BICYCLE RIDER EDUCATION

761—636.1(321) Information and forms. Information and forms regarding this chapter may be obtained by mail from the Office of Driver Services, Iowa Department of Transportation, P.O. Box 9204, Des Moines, Iowa 50306-9204, or in person at its location in Park Fair Mall, 100 Euclid Avenue, Des Moines; telephone (515)237-3153.

761—636.2(321) Definitions.

"Approved course" means the motorized bicycle rider education course approved by the department.

"Sponsor" means an entity that delivers the approved course.

761—636.3 Reserved.

761—636.4(321) Agencies or institutions. Any school district, area education agency, merged area school, other agency or individual planning to offer a motorized bicycle rider education course must receive course approval from the department prior to the beginning of the first class that is offered and annually thereafter. The agency or institution or individual shall complete a form provided by the department to apply for course approval. Course approval will be issued for a calendar year or remainder of a calendar year. The approval expires on December 31 and must be renewed annually.

761—636.5(321) Private or commercial sponsors. The department licenses private and commercial sponsors offering motorized bicycle rider education.

636.5(1) *Instructor and course approval.* The department must approve the sponsor's course and instructors prior to the beginning of the first class that is offered and annually thereafter.

636.5(2) *Application and fees.* Application for authorization or renewal shall be made to the department on forms provided by the department. The fee for an authorization or a renewal is $25 for a private or a commercial sponsor. The fee must be paid by cash, money order or check. A money order or check must be for the exact amount and should be made payable to the Treasurer, State of Iowa, or the Department of Transportation.

636.5(3) *Issuance and renewal.* Authorization to offer motorized bicycle rider education shall be issued for a calendar year or remainder of a calendar year. The authorization expires on December 31 and must be renewed annually.

636.5(4) *Cancellation.* The authorization to teach motorized bicycle rider education shall be canceled if the course or instructors are no longer approved.

761—636.6 Reserved.

761—636.7(321) Course requirements.

636.7(1) *Classroom instruction.* An approved course shall consist of a minimum of six clock hours of classroom instruction which includes the instructional components contained in subrule 636.7(3).

636.7(2) *Driving instruction.* Motorized bicycle rider driving experiences in addition to classroom instruction are permissible, but not required.

636.7(3) *Course content.* The following instructional components shall be incorporated in every motorized bicycle rider education course.

a. Operator and motorized bicycle preparation.
(1) Knowledge of Iowa driving laws.
(2) Knowledge of vehicle registration requirements.
(3) Vehicle inspection.
(4) Protective clothing and devices.
(5) Risk assessment.
(6) Route selection.

b. Basic control skills.
(1) Starting procedures.
(2) Speed control.
(3) Turning.
(4) Stopping.

c. Safe driving practices.
(1) Use of lights and warning devices.
(2) Signaling.
(3) Maintaining directional control.
(4) Perception skills and observation.
(5) Use of mirrors.
(6) Recognition of hazards.
(7) Speed control.
(8) Lane positioning.
(9) Concerns and conflicts regarding intersections.
(10) Following distances.
(11) Lateral separation.

d. Complex situations.
(1) Limited visibility.
(2) Adverse weather.
(3) Critical situations.
(4) Malfunctions.

e. Motorized bicycle care.
(1) Inspection.
(2) Maintenance.

761—636.8(321) Teacher qualifications. A teacher of an approved motorized bicycle rider education course shall possess a valid license allowing unaccompanied driving other than a temporary restricted license and shall be able to operate a motorized bicycle. A teacher must also have a clear driving record for the previous two years. A clear driving record means the teacher has:

636.8(1) Not been identified as a candidate for driver's license suspension under the habitual violator provisions of rule 761—615.13(321) or the serious violation provisions of rule 761—615.17(321).

636.8(2) No driver's license suspensions, revocations, denials, cancellations, disqualifications or bars.

636.8(3) Not committed an offense that would result in driver's license suspension, revocation, denial, cancellation, disqualification or bar.

636.8(4) No record of an accident for which the individual was convicted of a moving traffic violation.

761—636.9(321) Evaluation. Each student shall be evaluated to determine successful completion of the course.

These rules are intended to implement Iowa Code section 321.189.

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